

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

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Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916, **SC Court of Appeals**  
2009-CP-08-1413, 2008-CP-08-2714  
Appellate Case No. 2014-002390

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THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC.,  
JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU,  
JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM  
JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S.  
POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO  
AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M.  
JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III,  
RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J.  
SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, and CARRIAGE HILL  
ASSOCIATES OF CHARLESTON, LLC,

Appellants.

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RECORD ON APPEAL  
Vol. IV of VI

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1 acoustic ceiling repairs. Okay?

2 A. All right.

3 Q. Who designed the acoustical ceiling repairs?

4 A. Mr. Padgett and my -- John Duma, in my office,  
5 collaborated on the acoustical ceiling design.

6 Q. Do you know whether or not in Mr. Duma's thirty  
7 or forty years experience in architecture, that he's prior  
8 to that done acoustic designs for soundproofing and that  
9 sort of thing for sound reduction?

10 A. Yes. He's designed multi-family buildings for  
11 the army, for Housing Authority, and private owners,  
12 apartments and condos.

13 Q. Is it your understanding that designing -- an  
14 architect's thinking about acoustics in buildings is  
15 something that's just recently popped up in the last year  
16 or two?

17 MR. MAYBANK: Objection, Your Honor. This  
18 gentleman is a construction builder, he's not an  
19 architect or an acoustical expert.

20 THE COURT: Yeah. But he's talking about  
21 estimates. Okay? I think in the context of  
22 estimates, he's qualified to testify. If it goes too  
23 far, I'll be glad to hear your motion again. Okay?

24 MR. MAYBANK: Thank you, Your Honor.

25 A. I'm sorry. Could you repeat the question?

1 Q. [Mr. Bundy] Is the -- in your experience in  
2 building, okay, and performing contracts, building  
3 condominiums and complying with the designs, do you  
4 understand this is a relatively new concept, this acoustic  
5 soundproofing or sound-deadening between living units in  
6 multistory buildings?

7 A. No. It's not a new concept and it's not a new  
8 problem. This is a concern. There's code issues  
9 requiring the amount of sound transfer between walls and  
10 floors.

11 Q. In the condominium you built at Bell Hall, what  
12 was the floor system and the soundproofing like there, or  
13 the sound-deadening, between the units?

14 A. The floor construction was almost identical to  
15 The Oaks' floor construction. There was sound-deadening  
16 mats installed on the top floor and there was resilient  
17 strips installed on the bottom. It's very similar.

18 Q. How about the floors themselves?

19 A. They were plywood.

20 Q. No Gyp-Crete?

21 A. No.

22 Q. And did you have any problems over there?

23 A. We didn't put a lot of hard surfaces in there.  
24 It was mostly carpet and they were of different price  
25 point altogether.

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1 Q. Okay. What was the price point of those?

2 A. Sub 200,000.

3 Q. Pardon me?

4 A. Sub 200,000 a unit.

5 Q. So less than 200,000 bucks?

6 A. Yes.

7 Q. Okay. In terms of the price point of seven  
8 hundred, seven fifty, six-fifty price point for  
9 condominiums such as The Oaks, what would you normally  
10 expect for the --

11 MR. MAYBANK: Object to the form, Your Honor.  
12 That's speculation.

13 THE COURT: Object to the form?

14 MR. MAYBANK: He's speculating. Objection.  
15 He's speculating.

16 THE COURT: I will overrule as far as the form.

17 MR. MAYBANK: Thank you, Your Honor.

18 A. Typically, in multistory private residences we  
19 see a concrete construction like a hotel. Typically, in  
20 the condominium project that I just described, that's  
21 typical of apartment-type construction where it's a  
22 totally different product. So it's a different price  
23 point, different product, and it's not cost effective to  
24 build in a more expensive manner, based on what they can  
25 get per month or per unit when they sell them.

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1 Q. [Mr. Bundy] And if you don't use concrete  
2 flooring, or solid concrete, what's the next level that  
3 you would go to to try to establish a decent --

4 A. There's a million different UL assemblies for a  
5 wood-frame building, and typically there is some type of  
6 topping slab or some kind of deadening to put on top of  
7 them.

8 Q. All right, sir. Do you -- you've been to The  
9 Oaks?

10 A. I have.

11 Q. You've been out there --

12 A. I have --

13 Q. -- and looked around?

14 A. Yes, sir.

15 Q. The outward appearance, the esthetics of the  
16 Oaks, how would you compare that to the -- and the quality  
17 of the esthetics, how would you compare that to the  
18 quality of the structures themselves? In other words --  
19 do you understand what I'm saying?

20 A. I understand what you're asking me.

21 Q. All right. What -- how would you -- what would  
22 you say?

23 A. The building is very plush, you know, the trim,  
24 the appointments, the exterior landscaping, the overall  
25 feel of it. The structure is probably the most cost

1 effective way to build that building, because it's all  
2 wood framed, aside from the garages. And my contemplation  
3 with the reason why the garage was constructed as it is is  
4 for fire barriers between garages and living quarters,  
5 which has to be a 2-R rating. Nice trim, a lot of nice  
6 cabinets, a lot of really nice finishes, to give the  
7 appearance of the value that someone is going to pay for  
8 it. But the actual structure is very similar to  
9 multifamily apartment-condominium type construction that  
10 we're used to.

11 Q. Could you characterize it as a tricked-out  
12 apartment building?

13 A. I would say yeah. I mean, it's got a lot of  
14 amenities that aren't typically found in it, but the bones  
15 of it are the same.

16 Q. And are the bones important when you pay  
17 \$700,000 for a condo?

18 A. Typically, we think the bones are the most  
19 important. You can always add trim, you can always add  
20 cabinets, you can always add mahogany floors, but you  
21 can't fix the way that things are constructed, easily,  
22 after the fact.

23 Q. And other condos in the area -- are you familiar  
24 with the Tides?

25 A. I am.

1 Q. And what sort of construction is that?

2 A. Cast-in-place concrete.

3 Q. Concrete between floors?

4 A. Yes, sir.

5 Q. How about the Renaissance?

6 A. I believe it's cast-in-place, as well. I mean,  
7 it's structural steel-cast floors and then metal-stud  
8 infill.

9 Q. How about the Bristol?

10 A. That's definitely that way.

11 Q. Do you know of any condominium project in the  
12 tri-county area, at this price point, that is constructed  
13 this way structurally?

14 A. No, sir.

15 Q. Okay. And how much are you talking about saving  
16 here? Let me ask you -- you're in the money business.  
17 You're in the business of trying to make money. How much  
18 do you think the builder and the developer saved by  
19 building the structure the way they did as opposed to  
20 building it the way to make it more commensurate with the  
21 finishes and fit?

22 MR. MAYBANK: Objection, Your Honor. He's  
23 speculating on what the developer may or may not have  
24 saved. He wasn't in the accounting process.

25 THE COURT: Rephrase your question.

1 I'll sustain the objection.

2 MR. BUNDY: Thank you, Your Honor.

3 THE COURT: I don't think he knows what the  
4 construction -- the developer saved, but he might be  
5 able to address it from a cost standpoint.

6 Q. [Mr. Bundy] From a cost standpoint, what is the  
7 difference in costs in construction if you build the same  
8 condos as the other? Same fit and finish in both  
9 instances, but in one instance you use concrete -- like  
10 the Bristol or any of these others -- as compared to what  
11 was done here, per building?

12 A. It would be very difficult for me to quantify  
13 that sitting here. But, obviously, once you introduce  
14 concrete, you introduce structural steel, you introduce a  
15 significantly different load on the foundation. This  
16 building would be multiple times more expensive to  
17 construct in that manner.

18 Q. And so by having this type of structure, you're  
19 able to achieve a price point by increasing amenities from  
20 the money you don't spend on the structure, assuming you  
21 spend the same amount of money?

22 A. Correct. You would be able to spend more in  
23 finishes, theoretically, than in the foundation if you  
24 used the less expensive foundation, yeah.

25 MR. BUNDY: I think that's all I have. Thank

1           you.

2           THE COURT: Cross-examination.

3           MR. MAYBANK: Mr. Willis, how are you today?

4           THE WITNESS: Very well. Thank you.

5           MR. MAYBANK: My name is Roy Maybank. I  
6           represent Daniel Island Riverside Developers and  
7           Carriage Hill Associates of Charleston.

8                                   CROSS-EXAMINATION

9           BY MR. MAYBANK:

10           Q.     What other projects have you done for Mr. Bundy  
11           -- I wasn't writing it down -- or have you done any other  
12           projects for Mr. Bundy's firm?

13           A.     For the firm?

14           Q.     For the firm.

15           THE COURT: Did you say projects or testify?

16           MR. MAYBANK: Projects.

17           THE COURT: Oh. Okay.

18           Q.     [Mr. Maybank] Any type of bill-back projects  
19           like this. In other words, they were the attorneys of  
20           record.

21           THE COURT: I didn't know Mr. Bundy was in the  
22           project business, building condominiums.

23           A.     We did the Barnwell County admin building, which  
24           they were the attorneys of record on. We repaired the  
25           Frieda [phonetic] residence in Park West, yeah, that they

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1 were the attorneys of record on. Those are the only two  
2 that jump to mind right now.

3 Q. [Mr. Maybank] Could there be others that --

4 A. There could be.

5 Q. -- you just don't remember?

6 A. There could be.

7 Q. How about with working with Mr. Ted Padgett?  
8 How many projects have you worked with Ted on?

9 A. We worked together on Orange Street downtown, 14  
10 or 15 Orange Street. And I've done a lot of pricing for  
11 Ted over the years, but that was the only one that  
12 resulted in construction work.

13 Q. Is that the Orange Street residence where they  
14 are claiming window defects? Do you know?

15 A. I don't know. I did some foundation repairs  
16 there. I wasn't doing -- there was a window-change out on  
17 the job, but it wasn't by me.

18 Q. Are you still involved in that lawsuit?

19 A. Hopefully not.

20 Q. You wouldn't be the first person to take that  
21 position in that case, I assure you.

22 Any other buildings besides these three with Mr.  
23 Bundy's firm through Mr. Padgett and/or Mr. Padgett, how  
24 about in terms of other work? Do you normally do general  
25 contracting work as a business or do you do remediation

1 work as a business?

2 A. I do both as a business. And my percentage of  
3 either depends on the year. Right now we have two new  
4 construction projects and two remediation projects. So  
5 sometimes I'll have all new construction or renovation  
6 work and sometimes I might have all remediation. It just  
7 depends on the time of year.

8 Q. If you've got two remediation works right now,  
9 would that include that job or is that two others?

10 A. I'm referring to money -- projects that I'm  
11 actively working on in the field that's two others.

12 Q. Which two others are you currently actively  
13 remediating right now?

14 A. We're making the structure repairs to the ILA  
15 building on East Bay Street and we are decladding twenty-  
16 four townhouses in West Ashley, Proprietor's Row.

17 Q. Where?

18 A. West Ashley.

19 Q. I'm sorry. But where?

20 A. Proprietor's Row.

21 Q. Twenty-four townhouses?

22 A. Yeah.

23 Q. And the twenty-four townhouses, you're stripping  
24 and recladding?

25 A. Correct.

1 Q. Are the windows coming out?

2 A. They are.

3 Q. And is that stripping and recladding on those  
4 twenty-four town homes as a result of the leaking-window  
5 problems?

6 A. Those units are thirty years old and there's  
7 no litigation pending. They're rotten. I don't know if  
8 it's -- I'm sure it's partly from the windows, partly from  
9 the roof, partly from flashing, partly from --

10 Q. Sure.

11 A. Yeah.

12 Q. I guess the better question I should have asked  
13 is the homeowners association hired you to come in and do  
14 the work?

15 A. Correct.

16 Q. It's not through a lawsuit?

17 A. That's correct.

18 Q. On the new construction, what type of new  
19 construction are you building?

20 A. We are building a pizza restaurant at 94 Stewart  
21 Street. We are doing a dermatology office at Trident  
22 Hospital.

23 Q. Dermatology at Trident Hospital?

24 A. On the outside of it. Yes, sir.

25 Q. I mean, there's a --

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1 A. Right. Exactly. Medical --

2 Q. -- there's a road that goes around it?

3 A. Medical plaza around the outside.

4 Q. Have you yourself ever been the head project  
5 construction manager, from building from foundation up, on  
6 condominiums the size and scope of what were built out on  
7 The Oaks project?

8 A. Square-footage size, yes, sir.

9 Q. And what was the name of that project?

10 A. Bell Hall condominiums.

11 Q. Bell Hall. Have those been in any litigation?

12 A. Not from a construction standpoint.

13 Q. What were they litigated from?

14 A. The bank took them back.

15 Q. Pardon me?

16 A. The bank took them back.

17 Q. And that's Bell Hall. How many units was that?

18 A. We built the first phase, which was an eighteen-  
19 unit building.

20 Q. Was the eighteen-unit building a single building  
21 with eighteen units in it?

22 A. Correct.

23 Q. How high up did it go?

24 A. Three stories.

25 Q. Did y'all use concrete poured between the

1 different stories on that building?

2 A. No, sir.

3 Q. Did you use Gyp-Crete between the different  
4 floors on that building?

5 A. We did not.

6 Q. Would you agree with me that more likely than  
7 not, you get that concrete steel on a place like the Tides  
8 that is seven and eight stories high, like the Renaissance  
9 that is twenty-maybe stories high, that the normal  
10 construction here in the Charleston area when it comes to  
11 two- and three-story condominium and town homes is  
12 normally stick built?

13 A. I would say that you can definitely build a  
14 three-story building stick built and four-story stick  
15 built and you cannot build a twenty-foot -- a twenty-story  
16 building with lumber. So you've got two different things  
17 going on here. One is that, structurally, you can't build  
18 the Tides out of two-by-fours. They didn't have an option  
19 but to go with the method that they employed. But you  
20 could definitely build a three- or four-story luxury  
21 condominium project with steel and concrete.

22 Q. Sure you can. But that wasn't my question.

23 My question was wouldn't you agree with me that  
24 most construction in the tri-county area, Berkeley,  
25 Charleston, and Dorchester, when it's built two- to three-

1 stories high it's still stick-built construction?

2 A. I would disagree with that.

3 Q. How about with the use of concrete between the  
4 stories?

5 A. Well, it's the same question. You can't stick-  
6 build it and pour concrete between the floors.

7 Q. All right. Have you ever been to the Monticeta  
8 [phonetic]?

9 A. No, sir.

10 Q. The Merivista [phonetic]?

11 A. No, sir.

12 Q. Any of the Dunes West properties out there?

13 A. I'm sure I've driven by them.

14 Q. Do you believe that all those are all -- most of  
15 those are all concrete construction? In your history of  
16 being a general contractor.

17 A. I have no way of knowing what kind of  
18 construction they are. I haven't been in the building.

19 Q. But you were able to testify as to the Tides, as  
20 to the Renaissance --

21 A. I watched them --

22 Q. -- and the Bristol?

23 A. I watched them go up. I mean, I was working in  
24 the area when those projects were being constructed. It's  
25 not very difficult to drive across the Cooper River Bridge

1 and tell they're pouring concrete.

2 Q. Good enough.

3 Can you tell me, then, what other concrete  
4 projects of two to three stories made of condos [phonetic]  
5 here in Charleston that you're aware of?

6 A. I can't give you a list, no, sir.

7 Q. Just give me one.

8 A. Again, I can't give you --

9 Q. You can't because most of them are built with  
10 stick-built, aren't they?

11 A. That's your position.

12 Q. You've provided two reports in this case, and I  
13 believe one has been marked Plaintiffs' 49 and one has  
14 been marked Plaintiffs' 181 -- or 180.

15 A. I have 180 in front of me.

16 Q. Okay. 180.

17 I'm going to hand you Plaintiffs' Exhibit 49 and  
18 ask you to look at that, if you would.

19 [Whereupon, the witness reviews documents]

20 A. Yes, sir.

21 Q. [Mr. Maybank] Do you recognize Exhibit 49 and  
22 181?

23 A. I do.

24 Q. Are they essentially the same reports?

25 A. They are.

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1 Q. And Exhibit 49, that is the cost-estimate base  
2 with the window inclusion; correct? The cost of windows  
3 and doors being replaced?

4 A. That's correct.

5 Q. And that cost is \$11,807,884?

6 A. Yes, sir.

7 Q. And that cost back in February 15th of 2011,  
8 though it's the same as the one you have now, contemplates  
9 fixing all of the construction defects known at that time,  
10 in those -- in this report dated April 2nd, 2003; correct?  
11 Pardon me. 2013.

12 A. You need to reword the question.

13 Q. Sure. The reports are identical to one another,  
14 other than the fact that on one you have the windows and  
15 doors and the other you don't?

16 A. I have the windows and doors, the bicon  
17 [phonetic] balusters, and the window treatments removed,  
18 in document 180.

19 Q. Okay. So the difference, then, is you're  
20 bringing it down from 11,807,884 down to seven million  
21 nine hundred and thirty-four seven zero four zero six; is  
22 that right?

23 A. Yes, sir.

24 Q. Now, you've testified that you will need -- that  
25 you're basing that scope, the 180, on what Mr. Padgett

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1 verbally kind of told you what needed to be done; is that  
2 right?

3 A. I based the first document, which is number 49,  
4 on Mr. Padgett's written scope of work. I based the  
5 second document, which is 180 -- it is the exact same  
6 document with certain components removed that were  
7 requested of me last week.

8 Q. So in terms of what is continued to be kept in  
9 180, you wouldn't take it out unless you were directed to;  
10 correct?

11 A. That's correct.

12 Q. So if you've got the rowlocks, which is I  
13 believe -- is that near a window?

14 A. It's near a window, but it's also near other  
15 connections. So where the stucco would meet the brick,  
16 there would be a rowlock or a water table. It's a  
17 decorative band. So there would be a sill under a window  
18 or next to a door, but there is other linear footage that  
19 would need to come out for flashing issues.

20 Q. So the sill brick that you refer to, that needs  
21 to come out based on this 180, the rowlock that need to  
22 come out, that's brick that will be having to be brought  
23 out because of the window removal; correct?

24 A. There's three components to the window -- to the  
25 brick-removal number. One of the components is window

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1 removal, defination, as per Mr. Padgett's scope of  
2 work. It's not only limited to windows but to doors, as  
3 well. So patio doors and windows, to remove them, a  
4 portion of the brick from the sides, from the sill, and  
5 from the head would have to be removed to remove that  
6 window and then reinstall that window.

7 Q. Is that broken out, then, in Exhibit 180?

8 A. It is not.

9 Q. So though globally he's asking for it, there is  
10 a component that needs to be taken out of there if you're  
11 going to be doing the windows and doors; correct?

12 A. There is a portion of the brick number that is  
13 still contemplated to be with window removal. However,  
14 there is -- all of the brick that is listed in document  
15 180 and in document 49 is not global removal of the brick.  
16 It's for a finite portion. It's for 6,100-and-some-odd  
17 square feet of brick. Of that 600,140 square feet of  
18 brick, there is a component that is attributable to window  
19 replacement.

20 Q. And I don't disagree with that.

21 A. Okay.

22 Q. I mean, I don't, because I looked at the  
23 buildings and I went back -- and I'm going to have someone  
24 testify about this in a little bit. I looked at the brick  
25 that surrounds the lower part of these buildings. That

1 brick that you're talking about, that percentage that can  
2 stay there, could theoretically be the amount of brick  
3 that goes around the bottom of each building; correct?

4 A. It could be there and then also in the middle of  
5 a field where you don't have an intersection with a  
6 flashing, or a dissimilar material, that it would be  
7 savable.

8 There is other -- there is another note in  
9 Mr. Padgett's scope which said that upon the partial  
10 decladding, if there were brick issues that were found  
11 with connections to the structure or build air voids or  
12 whatever that would make the entire brick system fail,  
13 that all of it would need to come off.

14 Q. Absolutely.

15 Have you seen a single photograph -- because we  
16 didn't see one yesterday. He testified that there were no  
17 brick ties. Have you seen a single photograph evidencing  
18 that there were no brick ties on this project?

19 A. I have not.

20 MR. BUNDY: Your Honor, I move to strike. I  
21 move -- I object to the question. That's not what our  
22 witness testified to. What the witness testified to  
23 was there was no lateral reinforcement in the brick.

24 THE COURT: Well, the question was had he seen  
25 any brick ties and he said no.

1 MR. BUNDY: Well, the question was a  
2 representation to the witness from the attorney of  
3 what another witness said.

4 THE COURT: Well, the attorney was testifying  
5 and I'll strike that portion --

6 MR. BUNDY: Thank you.

7 THE COURT: -- of it. But as far as the  
8 question, it's overruled.

9 MR. BUNDY: Thank you.

10 Q. [Mr. Maybank] So as far as you have -- in terms  
11 of your investigation on the project, you don't know if  
12 there are not any brick ties on there; correct?

13 A. First of all, I didn't do any investigation on  
14 the project besides going to the project to do my cost  
15 takeoff. The scope of work was determined by Mr. Padgett,  
16 not by Southeastern Construction. So I have no testimony  
17 regarding the current state of the brick veneer on the  
18 building.

19 Q. Would you agree with me, then, that if, in fact,  
20 the amount of stucco and brick that needs to come off as a  
21 result of the window and door removal is say sixty  
22 percent, say seventy percent, is it more cost effective to  
23 go ahead and strip the entire building and to reclad it  
24 because you're taking so many of the windows and doors  
25 out?

1 A. I think you would be assuming that the sixty or  
2 seventy percent of the work is from the window declad --  
3 or the window definistration.

4 Q. And if I were -- if I were -- yes. Please  
5 assume that for me.

6 A. Okay. You would have to assume that.

7 Q. Yes.

8 A. My experience is that a window -- if there is no  
9 systemic veneer issues with connection to the building,  
10 flashing at dissimilar materials, through all flashing at  
11 floor levels, weep tubes have been installed, and it's  
12 only a window-and-door issue, those windows and doors  
13 could be surgically removed.

14 Q. All right. And have you seen the number of  
15 windows and doors at The Oaks project?

16 A. I believe they are enumerated in my cost  
17 estimate.

18 Q. And I'm going to hand you something and it's  
19 got -- it's highlighted. If you would take a look at  
20 that. Assuming for this argument that the windows and  
21 doors need to come out, and that highlighted portion  
22 represents the amount of brick and stucco, because of the  
23 number of windows and the closeness in relation to them  
24 and the amount of water penetration coming through what  
25 we've now learned to be defectively manufactured windows,

1 if, in fact, that amount of highlighted stucco and brick  
2 need to come out solely for the window removal and door  
3 removal, would you agree with me that that percentage must  
4 come off of your Exhibit 180, as well? The cost for that?

5 A. Well, first of all, the stucco declad is  
6 independent of the windows and doors. It's already failed  
7 and there's rot because of it. And --

8 Q. Did you -- but you didn't do any investigation  
9 into that? You testified you didn't --

10 A. That's what was prescribed in the scope.

11 THE COURT: Are you asking him about the brick,  
12 or the stucco and the brick, with that form?

13 MR. MAYBANK: I think it's -- you know, I think  
14 it's both the stucco and the brick.

15 THE COURT: Okay. Okay.

16 MR. MAYBANK: If the windows are defective --

17 THE COURT: Because he testified earlier this  
18 sixty-one eighty square foot was not but seventy  
19 percent of the total brick on the building. I don't  
20 know where the other thirty percent is. Or maybe I  
21 misheard what you said.

22 THE WITNESS: No, sir. I mean, all of this  
23 brick can be salvaged, all this brick can be salvaged  
24 -- and I can take a highlighter and turn it sideways  
25 and highlighter on these windows, as well -- but not

1 that much brick comes off.

2 THE COURT: Mr. Maybank, what I'm confused about  
3 is the sixty-one eighty. According to his testimony  
4 on direct, wasn't but seventy percent of the brick on  
5 the building. Okay?

6 MR. MAYBANK: I understand that.

7 THE COURT: Now, I don't know where that thirty  
8 is. Is that around the window, is that compensating  
9 for the window, or should it be a bigger percentage?

10 MR. MAYBANK: Your Honor, I believe that if we  
11 look at it -- and I'll show you the photographs --

12 THE COURT: Well, go ahead and ask the question.

13 MR. MAYBANK: All right.

14 THE COURT: I was just telling you my confusion.

15 MR. MAYBANK: All right.

16 Q. [Mr. Maybank] The thirty percent of the brick,  
17 if we were to take that through these drawings in the non-  
18 highlighted area, could that non-highlighted area that  
19 shows the brick be that thirty percent around the base of  
20 the building and the garage area and those areas that  
21 don't have windows, that do not need to come off?

22 A. Obviously, that is a component of it. I have  
23 not done that analysis. I haven't gone through and  
24 calculated all of the square footage of brick that would  
25 be attributable to the windows. I was not tasked to do

1 that.

2 Q. All right. Fair enough.

3 THE COURT: How difficult is it to do that?

4 THE WITNESS: Not very.

5 THE COURT: Can you do that?

6 THE WITNESS: Yes, sir.

7 THE COURT: Can you do that today?

8 THE WITNESS: Depends on when I leave.

9 MR. MAYBANK: Your Honor, what I thought --

10 THE COURT: Pardon?

11 THE WITNESS: Depends on when you let me leave.

12 THE COURT: Pardon?

13 THE WITNESS: It depends on when y'all let me  
14 leave.

15 THE COURT: Well, I'll let you leave right now  
16 and come back after lunch, if you can do that.

17 MR. MAYBANK: And we'll have somebody testify to  
18 that --

19 THE COURT: Okay. That's fine.

20 MR. BUNDY: He's going to do it today.

21 THE COURT: Pardon?

22 MR. BUNDY: He's going to do it.

23 THE COURT: Well, that's fine. I just want  
24 somebody to do it. Okay?

25 MR. BUNDY: It will be done.

1 Q. [Mr. Maybank] As well as the stucco. And that  
2 would be the same question that I --

3 THE COURT: Because I have no means of doing it,  
4 no knowhow as to how to do it.

5 Q. [Mr. Maybank] And so my question would be with  
6 the stucco, as well. As you sit here today, you can't  
7 quantify in your Exhibit 180 the cost differential of what  
8 it would be if you were doing the stucco solely with  
9 window problems versus the stucco with these alleged --

10 A. Correct.

11 Q. -- other problems?

12 A. Correct.

13 Q. Would it be a fair statement, though, to say --  
14 well, you would agree with me that if, in fact, there is a  
15 percentage attributable to the windows which you took out  
16 of your 180 cost -- Exhibit 180 cost estimate that in  
17 relation that amount attributed to the windows and doors  
18 should also be removed since it is attributable to the  
19 windows and doors?

20 A. That is not for me to determine. If I'm  
21 directed to pull a certain square footage out, I will.  
22 But you're asking me a legal question. I don't know if  
23 it's attributable. I mean, if you say -- you're running a  
24 hypothetical right now.

25 Q. Sure. Absolutely.

1           A.     I mean, all of the plywood and the studs are  
2           compromised according to the report. So the stucco and  
3           the brick have to come off to fix that. So we could run  
4           with the hypothetical that it doesn't matter about the  
5           windows and doors. I've still got to take it off because  
6           of that.

7           Q.     And if that damage, that substrate damage, is  
8           testified to be directly attributable to the failed  
9           windows that were defectively manufactured and installed  
10          around these areas, and that substrate had to come out,  
11          which you've put in the cost estimate here, the stucco has  
12          to come out, which you've put in the cost estimate here,  
13          the brick has to come out, that you've put in the cost  
14          estimate here -- if that's directly attributable to the  
15          water penetration around these defective windows, that  
16          percentage of your report, if we're looking at columns,  
17          should be shifted from the column of Exhibit 180 back to  
18          Exhibit 49, shouldn't it?

19          A.     In your hypothetical, yeah. But you're not  
20          going to know that until you open it up. And there is a  
21          lot of other damage that's in the plane of the wall and in  
22          parapet that don't have anything to do with windows. So  
23          you're asking me to testify --

24          Q.     But you --

25          A.     -- to something that I don't know about.

1 Q. Exactly. You have not done the investigation.  
2 Others have done that, others who can speak better to  
3 that; correct?

4 A. Correct.

5 Q. All right. Do you do the actual work yourself  
6 for your company -- do you put the belt on the hammer,  
7 nail gun, and be a part of the team, or are you overseeing  
8 the work on a managerial basis?

9 A. Both.

10 Q. Okay. Do you ever subcontract out any of the  
11 work that you have on your job sites?

12 A. Most definitely.

13 Q. Have you ever contracted out work to the Muhler  
14 company?

15 A. We've bought materials from the Muhler. I don't  
16 believe they've done any labor for me.

17 Q. Have you ever heard of the Muhler company?

18 A. Most definitely.

19 Q. Do you believe that Mr. Haye's company is a  
20 reputable Charleston company?

21 A. Mr. Haye's company sells windows in Charleston.

22 Q. Do you believe it's a reputable company holding  
23 itself out in the Charleston community to sell  
24 construction materials?

25 MR. BUNDY: Objection.

1 THE COURT: That's an improper question. I'm  
2 not going to put him in the position of saying --  
3 possibly slandering some company in Charleston. Okay?

4 MR. MAYBANK: And, Your Honor, I would move to  
5 strike the question. I agree.

6 THE COURT: Please do.

7 MR. MAYBANK: I agree. That was a totally --

8 THE COURT: I don't think that's a proper --  
9 you're putting him in an untenable position. Okay?

10 MR. MAYBANK: It was. I apologize.

11 Q. [Mr. Maybank] As far as your building, when you  
12 build structures do you build to code?

13 A. Yes, sir.

14 Q. Have you ever purchased Weather Shield windows  
15 before?

16 A. I have.

17 Q. Have you ever had any Weather Shield window  
18 failures on any of the projects you've installed the  
19 windows at?

20 A. I have.

21 Q. Do you know the name of those projects?

22 A. There's a residential project in Barrister Hall.

23 Q. Who is the homeowner?

24 A. I would have to look that up for you. I don't  
25 know who -- I don't even know that -- that was years ago.

1 That was the last time we used that product.

2 Q. Do you remember what the actual problems with  
3 the windows were on that site?

4 A. We had a leak through the window. It wasn't  
5 systemic. It wasn't all of the windows. We had two or  
6 three windows that had leaks that came through the window.  
7 And it was at a transom location.

8 Q. Believe it or not, we've had the same problems  
9 on this --

10 A. I can imagine.

11 Q. -- project.

12 Did you make any warranty claims to Weather  
13 Shield?

14 A. Weather Shield provided some supplemental parts  
15 and pieces for the window. We partially decladded. It  
16 was a Hardiplank structure. Declad around the windows to  
17 make sure the waterproofing was adequate and make sure the  
18 sill pan was good, and it was found that just -- it was in  
19 the actual window.

20 Q. Did you have any other projects in which you  
21 worked where you have been named as a defendant in a  
22 lawsuit?

23 A. [No response]

24 Q. And by you, I don't mean you personally but you  
25 as either individually or as your company that you were

1 doing work for.

2 A. Southeastern Construction has been sued before.

3 Q. And has Southeastern Construction been sued for  
4 construction defect work?

5 A. No. For subcontractor disagreements, things of  
6 that nature.

7 Q. Have you ever been sued for the work of your  
8 subcontractors?

9 A. No.

10 Q. All right. And when you say --

11 THE COURT: Mr. Maybank, the Court can almost  
12 take judicial notice there's nothing built in  
13 Charleston without a lawsuit.

14 MR. MAYBANK: Thank you, Your Honor.

15 If you'll give me one moment, Mr. Willis.

16 Q. [Mr. Maybank] Have you had a chance to review  
17 the report or cost estimate done by Mr. Steve Watkins?

18 A. I have not.

19 Q. In that report Mr. Watkins used a different  
20 contingency amount than you have.

21 MR. BUNDY: Your Honor, I object. The witness  
22 has testified he hasn't seen the report, doesn't know  
23 anything about it, and now he's testifying what's in  
24 the report and wants to ask my witness --

25 MR. MAYBANK: I'm just going to ask him --

1 THE COURT: He can say he doesn't know.

2 I mean, he knows what he's doing. If he doesn't  
3 know, he doesn't know. He can keep saying that.

4 MR. BUNDY: Right.

5 Q. [Mr. Maybank] My understanding is that --

6 [Whereupon, Mr. Maybank reviews documents]

7 Q. [Mr. Maybank] Would you agree with me if the  
8 sound attenuation has been resolved and the sound has been  
9 brought up to code, the sound portion of your cost  
10 estimate may not be necessary?

11 MR. BUNDY: Objection.

12 A. I'm really not into that. If it's remediated  
13 and there's no issue, then there should be no reason to  
14 remediate it further.

15 Q. [Mr. Maybank] Okay. So then that would take  
16 out the amount of money, hypothetically, that you have put  
17 in there --

18 A. Well, if the --

19 Q. -- for that amount?

20 A. Correct. And if the brick's good and the  
21 windows are good and the stucco is good, then why are we  
22 here?

23 Q. Windows.

24 A. Windows? That's why --

25 Q. Windows.

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1 A. -- we're here? All right.

2 THE COURT: That's why we're here.

3 A. Just making sure.

4 Q. [Mr. Maybank] Is this, a copy of Exhibit 49,  
5 your estimate, exclusive of the sound attenuation problem?  
6 Or do you know?

7 A. I have no idea what this is.

8 Q. You've got a cost-overhead profit-contingency  
9 fee of thirty-seven percent, nearly forty percent of the  
10 total cost of this project. Is that correct?

11 A. It carries fifteen percent overhead, a ten  
12 percent profit, and then there's a ten-percent  
13 contingency. But the ten-percent contingency is not my  
14 money.

15 Q. That's just in case you need it?

16 A. That's in case something needs to be done on the  
17 job.

18 Q. And if it doesn't, does it go back to the person  
19 who gave it to you?

20 A. It never comes to me to begin with.

21 Q. Does it come back to whoever paid for that?

22 A. That's not a question I can answer.

23 Q. When you add up your profit, I show that you  
24 have a -- you come up -- on the last page you have a total  
25 work item subtotal of \$904,000.

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1 A. Which cost estimate are you looking at?

2 Q. I'm sorry. I'm on Exhibit 180.

3 [Whereupon, the witness reviews documents]

4 A. What page?

5 Q. [Mr. Maybank] It is page 17.

6 A. Okay.

7 Q. At the very bottom.

8 A. What's your question?

9 Q. If, as we -- you and I have discussed, if we're  
10 going to be removing some of these portions for the stucco  
11 and the brick and other items that may go along with that,  
12 due to water intrusion, that would reduce that nine zero  
13 four per building down? I'm not asking you for a  
14 percentage. But if there is less that needs to be done,  
15 then it would come out of that number; correct?

16 A. If there's a lessening of the scope, then  
17 there's a lessening of that number. Yes, sir.

18 Q. And then I come over to your overhead of fifteen  
19 percent. That's on top of the \$904?

20 A. That's what it's based on.

21 Q. Pardon me. The \$904,000.

22 A. The \$904,000 is the cost and then fifteen  
23 percent of that is the project overhead and then there's a  
24 factor of ten percent applied to that subtotal.

25 Q. For profit?

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1 A. Correct.

2 Q. Why doesn't it -- why don't you factor profit  
3 off of the total subtotal? Why are you taking -- why do  
4 you include overhead as, then, an additional profit  
5 source?

6 A. It's how we calculate our fee, along with most  
7 general contractors.

8 Q. And you have a performance bond of two percent?

9 A. We do.

10 Q. And a contingency allowance of ten percent?

11 A. Correct.

12 Q. And do you believe that industry standard in  
13 Charleston County is a thirty-seven-percent profit in  
14 overhead and contingency?

15 A. I think that the profit and overhead is what is  
16 indicative for this type of work and it's what my company  
17 will do it for. As far as the payment performance bond,  
18 if the owner doesn't want it, they don't have to pay for  
19 it. But typically on these types of projects they ask for  
20 it. As far as the contingency, that is what we find to be  
21 the industry standard on this type of repair work.

22 If you want to add it up and present it as such,  
23 then thirty-seven is, in my opinion, normal. But you're  
24 painting a picture that there's a thirty-seven-percent  
25 burden for my company on this project and that is not

1 accurate. Twelve percent of this is for the owners. This  
2 is part of the project, which just happens to be totaled  
3 at the end of the spreadsheet. It could have easily have  
4 gone into division one, if that's where you would rather  
5 see it.

6 Q. Is there any contingent that has not been  
7 included in this bill-back scope of work? You're  
8 stripping the entire building; correct?

9 A. I'm sure there's something we haven't  
10 contemplated.

11 [Whereupon, Mr. Maybank reviews documents]

12 MR. MAYBANK: One moment, Your Honor.

13 THE WITNESS: Certainly.

14 [Whereupon, Mr. Maybank and Mr. Altman confer]

15 Q. [Mr. Maybank] Mr. Willis, if you would look  
16 back on Exhibit 180 for me and put it back next to Exhibit  
17 49, if you would.

18 A. Okay.

19 Q. That first sheet, what exactly is that? The  
20 first front page has a total of a hundred and forty-nine  
21 thousand seven thirty seven.

22 A. Division one. Typically, it's the general  
23 conditions of the project.

24 Q. Would any of those costs be lessened due to the  
25 fact that you're going to have to have a lot of that out

1 there for the removal of the windows and the doors as well  
2 as for the reinstallation of the windows and the doors?

3 A. I have to have a project manager, general labor,  
4 insurance, equipment rental, power, silt fencing, small  
5 tools, dumpster rental. You know, all that stuff comes in  
6 there as a project-specific expense that's not directly  
7 attributable to a particular division. That was my  
8 previous testimony.

9 Q. Sure.

10 So assume -- I'm sorry. If you're not --

11 A. If you would like me to answer it --

12 Q. Please. I apologize --

13 A. -- I'll continue to answer it.

14 Q. -- for interrupting.

15 A. This project, regardless of whether the windows  
16 come out or they stay in, these components are there and  
17 the time duration is there. If I have to declud the  
18 building in its entirety because brick ties aren't there,  
19 this stuff needs to be there. If I have to declud the  
20 building because the windows have to come out, this stuff  
21 has to be there. There was no contemplation given at the  
22 repricing of the window exclusion, from the bid, that this  
23 would be adjusted for that component.

24 Q. But you know -- back to my column. Shouldn't  
25 you get some cost-shift out of that and put it back into

1 the window column?

2 A. I don't see where the time frame on the project  
3 is going to substantially change from removing and  
4 resetting the windows if we're already -- if we're  
5 decladding for other purposes, so we would have to carry  
6 your hypothetical all the way through and say that the  
7 only reason why I'm doing any of this work is because of  
8 the windows. And if that's the case, then obviously some  
9 of this money would shift into the window column.

10 Q. Okay. Have you seen any pictures evidencing any  
11 type of brick -- lack of brick ties or improperly  
12 installed stucco?

13 A. I have not seen any pictures, no, sir.

14 Q. So then the only way that you know that anything  
15 is in the condition that it is in is through your  
16 discussions with Mr. Padgett?

17 A. And Mr. Freeman. That's correct.

18 Q. Mr. Padgett and Mr. Freeman?

19 A. [Indicates affirmatively]

20 I would be pleased to share what they told me  
21 they saw.

22 Q. Don't worry. We've already heard.

23 A. Fair enough.

24 MR. MAYBANK: Thank you.

25 THE COURT: Redirect?

1 MR. BUNDY: No redirect, Your Honor.

2 Just to clarify: you would like this witness to  
3 prepare you a document which shows what percentage of  
4 the brick and stucco have to be removed if it were  
5 just a window problem?

6 THE COURT: Come back this afternoon as a  
7 Court's witness. And he can bill his brother-in-law.

8 MR. BUNDY: We'll just put it in the form of an  
9 affidavit. Is that okay?

10 THE COURT: In the form of an affidavit will be  
11 fine.

12 MR. BUNDY: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. BUNDY: David, you are excused --

15 THE COURT: Mr. Maybank, I understand you're  
16 going to address that, also?

17 MR. MAYBANK: We are, Your Honor. Yes, sir.

18 THE COURT: Now, if you so choose, you can  
19 listen to their testimony and then if you want to  
20 readdress it. I just want some testimony from  
21 somebody on that issue.

22 MR. BUNDY: David will be glad to do it, Your  
23 Honor.

24 THE COURT: You know, if you want to address it  
25 by affidavit in rebuttal to Mr. Maybank, that's fine.

1 Okay?

2 MR. BUNDY: Yes, sir. Thank you, Your Honor.

3 THE COURT: All right. Thank you very much.

4 [Whereupon, Mr. Willis is excused and exits the  
5 witness stand]

6 THE COURT: Want to call your next witness?

7 MR. BUNDY: Well, Your Honor, I can call  
8 Mr. Behringer, unless they're going to call him. I  
9 don't want to call a witness twice unnecessarily. If  
10 they're going to call him in their case, then I don't  
11 need to call him. But if they aren't going to call  
12 him, I would like to --

13 THE COURT: Mr. Maybank, are y'all going to call  
14 him?

15 MR. MAYBANK: Yes. Yes, Your Honor.

16 THE COURT: All right. If for some reason you  
17 decide not to, I'll let him call him later.

18 MR. MAYBANK: Absolutely.

19 THE COURT: Okay?

20 MR. MAYBANK: We're not going to run out of the  
21 courtroom and put him in the garage --

22 THE COURT: I understand.

23 MR. BUNDY: And the same would be true of  
24 Mr. Rumplick.

25 MR. MAYBANK: Yes. And Your Honor has asked if

1 Mr. Rumplick can take the stand so he can hear some  
2 testimony.

3 THE COURT: Certainly.

4 MR. MAYBANK: We're going to absolutely make  
5 that --

6 MR. BUNDY: Given those rulings, I'm done.

7 THE COURT: I think the parties have agreed to  
8 hold all motions until the defense has presented their  
9 case; is that correct?

10 MR. MAYBANK: That's correct, Your Honor.

11 THE COURT: And you're not waiving any  
12 presentation to the Court of any appropriate motions  
13 at this time. Is that also correct?

14 MR. MAYBANK: That's also correct.

15 THE COURT: From the plaintiff and the  
16 defendant?

17 MR. MAYBANK: That is correct, Your Honor.

18 THE COURT: We're going to take about a ten- or  
19 fifteen-minute break for the defendant to get ready to  
20 present his case.

21 MR. MAYBANK: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 [Whereupon, a recess is taken from 11:51 a.m. to  
24 12:06 p.m.]

25 [Whereupon, Defendants' Exhibit Numbers 237

1 through 255 are marked by the court reporter]

2 THE COURT: All right. Are you ready to  
3 proceed?

4 MR. MAYBANK: I am, Your Honor.

5 THE COURT: Okay.

6 MR. MAYBANK: Your Honor, the defense would call  
7 Mr. Mike Parker.

8 [Whereupon, Mr. Parker comes forward]

9 THE CLERK OF COURT: Raise your right hand.

10 [Whereupon, Mr. Parker is duly sworn by the  
11 clerk of court as follows: do you swear or affirm  
12 that your testimony will be the whole truth and  
13 nothing but the truth, so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: State your full name and  
16 spell your last name.

17 THE WITNESS: Michael Lawson Parker.

18 P-A-R-K-E-R.

19 [Whereupon, Mr. Parker takes the witness stand]

20 MR. MAYBANK: Mr. Padgett, good afternoon. My  
21 name is Roy Maybank. I represent Carriage Hill  
22 Associates of Charleston and Daniel Island Riverside  
23 Developer in this lawsuit.

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MICHAEL L. PARKER,  
Having Been First Duly Sworn,  
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. MAYBANK:

Q. Are you familiar with this lawsuit that we're here about today?

A. Somewhat.

Q. Would you say you were intimately familiar with the conditions of The Oaks project as we sit here today?

A. Yes.

Q. Before you get into your involvement in the project, if you would, could you tell the Court who you are and your background, please?

A. I'm a consulting engineer employed by Sutton-Kennerly and Associates. I do consulting and specialty engineering work repairing buildings, parking decks, and I also do forensics on non-conforming construction materials used in construction.

Q. Does your work involve testing and investigating and evaluations of masonry stone, hard-coat stucco, plastics, tiles, hardened concrete, cement, and all other sorts of construction material?

A. Yes.

Q. Is your involvement also to personally be

1 involved in conducting condition assessments of laboratory  
2 and field testing out in the field on various building  
3 elements?

4 A. Yes.

5 Q. As it relates to any education, you have a B.S.  
6 in engineering from Virginia Tech; is that correct?

7 A. Yes.

8 Q. How long have you been a licensed engineer?

9 A. Since 1981.

10 Q. Have you -- are you a South Carolina licensed  
11 engineer?

12 A. Yes.

13 Q. And what kind of licensed engineer are you?

14 A. The states license you as a professional  
15 engineer, for instance, in South Carolina; in Georgia, a  
16 professional engineer; and Virginia, a professional  
17 engineer; in North Carolina, a professional engineer.

18 Q. How about South Carolina?

19 A. South Carolina, a profession engineer. Yes.

20 Q. Have you been involved in various construction  
21 litigation projects in Charleston County in the last five  
22 to ten years?

23 A. Yes.

24 Q. Have you been involved in various construction  
25 litigation projects involving water penetration through

1 the exterior envelopes of buildings?

2 A. Yes.

3 Q. Have you been asked, by those individuals that  
4 have retained you, to come in and do a forensic analysis  
5 of -- and we're just talking in general, Mr. Parker -- of  
6 the project that you've looked at to determine why or how  
7 there is water penetration in the buildings?

8 A. Yes.

9 Q. If you could -- for the Court's record, could  
10 you give the Court a list, to the best that you recall,  
11 here in Charleston County some recent projects that you've  
12 been involved in?

13 A. The Wild Dunes Ocean Club --

14 MR. MAYBANK: Mr. Parker, I need you to speak up  
15 a little, please.

16 A. The Wild Dunes Ocean Club, Isle of Palms condos,  
17 Renaissance, Bristol, Merivista.

18 Q. [Mr. Maybank] The Renaissance would be next to  
19 the Motley Rice building?

20 A. Yes.

21 Q. The Bristol would be the large condominium at  
22 the place of the old Wine House gas station?

23 A. Yes.

24 Q. The Miravista is on James Island, a large multi-  
25 unit building, condominium?

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1 A. Yes.

2 Concord, West Ashley.

3 Q. Who did you work for on the Concord West of the  
4 Ashley?

5 A. I was employed by Attorney Steve Farr for an  
6 insurance company representing the general contractor.

7 Q. All right.

8 A. Beaumont condominiums in Mount Pleasant. The --

9 Q. What's 177 Meeting Street, sir?

10 A. 177 Meeting Street, I worked for the Harris  
11 Development Corporation.

12 Q. And what did you do on that building?

13 A. Investigated the windows. They had perfume  
14 leak. And I designed a remediation for all the windows.

15 Q. How about the Ocean Club at Wild Dunes? How  
16 large a building is that?

17 A. It's two seven- or eight-story structures.

18 Q. All right. And what were you asked to do on  
19 that structure?

20 A. Well, I was involved back in '89 evaluating some  
21 conditions around the windows. And then again in maybe  
22 early 2000, I was representing the designers, Ted Padgett  
23 and Marshall Clark, in litigation against them by the  
24 regime. And then again when Bill Reeseburg passed away  
25 there was a controversy on whether or not to remove all

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1 the stucco on both the buildings and so we got involved in  
2 evaluating the walls and the window system and we did a  
3 seventy-five percent design-development remediation and  
4 were able to salvage the exterior walls and convince the  
5 others that it did not need to be removed.

6 Q. So in all of those projects, then, whether it be  
7 the Renaissance, 177 Meeting, Merivista, Concord, those  
8 are numerous condominium developments here in the  
9 Charleston County area; correct?

10 A. Yes. And there are some more I forgot. There's  
11 33 Calhoun, 21 George Street, Cumberland, Concord  
12 Cumberland. I've probably forgotten a lot of them that  
13 were --

14 Q. And so what you're telling the Court today is  
15 that you have performed numerous investigations into water  
16 penetration on large condominium complexes here in  
17 Charleston; correct?

18 A. Yes.

19 Q. Pardon me?

20 A. Yes.

21 Q. All right.

22 A. I'm sorry. I'm hoarse.

23 Q. I understand.

24 And as part of that investigation, you were  
25 looking for sources of water penetration around and

1 through windows, mason, stucco, or some parts thereof?

2 A. Yeah. Most all those projects involved non-  
3 performances in some component of the facade.

4 Q. And would non-performance of the facade include  
5 window-brick-molding failures?

6 A. A lot of them involved window leaks.

7 Q. Okay. Because the brick mold that we have in  
8 this case is unique to this Weather Shield product;  
9 correct?

10 A. This particular brick molding is.

11 MR. MAYBANK: At this time, Your Honor, I would  
12 offer Mr. Parker in as an expert as it relates to  
13 water penetrations and sources into the interior of  
14 buildings.

15 THE COURT: Do you have any questions you would  
16 like to ask him, or --

17 MR. BUNDY: No, Your Honor.

18 THE COURT: -- do you agree that he's an expert  
19 in --

20 MR. BUNDY: I'll agree --

21 THE COURT: -- water source and water  
22 penetration?

23 MR. BUNDY: I'll agree that he's entitled to  
24 give an opinion, yes, sir.

25 THE COURT: Okay.

1 MR. MAYBANK: Mike, if you would, can you step  
2 down and get into the jury box for me?

3 [Whereupon, the witness complies]

4 MR. MAYBANK: Your Honor, we marked this as an  
5 exhibit, too. That's just a list of his trials and  
6 depositions that he's given.

7 [Whereupon, Mr. Maybank proffers documents to  
8 the Court]

9 THE COURT: Have you marked all these, or are  
10 you going --

11 MR. MAYBANK: I have, Your Honor.

12 THE COURT: Okay. Have they been admitted?

13 MR. MAYBANK: Without objection, yes --

14 THE COURT: What number?

15 MR. MAYBANK: Your Honor, 252 is the  
16 biographical information, 253 is the continued  
17 biographical information --

18 THE COURT: 252?

19 MR. MAYBANK: 252 and 253.

20 THE COURT: Okay.

21 MR. MAYBANK: 254 is --

22 THE COURT: The subpoenas for testimony?

23 MR. MAYBANK: 254 is subpoenas for testimony,  
24 yes, sir. And then 255 are these projects involving  
25 evaluation of wood and door leakage by Mr. Parker.

1 THE COURT: Any objection to 252, 253, 254 and  
2 255?

3 MR. BUNDY: No, Your Honor.

4 THE COURT: Admitted without objection.

5 [Whereupon, Plaintiffs' Exhibit Numbers 252,  
6 253, 254 and 255 admitted into evidence by the Court]

7 MR. MAYBANK: Mike, you're going to have to talk  
8 up. They're even bringing you a recorder. You can  
9 just speak to a recorder there.

10 All right. Can we dim the lights, please?

11 Your Honor, I do not have a printout of this.  
12 It's a demonstrative presentation.

13 THE COURT: Okay. That's fine.

14 Q. [Mr. Maybank] Mike, you were retained by  
15 Carriage Hill Associates and Daniel Island Riverside  
16 Developer to investigate what?

17 A. Well, I came down at the request of one of the  
18 Behringer brothers to determine why there was a leak at  
19 the balcony roof.

20 Q. And is this the development? There are six  
21 buildings here that are on the marsh. Is this The Oaks  
22 development that you came down to take a look at?

23 A. I came down primarily, originally, to look at  
24 this corner of the building which has a balcony roof right  
25 there. That's why I came down.

1 Q. And do you know what building number that is?

2 A. I believe that's building number four.

3 Q. So at the time, there was some kind of roof-  
4 water penetration that was causing concern and you were  
5 asked to come investigate it?

6 A. Yes. I was working on the Bristol and  
7 Renaissance and Wild Dunes, and somehow the Behringers got  
8 my name and asked me -- and I met them at dinner one night  
9 and they said that they had an engineer but he was no  
10 longer working for them and would I come down and look at  
11 this leak.

12 Q. Do you know who that engineer was that they had  
13 first hired to help them?

14 A. They told me it was Ted Padgett.

15 Q. And is this what you were asked to do  
16 originally?

17 A. Well, they wanted to know what the source of the  
18 water leakage was at this balcony-roof interface so I had  
19 instructed them that I needed to get a contractor -- or  
20 they had already maybe gotten one, LesCo. And when I got  
21 to the site, they had a section of a wall at the balcony-  
22 roof interface removed and there was a lot of rot there  
23 and so they wanted to know what I needed to do in order to  
24 try to determine why this happened. And so I told them  
25 the first thing they needed to do is execute about three

1 tasks, investigative tasks, and then -- so we embarked on  
2 those three tasks. And when we finished the three tasks,  
3 there was an unusual situation where we found from our  
4 non-destructive evaluation that there appeared to be some  
5 places underneath the window that were wet underneath the  
6 wall.

7 Q. So just so the Court understands: you were not  
8 originally asked to come out there and find any kind of  
9 window-water penetration; correct?

10 A. Right. I was out there originally to look at  
11 this roof-balcony wall interface.

12 Q. And part of your investigation, you employed a  
13 non-destructive survey with a moisture scanner on the  
14 inside of which floor?

15 A. Well, what we wanted to do is to do something  
16 effective. And, quite frankly, there was large areas and  
17 we wanted to see did we have a systemic roof leak all the  
18 way around the building. So what we did is we were able  
19 to get access to maybe four or five units in two or three  
20 buildings. So we took an instrument that's called -- it's  
21 a wall detector and it reads high-moisture contents in  
22 walls. So we took and continuously surveyed the exterior  
23 wall with these units to see if there was any pattern or  
24 if there was any evidence of leakage around the perimeter  
25 of the roof. And what we found was we found that

1 predominately we had leak evidence at these corners of  
2 these balconies that went down the whole length of the  
3 upper flour wall and then we found a few places away from  
4 the corners that were underneath windows.

5 Q. Originally, with that survey, all right, did you  
6 then expand that survey on the interior part of the  
7 building?

8 A. No. We then -- that was the first task. We  
9 couldn't get access to all the units, for whatever reason,  
10 so we went out and we completed the other tasks, which was  
11 to do some water-spray testing. And we actually did the  
12 water-spray testing before we did the surveys. We put  
13 water on the building. And then we came in and  
14 did D-ports and started removing parts of the interfacing  
15 of the walls so we could determine the path that water was  
16 getting to the exterior wall sheathing.

17 Q. So in addition, then, you were called out there,  
18 you found that there was water coming into the building  
19 from this roof-to-wall intersection; correct?

20 A. Yes.

21 Q. And so you also did non-destructive interior  
22 tests to see where and how far that water around that  
23 wall, the roof-intersection, may have been going?

24 A. Right. And whether or not there were other roof  
25 conditions that were leaking.

1 Q. As part of that interior non-destructive test,  
2 did you find areas away from those roof-wall intersections  
3 that did, in fact, evidence high moisture?

4 A. Yeah. There was a couple areas directly beneath  
5 the windows that we found that had --

6 Q. Were those windows in close proximity to the  
7 roof-wall corner intersections, or were they away from  
8 those areas?

9 A. They were away from them.

10 Q. It wouldn't be water penetration or findings  
11 that you would expect to be a result of that roof-wall  
12 intersection?

13 A. No.

14 Q. Did you conduct a methodology to test the  
15 windows as you began your testing process?

16 A. Yes. We had just completed a fairly extensive  
17 amount of work on the Concord Cumberland with these same  
18 manufactured windows. And I met with the Behringer  
19 brothers and I told them, I said, look, we've had -- these  
20 things leaked real profusely on another condo project  
21 downtown, we need to find out what's going on with them  
22 here and find out if they're leaking, we have the evidence  
23 of the non-destructive testing but we need to find out if  
24 these windows are performing properly.

25 Q. All right. Did you do an investigation pursuant

1 to any type of standards?

2 A. Yeah. We used -- there was both ASTM and some  
3 AAMA standards, industry standards, if you want to call  
4 them, and they over the years have put together documents  
5 that are protocol in going about evaluating water  
6 intrusion into buildings. And so we employed steps from  
7 those standards. There's basically four steps prior to  
8 testing, which we started reviewing documents, look at  
9 design, some of the history, the leak history, and then we  
10 inspected the project. And then we conducted several  
11 different field tests. And then we did an AAMA 511  
12 series, which led us to actually removing several windows  
13 and doors and then actually dissecting those units to find  
14 out what is going on and why these things were leaking.

15 Q. Did you also get information from the  
16 manufacturer and from the window seller as to the window  
17 types of components that were installed on this project?

18 A. Over the years we requested many documents from  
19 the window manufacturer. We received bulk documents from  
20 Weather Shield, the manufacturer, that did not apply to  
21 this project and would not fit manufactured models of  
22 these windows. And, quite frankly, not until maybe six  
23 weeks ago did we get I think what we felt are the correct  
24 shop drawings for these windows. So we -- it was a very  
25 frequent search for documents to try to get the right shop

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1 drawings, manufacturing assemblies, for several -- for  
2 three years.

3 Q. Were you working, during those three years, in  
4 conjunction with the Behringers at Carriage Hill  
5 Associates of Charleston and Daniel Island Riverside  
6 Developers?

7 A. Yes.

8 Q. Were you also working with Ted Padgett, as the  
9 engineer for the homeowners association?

10 A. Yes.

11 Q. Were there multiple collaborative efforts  
12 between you and Mr. Padgett to try to come up with  
13 solutions and ways to fix the problems that the homeowners  
14 were complaining about as it relates to the windows?

15 A. Well, we did -- I mean, in talking to Ted  
16 earlier -- I've worked on many projects -- you know, he  
17 kind of knew -- he kind of knew our methodology. So we  
18 told him, look, we're going to -- based on what we know,  
19 we know there's something major wrong with these windows,  
20 there's profuse leakage, and so -- and we know we've got  
21 wood structures, we know -- we've seen, you know, what  
22 damage happens to the exterior sheathing and wood framing  
23 if these continues.

24 So I put together what we call a seventy-five  
25 percent design-development, DDs, a set of documents, which

1 at that time was to remediate the window conditions,  
2 whether we have new windows or not. Because if you don't  
3 stop the profuse intrusion of water in wood-frame  
4 construction, it's going to start decaying very quickly to  
5 the point where it becomes a structural hazard. And it  
6 had been leaking for about a year and a half when I got  
7 involved and it had already sustained some damage. And on  
8 that one corner of building four, we probably replaced  
9 twenty-five percent of the framing just in the corner.

10 Q. All right.

11 A. So I said, look, we have got to stop this  
12 profuse leakage, whether the window people were going to  
13 help work on this or not, but we have got to get this  
14 done. So we put together a seventy-percent DD set, which  
15 was to flash the window systems, take the windows out,  
16 reflash them to where if they leaked it would not damage  
17 the building.

18 Q. Any further than it already had?

19 A. Right. I mean, just to stop the mess and the  
20 profuse leakage.

21 Q. In looking at this slide, did you look at the  
22 field of wall stucco as part of your investigation?

23 A. Yes, sir. When we were -- we were spray-testing  
24 around the top during the roof-balcony situation and we  
25 also did a lot of test cuts in that episode, just in the

1 wall of the stucco, to see if there was any evidence that  
2 the stucco was contributing to the leakage. And we didn't  
3 find any.

4 Q. I'm sorry. You did not?

5 A. We did not find any leaks associated with the  
6 stucco. Now, and then when we went and started dissecting  
7 windows, we also took out portions of the windows, we took  
8 out, you know, a foot or two around the windows, and then  
9 subsequently I guess in '09, 2010, we did a mockup of a  
10 remediation, our seventy-five percent DD. We stripped off  
11 the whole back of a building and it --

12 Q. Which building?

13 A. Building number -- I think it was building  
14 number four. We took the -- it could have been building  
15 number five. It was Bobby Reece's unit. Where was  
16 Bobby's? Which one? I think it was maybe number five.  
17 We took --

18 Q. Did you leave any of the exterior siding, stucco  
19 or brick, on that building when you did your remediation  
20 project?

21 A. At the time, we cut a strip on each side of the  
22 rear stairwell and we went up almost to the roof. Maybe  
23 we left up to three feet on the stucco. There was no  
24 brick on the back.

25 Q. And so all the stucco but three feet of it at

1 the top to roof-wall intersection had to be taken off so  
2 you could properly remediate the building?

3 A. Yeah. And then we were also looking to see the  
4 extent of leak damage.

5 Q. Would this be leak damage as a result of the  
6 windows leaking?

7 A. Yes. That's what we were -- that is correct.

8 Q. At that point, had you determined what was  
9 causing the windows to leak?

10 A. We knew that the windows were leaking. We had  
11 gotten some information from Weather Shield -- or the  
12 window manufacturer -- and we knew that these are what's  
13 called combination windows. These are several units that  
14 are put together. And we knew that there was assembly --  
15 manufacturing-assembly defects that was contributing. But  
16 that's -- in looking at the way the leak patterns were  
17 from these windows, we knew there was something else. So  
18 that's why we took the windows out and we started  
19 dissecting the windows to try to figure out what else --

20 Q. Well --

21 A. -- is contributing to leakage.

22 Q. -- tell the Court, though, Mike, what you did to  
23 get to that point.

24 A. Well, we did a bunch of testing. We did seal-  
25 dam testing, we did water -- field-water testing, and we

1 were getting leaks all over the place in these windows. I  
2 mean, it was not your traditional type of leak that we see  
3 on a project. It was profuse leakage through the window,  
4 through the door, coming out the bottom profusely, in  
5 places you normally don't see leaks in windows.

6 Q. Was the water coming through the window into the  
7 individual homeowner's units?

8 A. In some cases, yes.

9 Q. Was the water coming into the unit and dripping  
10 down the inside of the window and then ending up in the  
11 unit?

12 A. Yes.

13 Q. Was the water coming into -- past the window  
14 plane and into the building structure itself?

15 A. Yes. It had gotten into the exterior wall  
16 cavities. I mean, the damage was extensive, as some of  
17 these photos show.

18 Q. I understand that. But it is extensively  
19 damaged because of the water coming through the window and  
20 into that cavity?

21 A. Yes.

22 Q. Now, this is part of some of the testing that  
23 you did around the upper parts of the roof; is that  
24 correct?

25 A. Yeah. What we did originally was to -- we would

1 put spray bars up here and we would basically spray, for  
2 three or four hours, the exterior part of the facade above  
3 the -- right above the -- well, primarily near the roof  
4 level, and then we would go into a unit and we would  
5 survey the inside wall and see if there was any sign of  
6 moisture. And as you can see, the green strips were areas  
7 where we did not detect any moisture and the red patch is  
8 areas where we did. And we had some -- we had some cases  
9 here where that was very unusual. I mean, we could see  
10 where if you have a leak here, it could come down and  
11 maybe could get underneath the windows --

12 Q. Why would that be unique? Because what's the --  
13 is that a corner area there?

14 A. Yeah. That's the corner, this is the roof, this  
15 is where it was leaking. And so as water goes down the  
16 structure, it has a tendency to spout, to spread out  
17 further. So as it goes vertically down it wicks out,  
18 additionally. So, you know, here's a case where there was  
19 no -- where underneath the two windows was dry but  
20 underneath here it was wet. And we couldn't understand  
21 that. And, also, here was dry all the way down and wet.

22 Q. And so this is what led to your further  
23 investigation, after you initiated the roof-wall  
24 intersection leak, to say, we may have other problems?

25 A. Right. We did our reports and they also

1 verified wet, dry, dry, wet. So we were convinced.

2 Q. And were these the roof-issue findings that you  
3 found at the time?

4 A. Yeah. We concluded and we said, look, the roof  
5 is not flashed properly at the stucco-wall interface.

6 Q. All right.

7 A. And this is -- you know, we used several  
8 techniques and came up with that conclusion.

9 Q. Did the water leak down to the exterior wall  
10 behind the stucco of the building?

11 A. Yes.

12 Q. Did non-destructive scanning from an interior of  
13 the top floor of the two buildings confirm the type of  
14 roof leakage?

15 A. Yes.

16 Q. All right. Did you design and provide to the  
17 homeowners association a drawing for remediating that  
18 roof-to-wall kick-out detail so that that problem could be  
19 fixed?

20 A. Yes. We routinely use a kick-out flashing in  
21 stucco, new or remediated stucco. It's just a common --  
22 and it's a necessary item. It didn't get installed here.  
23 I don't know why. So we designed one and actually had one  
24 put in at this corner of the building on the balcony. We  
25 did not find any other problems with the roof, as far as

1 leakage goes -- and for that matter, for anything --  
2 except for this balcony at the balcony roofs. And so we  
3 put that on there, we water-tested it, and it didn't leak.

4 Q. All right.

5 A. We felt like we resolved the problem there.

6 Q. And I believe that you -- upon fixing the roof-  
7 wall problem that was the initial reason why you were out  
8 there, y'all began to find water intrusion problems  
9 elsewhere and began to investigate at other locations  
10 around these buildings; is that correct?

11 A. Yes, that's correct.

12 Q. Were you ever told by the Behringers to stop,  
13 leave town, and don't continue to investigate?

14 A. No. No. Matter of fact, they were -- when I  
15 sat down and talked with them about the Weather Shield  
16 window problems of the past on other projects, they became  
17 intently concerned about these windows and said, we've got  
18 to find out -- we've got to find out what's wrong. And so  
19 I said, okay, we're going to do a lot of testing and we'll  
20 find out what's wrong with these windows.

21 Q. And did you end up doing a great deal of testing  
22 on these buildings?

23 A. Yes.

24 Q. So once you moved from the roof, did you also  
25 look at any other part -- potential parts or places for

1 water intrusion?

2 A. Well, we looked and we did some testing on the  
3 balconies. The balcony -- there was -- we thought maybe  
4 some of the balconies could be contributing. And on the  
5 corner of building four we sprayed that and on two  
6 elevations. We didn't get any leakage there. So we were  
7 pretty much convinced that at that time that the roof was  
8 the major causation of the roof-balcony leakage, and then  
9 the windows. So at that point we started a lot of field  
10 spray-testing on the windows.

11 Q. Did you do any field-testing, Mike, on the  
12 stucco?

13 A. Yes. During the -- as I said earlier, we cut  
14 D-ports in there and we -- you know, we looked at the --  
15 to see if there was leaks associated with the stucco. We  
16 didn't see any.

17 Q. All right. And would these be various stucco  
18 cuts from around the different buildings, indicating that  
19 the substrate was dry?

20 A. This is a -- this is kind of a -- this is I  
21 think maybe one or two. But, yeah. I mean, when you cut  
22 through the Tyvek and it was -- the sheathing was dry. We  
23 had obviously two weather barriers here. It was fastened  
24 properly. We didn't see a problem with the stucco.

25 Q. If you had seen a problem with the stucco, would

1 you have advised Carriage Hill and Daniel Island, hey, in  
2 part of our investigation, we have found that there is  
3 some stucco defect and deficiencies, here's a new report  
4 that we need to give to you?

5 A. We were on a hunt for water intrusion. I didn't  
6 do a -- I didn't do a code compliant going out there and  
7 seeing how many fasteners were there. We did -- what our  
8 goal was was to find out what was causing the water  
9 intrusion. We did not find that related to the stucco. I  
10 didn't do any work on the brick.

11 Q. That's fine. But as far as the stucco?

12 A. But the stucco, we didn't find a contributing  
13 problem with the stucco.

14 Q. Now, these are the different types of windows  
15 and these are the different types of code requirements  
16 that the window is required to meet; correct? A  
17 structural deflection; is that correct?

18 A. That's correct.

19 Q. Water resistance?

20 A. Correct.

21 Q. Air infiltration?

22 A. Correct.

23 Q. Impact?

24 A. Yes.

25 Q. Break in security?

1 A. Yes.

2 Q. And those are the five requirements. Did the --  
3 some of the windows, if not all of the windows, out at The  
4 Oaks fail to meet one of these five criteria?

5 A. Yeah. Virtually all of them didn't meet the  
6 water resistance. I think I've heard that, and I've seen  
7 some information indicating that, some of the impact  
8 glazing wasn't tested, so it didn't meet code. So there  
9 was problems with definitely number two, water resistance,  
10 and number four.

11 Q. And these are some of the different types of  
12 windows that are out there; correct?

13 A. Correct.

14 Q. You've got your doors, your casement, your  
15 picture, and your double-hung and your French doors?

16 A. Correct.

17 Q. And did you test all the windows? Did you test  
18 numerous windows out at The Oaks, both exposed and  
19 underneath the porch area?

20 A. Yes, we did. We tested all -- I think we tested  
21 every type of door and window out there and whether it was  
22 under a balcony or not.

23 Q. Mike, in your testing did most, if not all, of  
24 the windows fail the water test?

25 A. I think of thirty-or-some -- thirty or forty-

1 some water tests, I think there was about eighty-some --  
2 mid-eighty percent that failed the water test --

3 Q. And those were the --

4 A. -- it was a real high percentage.

5 Q. And those were the water tests that you ran  
6 pursuant to ASTM and AAMA standards?

7 A. Yes.

8 Q. All right. The failure of the windows, do you  
9 attribute that massive failure to the design and  
10 manufacturing and somewhat the installation of those  
11 windows by either Weather Shield or other third parties?

12 A. Yeah. There was a tremendous amount of  
13 manufacturing defects in the window units that aren't  
14 readily obvious.

15 Q. So if I was purchasing the unit and it came to  
16 my job site and my installer installed it, there would be  
17 what they call a latent or non-observant defect that the  
18 installer would not know about until after the fact; is  
19 that correct?

20 A. That's correct. I mean, we just got through --  
21 before this project, we had just got through a whole bunch  
22 of testing and knock-down-drag-out with the window  
23 manufacturing on Concord Cumberland for the same reason.

24 Q. And these are just different types of windows.

25 Now, this is the front of one of the buildings;

1 correct?

2 A. Correct.

3 Q. And based on your analysis of the windows, the  
4 fact that after they were installed and a forensic  
5 investigation was done by you, was Mr. Padgett part of  
6 that investigation? And I see forty-eight reports that  
7 Ted had. Did you and Ted work together?

8 A. A lot.

9 Q. So as part of that investigation that you and  
10 Ted did together, did you come to the conclusion as  
11 to -- eventually, as to whether or not all these windows  
12 and doors needed to be taken out of these units and new  
13 doors put back in?

14 A. In my opinion, all the windows and doors need to  
15 be replaced with new product.

16 Q. And that's not a new opinion that you are giving  
17 to this Court today, is it?

18 A. No. I told the -- at Bobby Reece's board  
19 meeting that we had at his office in 2008, I told him  
20 that.

21 Q. But you also came up with a remediation fix,  
22 didn't you?

23 A. Yeah. I think at that same meeting we presented  
24 the seventy-five percent DD.

25 We, at that point -- there again, to make sure

1 we could stop the water, but whether or not there would be  
2 new window components or not, because Carriage Hill didn't  
3 know whether they could get the window supplier to provide  
4 new windows, we said, well, we can at least put the  
5 existing windows back in in such a manner that the leak  
6 that they're going through will not damage the building.

7 Q. So in '08, you presented to the board that the  
8 windows and doors needed to come out; correct?

9 A. Needed to be -- needed to be -- yeah. Needed to  
10 be replaced.

11 Q. And Carriage Hill -- you informed Carriage Hill  
12 of that; correct?

13 A. Yes.

14 Q. And, in fact, Carriage Hill, yourself, tried to  
15 get Muhler, Weather Shield, and others to come in and  
16 assist with fixing this problem, didn't they?

17 A. Yes.

18 Q. At some point, to try to at least mediate the  
19 damage, you came up with a fix that you presented to the  
20 board that said this may not be the end-all-be-all but  
21 it's something that I've used in other projects to try to  
22 stop the water penetration and deterioration of the  
23 building?

24 A. Yes. I mean, we had just got through -- I  
25 designed the remediation for the Bristol, Renaissance --

1 MR. BUNDY: I have an objection, under the rule  
2 of the settlement being confidential. They were  
3 willing to do that in return for a release.

4 THE COURT: I'm sorry. What?

5 MR. BUNDY: They were willing to take the  
6 windows out and put them back in in return for a  
7 release from my clients. So that's all -- these  
8 things are all confidential settlement negotiations.  
9 They're trying to make you think -- they're trying to  
10 present to you the notion that they were going to do  
11 this on a temporary basis and then come back in later  
12 and put brand-new windows in. That's just inaccurate.  
13 That was an offer of --

14 THE COURT: I'm not sure they're saying they  
15 put brand-new windows. They were just wanting to  
16 take them out and fix -- and remediate any further  
17 damages --

18 MR. BUNDY: But they wanted a release --

19 THE COURT: -- is what I gleaned from it.

20 MR. BUNDY: But they wanted a release from my  
21 client from any further responsibility.

22 THE COURT: Well, I understand.

23 My question to you is I understand what you're  
24 doing. But what relevance does it have in this case?

25 MR. MAYBANK: And I'll -- I'll --

1 THE COURT: Get to that. Okay?

2 MR. MAYBANK: -- get to that --

3 THE COURT: I really don't care about --

4 MR. MAYBANK: -- so I didn't --

5 THE COURT: -- I understand if they were trying  
6 the windows and Muhler and Weather Shield -- it would  
7 be a different story. But we aren't, so get to the  
8 point that I'm here for.

9 MR. MAYBANK: Sure. Thank you, Your Honor.

10 THE COURT: Well, now your objection is  
11 overruled.

12 Q. [Mr. Maybank] So -- all right. This is the  
13 side -- front of a side of the building at The Oaks;  
14 correct?

15 A. Yes, sir.

16 Q. And these colored windows -- all these colored  
17 windows, even though the French doors are white, these are  
18 all are what is being told that will need to come out and  
19 be put back in; correct?

20 A. Correct.

21 Q. As part of that process -- the areas around  
22 the windows which are brick and stucco, do you have an  
23 opinion whether or not as a result of the window defect  
24 problems, as found at The Oaks, if for that reason  
25 alone all the brick and all the stucco need to come off

1 of these buildings?

2 A. In my opinion, all the stucco and all the brick  
3 have got to come off these buildings.

4 Q. And that is irrespective of any other problems  
5 that may be alleged to have been wrong with the stucco or  
6 the brick?

7 A. [No response]

8 Q. Can you tell the Court why in your opinion all  
9 the stucco and all the brick, just on a window replacement  
10 perspective, needs to be taken off and put back on?

11 A. Well, for instance, let's just say -- you know,  
12 I previously talked about when these windows leak, as the  
13 water runs down it also runs out. So, you know, by the  
14 time this water is down in here, it is around these  
15 corners. So when you start looking at that, there's --  
16 and, basically, even on the back part of building five and  
17 the subsequent building four, and a lot of test cuts,  
18 there is a tremendous amount of rotten wood on --  
19 everywhere. And except maybe a little bit up on the very  
20 top. And there's a few places on the side of the windows.  
21 But the thing of the matter is you've got to take off all  
22 this brick. And in my experience, even the brick down  
23 here, because most people -- it's very difficult to come  
24 in and match, for one, the mortar color, two, the brick  
25 color.

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1           We've done a tremendous amount of work in trying  
2           to leave some brick on, stain the brick to match it. And  
3           at the end of the day it's about as cheap just to go ahead  
4           and take it off than it is to try to stain -- if you were  
5           going to put back new brick and mortar, to stain the  
6           mortar, to stain the color of the mortar and stain the  
7           brick to match. So at the end of the day, it's just a lot  
8           easier just to go ahead and take it all off and put all  
9           new brick down.

10           The stucco, during the remediation of four and  
11           five in the back, there was a lot of horizontal -- a lot  
12           of these floor diaphragms stick out an inch or two from  
13           the exterior wall framing. And so what happens is when  
14           these windows leak, a lot of that water goes horizontal.  
15           And it may go horizontal for two or three feet and then go  
16           down, it may go ten feet and go down. So all this rot --  
17           there's rot everywhere except right up in here. Now --

18           Q.     And the rot right up in here is the one right  
19           underneath the roof-to-wall intersection --

20           A.     Well, but there's not much -- there's not --

21           Q.     -- about two feet?

22           A.     -- there's not much decay -- I haven't seen much  
23           evidence of decay here.

24           However, when you start talking about declad the  
25           building: when you join stucco -- like when we did at the

1 Renaissance, we had -- you know, we saved about \$300,000  
2 by not taking all the stucco off the lower two stories.  
3 But we had to design a special interface for that stucco.  
4 It cost a lot of money. I'm thinking it probably cost  
5 about \$50 a linear foot to salvage the stucco. And when  
6 you look at something like this, and pay that kind of  
7 money, the contractor typically -- like we did at the  
8 Bristol, I gave him the option of taking all of it off or  
9 doing the cuts and salvage it. Five contractors bid it.  
10 Everybody wanted to take -- it was cheaper to take it all  
11 off because you can demo it and put it back cheaper than  
12 trying to saw-cut it, bond it back together so it won't  
13 split in the future, and then putting different coatings  
14 over it to hide that crack.

15 So at the end of the day, my recommendation, my  
16 opinion, is all of it should come off.

17 Q. And that's as a result of the water coming  
18 through the windows and doors?

19 A. Correct.

20 Q. Here is a photograph -- is this a sill-dam test?

21 A. Yeah. That was one of the original -- that was  
22 a sill-dam test we did during the course of our  
23 investigation.

24 Q. And that was to show whether or not the water  
25 was coming through the windows?

1 A. Correct.

2 Q. And that's a spray-rack test that you did on one  
3 of the windows to try to isolate the window to see if  
4 water was coming through the windows; is that correct?

5 A. Correct.

6 Q. And that is putting a negative pressure, as if  
7 it's in a storm, on the inside of the window?

8 A. Yeah. That's to emulate the --

9 THE COURT: Mr. Maybank, I understand the  
10 windows leaked. I understand he tested them. Okay?

11 MR. MAYBANK: We'll limit it, Your Honor.

12 THE COURT: But that's not the issue. Even  
13 though it was your sub and your windows. Okay?

14 MR. MAYBANK: Yes, sir.

15 Your Honor, this is a rendering of the side of  
16 one of the buildings out there.

17 THE COURT: One of the what, now? I'm sorry.

18 MR. MAYBANK: The side of one of the buildings  
19 showing the porch on the side.

20 Q. [Mr. Maybank] As a result -- is your testimony  
21 that not only does the front facade, but all the different  
22 sides of the building, need to come off, as well, in this  
23 window replacement project?

24 A. Yeah. I mean, I'm also -- all the windows and  
25 the balconies, all the stucco walls associated, all of

1 that needs to be replaced.

2 THE COURT: Were there any leaks in the windows  
3 in the balcony -- under the balcony?

4 THE WITNESS: They do leak. The windows do  
5 leak. I don't know -- we didn't -- I don't recall the  
6 leak surveys, whether people reported water entry.  
7 But we did test several of those windows. They  
8 leaked, just like the rest of them.

9 THE COURT: Well, I understand. But I know  
10 water sometimes blows horizontal in Charleston. Were  
11 they leaking, or does anybody know, the ones under the  
12 balconies?

13 THE WITNESS: Well, they were leaking. We  
14 tested them and --

15 THE COURT: I know you tested them. They were  
16 capable of leaking when you sprayed water on them.

17 THE WITNESS: I don't know if there was any  
18 leaks reported otherwise.

19 THE COURT: Okay. Thank you.

20 THE WITNESS: Yes, sir.

21 MR. MAYBANK: Mike, go back down and return to  
22 the box, please.

23 [Whereupon, the witness complies]

24 MR. MAYBANK: Your Honor, I know that you've  
25 asked for Mr. Willis to try to delineate by cutting

1 out what portions of the brick and stucco. For the  
2 purpose of the testimony --

3 THE COURT: I don't question the fact that all  
4 the bricks come off, for no other reason, they'll  
5 never match it. Okay?

6 MR. MAYBANK: Sure.

7 THE COURT: The question I want to know is how  
8 to delineate -- forget about the rot underneath the  
9 windows. What's it going to -- how much brick are you  
10 going to have to take out around these windows to get  
11 them out and put it back.

12 MR. MAYBANK: And I believe the testimony is all  
13 of it.

14 THE COURT: Okay. All right.

15 Q. [Mr. Maybank] Was that your testimony, Mike?

16 A. Yeah. And the reason I say that, I mean, you  
17 literally -- to get a window properly flashed, in whatever  
18 is decided, you've got to work in about an eighteen-inch  
19 band around every window, okay, whether you're going to  
20 replace the facade or not. But when you start keying in  
21 brick and you've got -- try to color the mortar or stain  
22 the brick, it's very difficult to get the same look of  
23 brick --

24 THE COURT: Yeah. I understand to match the  
25 brick would be almost impossible.

1 [Off the record momentarily]]  
2 [Whereupon, a recess is taken from 1:14 p.m. to  
3 2:36 p.m.]

4 THE COURT: Ready to proceed?

5 MR. MAYBANK: No, Your Honor.

6 THE COURT: Okay.

7 MR. MAYBANK: May we approach the bench, Your  
8 Honor?

9 THE COURT: Yes, sir.

10 [Whereupon, an off-the-record bench conference  
11 is held]

12 CONTINUED DIRECT EXAMINATION

13 BY MR. MAYBANK:

14 Q. Can you look at this set right here, Mike.

15 A. Yes.

16 Q. That group in front of you. Exhibit 237 to 248  
17 I believe have been admitted.

18 Mike, were you part of the destructive -- were  
19 you part of the investigation during the destructive  
20 testing out at The Oaks to try to figure out where the  
21 water was penetrating into the building?

22 A. Yes.

23 Q. And as part of that, did that destructive  
24 testing entail taking off portions of the building as  
25 evidenced or shown in the photographs Exhibit 237 through

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1 248?

2 A. Yes. We were -- this is -- like I indicated,  
3 this is a corner of building five and we were trying to  
4 determine if that was the only water-intrusion component  
5 or source that was causing this damage.

6 Q. And part of that destructive testing was taking  
7 off the brick veneer on this building?

8 A. Yes.

9 Q. And in taking off the brick veneer, did you and  
10 people doing this testing come across brick ties that were  
11 attached to the building and then attached into the brick  
12 itself?

13 A. Yes.

14 Q. And is that evidenced in the photographs before  
15 you, 237 through 248?

16 A. Yeah. Most of them, it's very obvious.

17 Q. Did anybody, during any of the other destructive  
18 testing, ever complain to you, whether it be  
19 subcontractors working on your behalf, or on behalf of  
20 Mr. Padgett or the HOA, to test -- to tell you that they  
21 were concerned that there were no brick ties in any of the  
22 buildings?

23 A. No.

24 Q. As far as you know, as these brick ties are, do  
25 you believe that they would be consistent throughout the

1 development?

2 A. I have no idea. I mean, you know, it's normal  
3 practice to put ties in. I don't know. I didn't survey  
4 the brick, so I don't know.

5 Q. If they used them in one building, would you  
6 assume that they used them in all the buildings?

7 MR. BUNDY: I object. Ask the witness to  
8 speculate. He said he didn't know.

9 MR. MAYBANK: I was just curious. I heard  
10 Mr. Bundy ask --

11 THE COURT: I'll sustain -- I mean, excuse me.  
12 I'll overrule the objection. If he knows, he knows;  
13 if he doesn't, he doesn't.

14 A. If the same mason did the work and they put the  
15 ties on one building, you would anticipate they would put  
16 the ties on the other building.

17 MR. MAYBANK: Thank you.

18 CROSS-EXAMINATION

19 BY MR. BUNDY:

20 Q. Mr. Parker, is it correct that you did not  
21 evaluate the brick or the stucco for code or workmanship  
22 compliance?

23 A. Yes.

24 Q. That you only concentrated on water intrusion?

25 A. Yes.

1 Q. So you do not have an opinion to a reasonable  
2 degree of certainty regarding the code compliance or  
3 workmanship on the stucco or the brick?

4 A. Correct.

5 Q. Now, this photograph, this one dated 2009 -- see  
6 that one?

7 A. Yes.

8 Q. You're looking at it.

9 What's the exhibit? Do you have an exhibit  
10 number on that, the 2009 photograph?

11 Q. [Whereupon, the witness reviews documents]

12 THE COURT: Talking about the June the 2nd?

13 MR. BUNDY: Yes, sir, June the 2nd.

14 THE COURT: What number? She's got it up here.

15 MR. BUNDY: I'm sorry.

16 THE COURT: What number is it, Mia?

17 MR. BUNDY: It is 237.

18 Q. [Mr. Bundy] Now, is that the original  
19 construction?

20 A. No.

21 Q. So that's a remediation; right?

22 A. Yes.

23 Q. So that's not proof that the brick ties were on  
24 this building, is it, originally?

25 A. No.

1 Q. All it does is prove that when you went back and  
2 did it, you put brick ties in? Somebody did?

3 A. Yes.

4 Q. And the brick ties that are used there are  
5 different from the ones that we saw in those couple of  
6 photographs before; right?

7 A. Yes.

8 Q. You testified that you knew in 2008 that all the  
9 windows and doors in this project needed to be replaced --

10 A. I believe I --

11 Q. -- is that correct?

12 A. -- testified to. Correct.

13 Q. And you told your client that, did you not?

14 A. Correct.

15 Q. And the only reason that your client -- who  
16 built and sold this development to my clients -- didn't do  
17 that at that time, based upon your recommendation, is  
18 because they would not spend the money necessary to go out  
19 and buy new windows and doors and replace them at the  
20 time; correct?

21 MR. MAYBANK: Objection. Speculation, Your  
22 Honor.

23 THE COURT: Overruled.

24 A. I don't know why -- I don't know why they didn't  
25 do it. I mean --

1 Q. [Mr. Bundy] Should they have done it --

2 A. I don't --

3 Q. -- if they wanted to fix it right?

4 A. You know, a lot of people don't do what I  
5 recommend. A lot of people, whether it's contractors,  
6 developers, owners --

7 THE COURT: The question was should they have  
8 done it. That's the question. If you would answer it  
9 and --

10 A. I recommended that they --

11 THE COURT: -- you can explain it.

12 A. Yes, I recommended that they do it.

13 THE COURT: Now you may explain it. I'm not  
14 trying to cut you short on your explanation.

15 A. Okay. I recommended it. Like I testified  
16 before, when you have profuse water intrusion on a wood-  
17 frame structure, it deteriorates very rapidly.

18 Q. [Mr. Bundy] They hired you as an engineer to  
19 give them recommendations about how to fix their buildings  
20 -- or my clients' buildings; correct?

21 A. Correct.

22 Q. How much are they paying you for those -- how  
23 much have they paid you in total in this case, or your  
24 firm?

25 A. I have no idea.

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- 1 Q. A couple hundred thousand dollars?
- 2 A. Probably.
- 3 Q. And if your firm were hired to be in charge of
- 4 the drawing plans and construction administration of a
- 5 12,000,000-dollar job, okay, y'all would charge about
- 6 what, ten percent?
- 7 A. Ten. Yeah, at least --
- 8 Q. At least?
- 9 A. -- ten percent.
- 10 Q. At least ten.
- 11 Your firm would charge at least ten percent,
- 12 maybe even fifteen or twenty?
- 13 A. It depends.
- 14 Q. Yeah. It depends on what they can afford to
- 15 pay, doesn't it?
- 16 A. It depends on what scope of work needs to be
- 17 done.
- 18 Q. Well, you've seen the scope of work on this job
- 19 that had been prepared by Mr. Padgett and twice by
- 20 Mr. Willis, have you not?
- 21 A. I've seen reports. I don't know that I've seen
- 22 pricing.
- 23 Q. Okay. You haven't --
- 24 A. I mean, there's been so many documents.
- 25 Q. I got you. There are a lot of documents,

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1 Mr. Parker.

2 Now, you did, however, at one point draw up some  
3 documents to take the windows out and the doors out and  
4 replace them -- and put the same ones back in; correct?

5 A. Yes.

6 Q. At that time, when you drew that plan, you had  
7 already come to the conclusion that the windows and doors  
8 that would go back in really should be new. You had  
9 already come to that conclusion; right?

10 A. Yes.

11 Q. So you drew a repair plan that could have also  
12 been used for putting in new doors and windows? The  
13 repair plan wouldn't be any different if you were going to  
14 use the same windows and put them back in, or get new  
15 ones, would it? It's the same because it's the same  
16 methodology; right?

17 A. Yes.

18 Q. So your repair plan could have been implemented  
19 back whenever you did it. And we're going to go over it  
20 in just a second. And if your client had been willing to  
21 buy new windows and doors, it could have been done way  
22 back then; right?

23 A. I guess so.

24 Q. And that would have stopped all the damage and  
25 given my client new windows and doors and we would be good

1 to go as it relates to all of that; right?  
2 A. Yes.  
3 Q. Now, if you would -- Exhibit 183.  
4 MR. BUNDY: I lost my contacts. I'm having a  
5 hard time seeing.  
6 Q. [Mr. Bundy] That's 183, is it not?  
7 A. Yes.  
8 Q. Okay. You've got glasses, too.  
9 And this is your work product, is it not? Or  
10 your firm's work product?  
11 A. Yes, that's my work product. That's right.  
12 Q. Signed and sealed by you?  
13 A. I stamped it.  
14 Q. There you go. And what's the date of this?  
15 A. The date is May 7th, 2009.  
16 Q. 2009. So on May the 7th, 2009, you had been  
17 paid a couple hundred thousand dollars, or thereabouts.  
18 You drew a sealed set of plans and specifications  
19 presumably that could have been filed with the building  
20 official and used to fix the windows and doors on this  
21 building; correct?  
22 A. Yes.  
23 Q. And if your client had been willing, he could  
24 have put in brand new windows and doors. We've already  
25 established that; correct?

1 A. Yes.

2 Q. Now, interestingly enough, tell me, if you  
3 would, what else in your plans -- first of all, tell me  
4 whether or not in this plan, in 2009, whether that plan  
5 calls for moving all the brick and all the stucco.

6 [Whereupon, the witness reviews documents]

7 Q. [Mr. Bundy] Do you need any help reading your  
8 plan?

9 A. No. But I haven't --

10 Q. Well, you --

11 A. I haven't read them in a while.

12 Q. Well, you may have forgotten about them.

13 A. No, I haven't forgotten about them.

14 [Whereupon, the witness reviews documents]

15 A. Under demolition it says, select, remove  
16 or dispose of existing stucco and masonry facade  
17 components --

18 Q. [Mr. Bundy] I'm having a hard time hearing you.

19 A. Excuse me.

20 Q. Yes or no. Did you in 2009 recommend when you  
21 took the windows out to take all the brick and stucco off?  
22 Yes or no.

23 A. I haven't determined that yet. I'm looking. It  
24 says --

25 Q. Oh. Okay.

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1 A. What I want --

2 Q. Let me sit down.

3 A. -- to do is read --

4 Q. Take your time.

5 A. I want to read in an organized order.

6 Q. Absolutely.

7 A. I will answer your question. I haven't looked  
8 at these drawings in three years.

9 Q. I understand that.

10 A. Under demolition it says, select or remove and  
11 dispose --

12 THE COURT: Sit down and just take your time  
13 reading them. Okay? Read them to yourself, then you  
14 can answer the question when you're ready. Okay?  
15 Take your time. Have a seat and read them and review  
16 them as long as you deem appropriate. Okay?

17 THE WITNESS: Is it all right if I stand up and  
18 look at them?

19 THE COURT: Yes, sir, you can stand up.  
20 Whatever you want to do. And just let me know when  
21 you're ready to answer the question, Mr. Parker.

22 [Whereupon, the witness reviews documents]

23 MR. BUNDY: With the Court's permission, I have  
24 the same set that was in a deposition. It's been  
25 sealed. May I unseal it so I can use this set?

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1 THE COURT: Yes, sir.

2 MR. BUNDY: Thank you.

3 Your Honor, while he's looking, I would move to  
4 put these documents in evidence that he's reviewing.

5 MR. MAYBANK: Let him look at them first and  
6 then identify them.

7 MR. BUNDY: He's already identified them. It's  
8 his document.

9 THE COURT: Let's see if he had any objection  
10 after he --

11 MR. BUNDY: I understand.

12 THE COURT: -- after he has a chance to look at  
13 them. Okay?

14 [Whereupon, the witness reviews documents]

15 A. Could you repeat the question?

16 Q. [Mr. Bundy] Be glad to.

17 In 2009 when you designed the repair for your  
18 client to at that time only reinstall the same windows,  
19 even though it was your recommendation to him to put in  
20 new windows, what was the scope of the repair work to the  
21 brick and the stucco? Was it all going to come off?

22 A. The demolition of the stucco and brick was going  
23 to be determined at the time by the engineer, which would  
24 be me. And there are provisions in these drawings that  
25 show that new stucco -- new-installed stucco interfacing

1 with existing stucco, and also retro-tie to masonry.

2 Q. The answer to my question is, no, you did not  
3 call for all of it to come off?

4 A. We didn't know how much was going to stay. But  
5 at that time, no, there was no -- there was not a  
6 requirement that all of it come off.

7 Q. But there is today in 2013?

8 A. Today my recommendation, yes.

9 Q. And your recommendation has changed because your  
10 strategy has changed, the strategy -- the theory behind  
11 your client's case has changed, has it not?

12 A. That's not true.

13 Q. It's not? Show me the drawings that you have  
14 drawn and prepared where they all -- where all the stucco  
15 and all the brick comes off.

16 A. I haven't prepared any drawings since '09.

17 Q. Show me one piece of paper that you have  
18 produced in this case through discovery wherein your firm  
19 recommendations that all the stucco and all the brick  
20 comes off.

21 A. I haven't -- I have not written a scope of work  
22 in this case since '09.

23 Q. When I took your deposition, was it your  
24 testimony that all the brick and stucco would come off?

25 A. I don't remember the deposition. I don't even

1 know what I said in the deposition.

2 Q. I'm satisfied you don't.

3 All right. Under item D, items not included in  
4 remediation -- do you see that on the first page?

5 A. Yeah.

6 Q. -- which you were not going to do?

7 A. Correct.

8 Q. What you were not going to do under 4 is  
9 exterior walls and wall cavities, except repair areas;  
10 right?

11 A. Correct.

12 Q. And you weren't going to replace storefronts,  
13 window-and-door units, and you weren't going to replace  
14 the handrail and stair systems or the balcony and balcony  
15 toppers; correct?

16 A. Correct.

17 Q. All right. Now, you said I believe earlier that  
18 you weren't aware of any problems with the masonry; is  
19 that correct?

20 A. That's correct.

21 Q. Why, then, would you have an item here called  
22 brick veneer -- brick masonry veneer which required in-dam  
23 terminations, metal in-dams, install new masonry anchors  
24 and masonry veer construction, and all of these detail in  
25 here, if the brick didn't need any work done on it? Why

1 were you doing all that work for --

2 A. Well, because of item B where it says  
3 demolition. We're talking about selective demolition. We  
4 don't know how far we're going to go. And this primarily  
5 was done for the mock-up remediation that we conducted on  
6 the back on building five, although there was no brick  
7 down there. But we didn't know where we were going to  
8 stop, so I put these plans together I think so that the --  
9 a contractor could get a permit to do the mock-up  
10 remediation on the back of Bobby Reece's units.

11 Q. Do you have any details to retro brick-tie --  
12 for a retro brick-tie fix? In other words, to install  
13 brick ties in existing brick without taking them down?  
14 Did you have a detail in there for that?

15 A. Had one detail.

16 Q. Okay. And the reason you had that was you knew  
17 at the time that all the brick ties weren't there that  
18 were supposed to be there; right?

19 A. That's not true.

20 Q. You just put it in there?

21 A. That's not true.

22 Q. It's in there, isn't it? Isn't the detail in  
23 there?

24 A. Occasionally, we have to make a vertical cut on  
25 a brick in a brick facade and we don't necessarily go to

1 the next tie. So what we have to do is we have to retro  
2 tie some of the existing end of that brick wall to start  
3 the brick back or put a joint in there. And that's what  
4 that was for.

5 Q. All right. Fair enough.

6 MR. BUNDY: Where are the plans? Here we go.

7 Your Honor, I move to put that in evidence,  
8 these plans in evidence.

9 THE COURT: Any objection from --

10 MR. MAYBANK: No objection, Your Honor.

11 THE COURT: That will be what? Plaintiffs'  
12 number what?

13 MR. BUNDY: What's that number, Mr. Parker?

14 THE WITNESS: 183.

15 THE COURT: Mia, what's the next number for the  
16 plans?

17 MR. BUNDY: The next -- this one is -- the next  
18 one I would like you to look at is Exhibit 184.

19 THE COURT: 184?

20 THE COURT REPORTER: This one is 183.

21 MR. BUNDY: This is 183. We just admitted it.

22 THE COURT: All right.

23 [Whereupon, Plaintiffs' Exhibit Number 183 is  
24 admitted into evidence by the Court]

25 MR. BUNDY: And now I'm going to ask him to

1 identify 184 for me, the plans.

2 Q. [Mr. Bundy] 184. Can you identify these plans?

3 THE COURT: Are they different plans?

4 MR. BUNDY: Yes, sir.

5 A. These are drawings for The Oaks at Rivers Edge  
6 luxury condominiums, Daniel Island.

7 Q. [Mr. Bundy] You said luxury condominiums?

8 A. That's what it says.

9 The front page is zoning. That's what it --  
10 it's by the architect-builders Carriage Hill. Consulting  
11 engineers, Nakula [phonetic]

12 Q. Are these the plans for this -- are these the  
13 architectural plans for these buildings?

14 [Whereupon, the witness reviews documents]

15 A. That's what it appears to be.

16 Q. [Mr. Bundy] Okay. After two hundred --  
17 certainly during the process of earning your \$200,000, you  
18 looked at the original plans, didn't you?

19 A. I don't know how much we've earned. You asked  
20 me if I thought it was that much.

21 Q. Whatever it is, whatever it is, part of your  
22 scientific method I think that we looked at earlier would  
23 certainly involve a forensic architect looking at the  
24 plans and specifications for the job, wouldn't it?

25 A. Well, I'm not a forensic architect, but I looked

1 at the -- I looked at the --

2 Q. You looked at them. Okay.

3 A. I looked at them.

4 Q. You're familiar with them. And you studied  
5 them, didn't you?

6 A. I looked at them.

7 Q. Were you ever asked to give an opinion as to  
8 whether those drawings were adequately drawn and met the  
9 average standard of care for architectural drawings?

10 A. I'm not an architect. I don't render an opinion  
11 on the standard of care for architects. I don't know if I  
12 was asked that question or not.

13 Q. But you are a water-expert guy, aren't you? You  
14 do details. You do water -- you do water-repair details,  
15 don't you? Water-intrusion details?

16 A. I'm an engineer that evaluates water intrusion,  
17 yes.

18 Q. Do you think as an engineer you're qualified to  
19 look at a set of architectural drawings, as it relates to  
20 the way the skin of the building is detailed, to determine  
21 whether or not it will repel water? Are you qualified to  
22 do that?

23 A. Yes.

24 Q. Now, you never looked at those plans to make the  
25 determination as to whether or not those plans are

1 adequate for that purpose, have you?

2 A. I didn't care about that.

3 Q. You didn't care about that. Of course you  
4 didn't. And the reason you didn't care about it is  
5 because who is listed as the architect-builder?

6 A. Well, it says on here it's Carriage Hill  
7 Associates of Charleston.

8 Q. Yeah. And that's your client; right? That's  
9 who you're working for.

10 A. I think I worked for two or three people on this  
11 project. I mean, we at--

12 Q. Who else --

13 A. -- probably one point in time, we have worked  
14 for them.

15 Q. Well, who are you working for today?

16 A. I don't know.

17 Q. We can all -- you're not working for me, are  
18 you?

19 A. Not that I know of.

20 Q. Don't send me a bill, because I ain't going to  
21 pay it.

22 So you haven't reviewed the plans and  
23 specifications on this job to determine whether they  
24 adequately detailed waterproofing? Just haven't done  
25 that?

1 A. Oh. Reviewed -- I reviewed the plans.

2 Q. Did you come to a conclusion --

3 A. Well --

4 Q. -- you did or not?

5 A. No.

6 Q. So you don't have an opinion; right?

7 A. No.

8 Q. Fair enough. I would like you to read in the  
9 record for me, please, note -- hold on -- yeah -- note  
10 number 11 on these plans and specifications. Just read  
11 that into the record for me.

12 A. It says: whatever work is done where no  
13 definite details or instructions are given, the contractor  
14 shall perform the work in accordance with the best  
15 practice and high standards of the construction industry  
16 without extra charge.

17 Q. Okay. So whenever there's an omission in here  
18 in these plans and specifications, this set of plans and  
19 specifications says you will do it to the highest  
20 standards in the industry; correct?

21 A. That's what it says.

22 Q. Okay. And that would be a requirement that was  
23 placed upon the builder-architect. Because these plans  
24 say that the builder-architect is one and the same entity;  
25 right? Carriage Hill Associates?

1 A. That's the way it's listed.

2 Q. So they're telling themselves, we're going to do  
3 this to the highest standard available and if we leave  
4 something out, it's got to be the highest and best  
5 available. Is there any head-flashing shown over any  
6 window in this building on those plans?

7 A. Let me look.

8 Q. Okay. And while you're looking, see if you see  
9 any -- see if you see any pans underneath the windows.

10 [Whereupon, the witness reviews documents]

11 THE COURT: While you're looking, look and see  
12 how far the flashing around the side of the windows  
13 went out the side of the windows, too, please, sir.

14 THE WITNESS: Yes, sir.

15 [Whereupon, the witness reviews documents]

16 THE WITNESS: Your Honor, they're shows a nine-  
17 inch minimum --

18 THE COURT: Waterproofing out beside the  
19 windows?

20 THE WITNESS: -- a membrane around the windows.

21 THE COURT: Membrane? How about the pans? Any  
22 pans? The attorney just said no pans.

23 [Whereupon, the witness reviews documents]

24 THE WITNESS: Their detail to the window section  
25 -- this is for brick -- shows a head-flashing membrane

1 over the nailing components and it shows a seal-  
2 flashing membrane under the nailing flange and under  
3 the jamb membrane for the sealed portion of the  
4 window.

5 For the stucco, it calls for a head-flashing  
6 membrane over the nailing flange. It calls for -- I'm  
7 looking at -- under section G it calls for seal-  
8 flashing membrane under nailing flange and under jamb  
9 membrane. There is no -- there's no calling for a  
10 pan, which --

11 THE COURT: That waterproof flashing that's --  
12 or waterproofing beside the window, is nine inches  
13 appropriate or should it go out twelve to twenty-four?

14 THE WITNESS: It really depends on what the --  
15 what you're interfacing on the other side of the  
16 window, too. They typically would have a -- and it  
17 depends on what peel-and-stick membrane and like if  
18 you're -- if it's Tyvek versus another thing. It  
19 depends. So you have --

20 THE COURT: Is one of the trade names for the  
21 product, what, Bitutron?

22 THE WITNESS: Bituthene.

23 THE COURT: Bituthene.

24 THE WITNESS: Bituthene. Yeah.

25 THE COURT: Bituthene. That probably ought to

1 be the name of the case.

2 THE WITNESS: I think it's typically a six-inch  
3 membrane.

4 THE COURT: All right. Thank you very much.

5 Q. [Mr. Bundy] So it's your testimony there was  
6 head-flashing? Or not?

7 A. It says there was -- they call it a seal-  
8 flashing -- head-flashing membrane.

9 Q. Is that head -- is that the same as head-  
10 flashing?

11 A. It's not the same as head-flashing that I  
12 installed.

13 Q. Pardon me?

14 A. It's not the same as head-flashing that I  
15 installed.

16 Q. Okay. And what is yours?

17 A. Mine is a preformed metallic component.

18 Q. And it works better, doesn't it?

19 A. I have no idea.

20 Q. Pardon me?

21 A. I have no idea. I haven't surveyed all windows  
22 and see what everybody else does. I just know what I do.

23 Q. Your repair drawings call for pan flashing --  
24 pans?

25 A. In May of '09, yes.

1 Q. Was pan flashing the highest and best use, or  
2 the best practice, when these plans were drawn? The --

3 A. I don't know.

4 Q. -- original plans?

5 A. I don't know.

6 Q. You don't have any knowledge of that. Okay.  
7 Tell me whether or not the details for the  
8 ceiling, floor -- and floor are complete and adequate,  
9 whether they're -- whether that's a complete detail, if  
10 you can.

11 MR. MAYBANK: Your Honor, I would object. This  
12 is getting into architectural issues that Mr. Parker,  
13 he's an engineer --

14 THE COURT: Well, rephrase the question --

15 MR. BUNDY: I'll withdraw --

16 THE COURT: -- and relate it to water intrusion,  
17 because that's what he says he's an expert in.

18 MR. BUNDY: I'll withdraw the question. That's  
19 all I have. Thank you, Your Honor.

20 THE COURT: Any redirect?

21 MR. MAYBANK: Just briefly, Judge.

22

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. MAYBANK:

3 Q. Mr. Parker -- what type of windows were  
4 installed on this project?

5 A. Weather Shield.

6 Q. When Weather Shield and window manufacturers  
7 shift windows to a job site, does it have its own  
8 flashing-installation detail

9 A. There's an installation manual that this -- for  
10 instance, from what I understand, there was an accredited  
11 or approved installer for Weather Shield on this project,  
12 and it's Muhler. They get prequalified by knowing what  
13 the manufacturing requires. There is a book -- there's  
14 actually an installation booklet and it has clear  
15 installation instructions, as far as flashings, whatever,  
16 that go on each type of window to be installed. We did  
17 get our -- we did discover and get that information on  
18 this project so I'm assuming that whoever put them in had  
19 that information, also.

20 Q. And that would come from Weather Shield?

21 A. Yes.

22 Q. All right. And are you aware whether or not the  
23 windows were self-flashing in this instance?

24 THE COURT: I'm sorry. What?

25 MR. MAYBANK: Self-flashing.

1 THE COURT: I didn't understand. Thank you.

2 A. There's a code provision, or there used to be a  
3 code provision, I think it was code book three, that says  
4 that if a window unit is self-flashed -- and in the old  
5 terminology you use it in the use [phonetic] of nailing  
6 pan, that it doesn't require head or pan flashing.

7 Q. [Mr. Maybank] And were these windows just such  
8 types?

9 A. Yes.

10 MR. MAYBANK: Thank you, Mike. No further  
11 questions.

12 THE COURT: Any recross?

13 MR. BUNDY: Nothing.

14 THE COURT: Okay. Mr. Parker, thank you so very  
15 much. You may step down.

16 [Whereupon, Mr. Parker is excused and exits the  
17 witness stand]

18 THE COURT: Any reason Mr. Parker can't be  
19 excused?

20 MR. BUNDY: None from the plaintiff, Your Honor.

21 MR. MAYBANK: None from the defendant, Your  
22 Honor.

23 THE COURT: Mr. Padgett, have a safe trip back.  
24 Thank you so very much for your testimony.

25 MR. BUNDY: I need to move that -- I need to

1 move 184 into evidence, the plans.

2 THE COURT: I think you already have.

3 MR. BUNDY: Three and four?

4 THE COURT: Have you got any objection to 183  
5 and 184?

6 MR. MAYBANK: I don't.

7 THE COURT: All right. 183 and 184 admitted  
8 without objection.

9 [Whereupon, Plaintiffs' Exhibit Number 183 is  
10 admitted into evidence by the Court]

11 [Whereupon, Plaintiffs' Exhibit Number 184 is  
12 admitted into evidence by the Court].

13 THE COURT: All right. We're going to take  
14 about a fifteen- or twenty-minute break.

15 [Whereupon, a recess is taken from 3:10 p.m. to  
16 3:43 p.m.]

17 THE COURT: Okay. Mr. Maybank?

18 MR. MAYBANK: Your Honor, if we could, we would  
19 like to recess for about ten minute.

20 THE COURT: Okay. That will be fine.

21 MR. MAYBANK: Thank you, Your Honor.

22 THE COURT: Let me know when you're ready.

23 MR. MAYBANK: Thank you.

24 [Whereupon, a recess is taken from 3:43 p.m. to  
25 4:08 p.m.]

1 THE COURT: All right. Mr. Maybank, you want to  
2 call your next witness?

3 MR. MAYBANK: Your Honor, at this time we would  
4 submit to the Court the orders that we have previously  
5 discussed from Ed DiMarzio and from Jerry Rumplick. I  
6 believe one is Exhibit -- here we go. One is 217,  
7 from the defendants, documents which I pulled out  
8 actually to bring back to you, and the other I'll hand  
9 up to the Court.

10 Mr. Rumplick's -- I mean, this DiMarzio order  
11 has not been entered yet so that will be the next one  
12 in the defendants' line.

13 THE COURT: What number?

14 THE COURT REPORTER: 256.

15 THE COURT: 256. Any objection to 256?

16 MR. BUNDY: None, Your Honor.

17 THE COURT: All right. Defendants' 266. That's  
18 an LLR report on DiMarzio; is that correct?

19 MR. MAYBANK: DiMarzio. Yes, Your Honor.

20 [Whereupon, Defendants' Exhibit Number 266 is  
21 admitted into evidence by the Court]

22 THE COURT: What was the other one?

23 MR. MAYBANK: The other one is the LLR order on  
24 Jerry Rumplick. And that is Defendants' Exhibit 217  
25 [sic], I believe.

1 THE COURT: Any objection --  
2 MR. BUNDY: None, Your Honor.  
3 THE COURT: -- to Defendants' 217 [sic]?  
4 MR. BUNDY: No objection.  
5 THE COURT: That's the LLR report on --  
6 MR. MAYBANK: Mr. Rumplick.  
7 THE COURT: -- Mr. Rumplick.  
8 MR. MAYBANK: Yes, Your Honor.  
9 THE COURT: All right.  
10 [Whereupon, Defendants' Exhibit Number 218 is  
11 admitted into evidence by the Court]  
12 THE COURT: All right. Other than those two  
13 exhibits concerning those two potential witnesses, do  
14 you have anything else?  
15 MR. MAYBANK: At this time, Your Honor, the  
16 defense rests.  
17 THE COURT: All right. Does the plaintiff have  
18 any reply testimony?  
19 MR. BUNDY: No, Your Honor.  
20 THE COURT: All right. Does the plaintiff have  
21 any motions?  
22 MR. BUNDY: I do, Your Honor, but I would  
23 request we be allowed to present them to you in  
24 writing. Is that --  
25 THE COURT: Okay. All right.

1 MR. BUNDY: -- satisfactory?

2 THE COURT: Does the defendant have any motions?

3 MR. MAYBANK: I think we would like to follow  
4 suit, if we could.

5 THE COURT: That's fine. I'll give you -- how  
6 much time do you need to file the motions with any  
7 memorandum of law you would like to present?

8 MR. BUNDY: Two weeks?

9 [Whereupon, Mr. Bundy and Mr. Maybank confer]

10 MR. BUNDY: Two weeks, Your Honor.

11 THE COURT: Also, if you would, send me some  
12 proposed orders on findings of fact in your case.

13 MR. BUNDY: Your Honor --

14 THE COURT: Yes, sir? I'm sorry.

15 MR. ALTMAN: Your Honor, I'm going to be on  
16 vacation in two weeks so --

17 MR. BUNDY: If we're going to do -- if you  
18 want all of it at one time, that's okay. We'll do --  
19 we were talking about thirty days. We'll just give  
20 y'all --

21 MR. ALTMAN: That will be fine.

22 MR. BUNDY: Okay. Thank you, Your Honor.

23 THE COURT: Okay. I'll give you thirty days to  
24 file whatever motions, any memos, and also your  
25 proposed orders as to findings of fact. Okay?

1 MR. BUNDY: Do you want conclusions of law, as  
2 well?

3 THE COURT: Yes, sir.

4 All right. Is there anything else?

5 MR. BUNDY: Nothing from the plaintiff, Your  
6 Honor.

7 THE COURT: Anything from the defendant?

8 MR. ALTMAN: Nothing from the defendant, Your  
9 Honor.

10 THE COURT: All right. I will wait on the  
11 motions and the memorandums of law, before I find any  
12 specific findings of fact, rather than doing it here  
13 today. And I will probably, after I read and make  
14 some decisions, I will probably e-mail the appropriate  
15 parties to probably modify their proposed orders to  
16 include some findings of fact that the Court would  
17 like to include, rather than finding them today.

18 Thank you y'all so very much. I enjoyed  
19 working with you. And y'all were very well-prepared,  
20 and a difficult case to try. Thank you, y'all, so  
21 very much for being prepared and presenting your  
22 cases.

23 [Whereupon, Court's Exhibit Numbers 1, 2 and 3  
24 are marked by the court reporter]

25 [BENCH TRIAL CONCLUDES AT 4:15 P.M.]

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the bench trial held before the Honorable J.C. Nicholson, Jr., on Thursday, April 11, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of October, 2013.



Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Daniel Island Riverside Developers, LLC, *et al.*,  
Plaintiffs,

v.

Weather Shield Manufacturing, Inc., *et al.*,  
Defendants.

CA No. 09-CP-08-1068

A.C. Construction, Inc.,  
Plaintiff,

v.

Daniel Island Riverside Developers, LLC, *et al.*,  
Defendants.

CA No. 09-CP-08-1413

Geoffrey C. Cipkala, *et al.*,  
Plaintiffs,

v.

Daniel Island Riverside Developers, LLC, *et al.*,  
Defendants.

CA No. 08-CP-08-2714

The Oaks at Riversedge Property Owners  
Association, Inc., *et al.*,  
Plaintiffs,

v.

Daniel Island Riverside Developers, LLC, *et al.*,  
Defendants.

CA No. 08-CP-08-3916

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**DAMAGES MEMORANDUM**

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**TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

### BACKGROUND

This suit stems from alleged construction defects at the Oaks at Rivers Edge condominiums (hereinafter "The Oaks"), located on Daniel Island, South Carolina. The Oaks consists of six buildings that were constructed in between 2004 and 2006. Daniel Island Riverside Developers was the developer of the project and Carriage Hill Associates of Charleston, LLC, was the construction manager.

Plaintiffs are the Property Owners Association, ("POA"), and individual current and former unit owners. The plaintiffs filed suit regarding claims as to negligent construction against Daniel Island Riverside Developers, Carriage Hill Associates of Charleston as well as several other subcontractors, material suppliers and design professionals, including Coastal Roofing, Weather Shield Manufacturing, Inc., Muhler Co., Inc., AC Construction, Inc., Coastal Caulking, Edward J. D'Orazio, AIA, and Gerald Rumplick, AIA, Richard Behringer, and Carriage Hill New York.

As part of the litigation, in February 2011, Plaintiffs produced an estimate from Southeastern Construction for \$11,807,884.00, attached hereto as Exhibit A and as entered as an exhibit at trial, to repair the six buildings. Prior to the start of the March 2013 trial, Coastal Roofing, Weather Shield Manufacturing, Inc., Muhler Co., Inc., AC Construction, Inc., Coastal Caulking, Edward J. D'Orazio, AIA, Gerald Rumplick, AIA, and Richard Berhinger, and Carriage Hill New York settled with plaintiff. Additionally, although they remained defendants, DIRD, and Carriage Hill Charleston also contributed to the settlement for a total partial settlement of \$7,702,552 million dollars to the POA.

At trial, Plaintiffs submitted a revised estimate of \$7,934,704.06, attached hereto as Exhibit B. The defendants submit two issues with the revised repair estimate. First, the revised repair estimate does not take into consideration the full settlement amounts received from the settling defendants. Using Plaintiffs' revised estimate, there is approximately \$4,105,332 of unaccounted for settlement money. Second, Plaintiffs did not submit evidence or did not submit credible evidence establishing that certain repairs were related to and attributable to original construction or even necessary.

As discussed below Defendants request that the Court apply a set off to any damage award to the POA based on the settlement. The Defendants also request that court find that Plaintiff failed to establish that the POA is entitled to damages to make certain repairs contained in the estimate including Paint Porch Ceilings, Garage Slab Repair, Parapet Wall Returns, French Drain System, Shower Water Proofing, HVAC at Lobby, Carpet of Stairs to Garage, Upper landing Repairs and Project Photograph.

**A. DEFENDANTS ARE ENTITLED TO A SET OFF ON ANY AWARD TO THE POA BASED ON THE SETTLEMENT FROM THE CO-DEFENDANTS.**

As discussed above, several parties settled with Plaintiffs prior to trial. The settlement was broken down into two groups, "the window group," which included Weather Shield, the window and door manufacturer; Muhler, the window distributor and entity that performed window installation remedial work during original construction; AC Construction, the window installer; and Coastal Caulking, the caulker. The "window group" contributed a total of \$4,002,552 to the settlement and in exchange were dismissed from the lawsuit. The second group consisted of DIRD, Carriage Hill of Charleston, Carriage Hill New York, Rumplick, D'Orazio and Behringer. The second group contributed a total of \$3,700,000 to the settlement. Of the \$3.7 million, \$1.2 million was from the settlement with the architects Rumplick and D'Orazio. Despite the settlements, plaintiffs revised estimate leaves \$4,105,332 of the settlement money unaccounted for.

A trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties. *Smalls v. South Carolina Dep't of Education*, 339 S.C. 208, 528 S.E.2d 682 (2000). "A set-off is not necessarily founded upon 'any statute or fixed rule of court, but grows out of the inherent equitable jurisdiction' of the court; there for motion are "addressed to the discretion of the court –a discretion which should not be arbitrarily or capriciously exercised. *Smalls* citing *Rockard v. Atlanta & Charlotte Air Line Ry.*, 89 S.C. 371, 376, 71 S.E. 992, 995 (1911).

A non-settling defendant is entitled to credit for the amount paid by another defendant who settles. *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967). The reason for allowing a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. "Or, differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." *Truesdale v. South Carolina Highway Dept.*, 264 S.C. 221, 213 S.E.2d 740 (1975). However, the reduction in the settlement must be from a settlement for the same cause of action. *Ward v. Epting*, 290 S.C. 547, 351 S.E.2d 867 (Ct. App. 1986).

In *Atlas Food Systems & Services, Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3<sup>rd</sup> 587 (4th Cir. 1996), the Fourth Circuit Court of Appeals applied South Carolina law when reviewing the district court's order which granted a set off of the entire amount of a settlement despite an agreement which allocated a majority of the settlement money to keep the settlement confidential. The Fourth Circuit recognized the principle that there can only be one satisfaction for an injury or wrong. It cited to the fact that district court inquired into the true nature of the settlement between Atlas and Mars and found that Atlas "could not name anything of value other than the claims against Mars that Atlas gave up for the payment." The Fourth Circuit upheld the district court's decision to "look[] beyond appearances and disregard[] the allocation of the settlement." *Atlas* at 596.

As in *Atlas Food*, the Court should exercise its equitable powers and, grant the Defendants a set-off for the total amount of the partial settlement.

As demonstrated via the testimony at trial from both Plaintiffs and Defendants, this case is about windows and damage that occurred as a result - windows that were manufactured improperly and installed improperly. There is no dispute that the defects with the windows themselves and the improper installation allowed water intrusion into the building cavity and damaged the components of the building.

**WINDOW/DOOR and HANDRAIL REPLACEMENT COSTS and WINDOW TREATMENT**

**REMOVAL COSTS**

Using Plaintiffs' revised estimate, Defendants agree that Item 2: Replace all windows and exterior doors should be deleted. Defendants also agree that removal of Item 8 Replace Guardrails should be deleted. Finally, Defendants agree that item 19: Window Treatment is properly deleted.

However, Defendants contend that they are also entitled to a credit for the following items listed below based on the \$4,002,552.00 settlement with the window group and the fact that repair of the items are a direct result of the window/door removal and replacement or necessary to repair damage caused by water intrusion from the windows/doors.

**STUCCO AND BRICK REPLACEMENT (\$1,091,971.50)**

Defendants contend that Plaintiffs have not properly removed costs for damages that occurred to the buildings as a result of the water intrusion caused by the defective and improperly installed windows. Plaintiffs contended that only 18.5 percent of the stucco removal was related to the window removal and resulting water damage and 14 percent of the brick removal. This is contrary to the testimony at trial and the reports submitted into evidence.

Mike Parker testified that all of the brick and stucco will have to be removed not only to remove and replace the windows and doors, but also to repair wood rot and damage to the sheathing behind the stucco and brick due to water intrusion from the windows and doors. There is no dispute that there is water damage behind the brick and stucco that needs repair. As such, Defendants should be entitled to a credit for the entire Stucco and Brick repair. This includes Item 3 Remove and Replace all Stucco, at \$97,166.55 per building, for a total of \$582,999.30 for all six buildings, as well as Item 4 Remove and Replace Brick at \$84,828.70 per building for a total of \$508,972.20.

Plaintiff's position that 86% of the brick removal is due to lack of brick ties is not supported by the evidence. While Plaintiff's expert Ted Padgett, PE, testified no brick ties were installed, Defendant's

expert, Mike Parker PE, testified that he observed brick ties during his investigation. Moreover, Mr. Parker's pictures submitted at trial showed brick ties were used on the buildings during original construction.

**REPLACE EXTERIOR TRIM/PAINT WOOD COSTS (\$119,588.00)**

Again, Mike Parker testified that the removal of the exterior trim is necessitated by both the removal and replacement of the windows and doors. Common sense dictates that a window or a door could not be removed and replaced without first removing the exterior trim. Likewise, once the window is replaced, it follows that the new trim will have to be painted. There is no other reasonable explanation for these two repair items other than to effectuate the window repairs. Item 5: Replace Exterior Trim is priced at \$14,130 per building, this equates to a total cost of \$84,788 for all six buildings. Likewise, Item 6: Paint Trim at \$5,800 per building equates to \$34,800 for all six buildings.

**WALL INSULATION (\$120,615.38)**

The evidence at trial demonstrated that the removal of the wall insulation and associated work was due to water intrusion into the building cavity via the windows and resulting damage. Plaintiff offered no other explanation otherwise supporting this repair item. Item 9: Wall Insulation is priced at \$120,615.30 per building for a total of \$120,615.38 for all six buildings.

**PAINT PORCH CEILINGS (\$47,880.00)**

Plaintiffs did not present any evidence that the need to pain the porch ceilings was necessary or due to original construction. As such, they are not entitled the costs. To the extent this item is due to original construction, the only logical correlation of the necessity of this repair is due to water intrusion/damage from the doors located above. Accordingly, Plaintiffs would be entitled to a set off based on the pre-trial settlement.

**GYPSUM BOARD REMEDIATION (\$440,940.00)**

Plaintiffs offered no evidence at trial to establish that the gypsum board replacement of the walls was due to anything other than water intrusion and damages from the windows. This repair is related and needed due to the removal and replacement of the windows, but also due to water damage from the windows. Item 18: Gyp Bd Remediation is priced at \$73,490 per building. This equates to \$440,940.00.

Additionally, Defendants are entitled to a set off of the items above based on the \$1,200,000.00 paid by the architects (Rumplick and D'Orazio). The allegations as to the architects among other was negligence and professional negligence in the design of the project specifically with regard to water management. The required affidavit of Gary Freeman, AIA, CCS, attached to Plaintiffs complaint states "I find deficiencies related to the performance of Jerry Rumplick, AIA and Edward J.D'Orazio to include, but not limited to the following: a. improper water control and water management system design in both the stucco and the brick veneer; b. Violation of ASTM Standards C 926 and C 1063; c. Design deficiencies which violate the applicable building codes; d. Omission of required flashing systems." At a minimum, based on the settlement of the architects and the water management allegations, Defendants are entitled to a set off of the full amount of the Stucco/Brick sections discussed previously.

Accordingly, based on the "window group" settlement, and the \$1,200,000.00 settlement with the architects, Defendants should be entitled to an additional set off credit of \$1,820,994.88.

**ACOUSTIC REPAIRS/SOUND REMEDIATION (\$1,973,134.98)**

In their revised estimate Plaintiffs include a total of \$1,973,134.98 for sound remediation. These items are listed under Item 14: Acoustic Modifications Floors and Item 15: Acoustic Ceiling Modifications. Plaintiffs should not be awarded costs to repair these items as it has already been corrected. At trial, Defendant's expert testified that the acoustics had been brought up to code by previous repairs conducted by Defendants. Moreover, Plaintiff's expert report agreed. In fact, the

Quietly Making Sound report prepared on behalf of the Plaintiffs and submitted at trial states in pertinent parts:

The ASTC ratings exceeded the minimum building code requirements for both the original and modified floor/ceiling system designs.

The FIIC rating with wood floor coverings was 41 for the original construction, which falls below the minimum building code requirement. An increase of 8 points was realized for the modified construction, resulting in an FIIC rating of 49 which meets the applicable criterion.

(Quietly Making Noise Report, p.9). Moreover, Plaintiff's expert also states:

The design modification have clearly made a significant improvement. The improvements to the ceiling are consistent with recommendations that QMN would have made and further changes to the ceiling design are unlikely to result in much more of an increase in the ratings.

(Quietly Making Noise, p.9).

In other words, even if the \$1,973,134.98 worth of work was completed, the sound/acoustics would not be any better than they are currently.

**B. PLAINTIFFS FAILED TO PRESENT EVIDENCE TO SUPPORT CERTAIN REPAIRS WERE THE RESULT OF NEGLIGENT CONSTRUCTION.**

At trial, Plaintiffs have the burden of proving their case by a preponderance of the evidence. *Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). However, at trial Plaintiffs did not present evidence regarding several of their repair items, including garage slab repair, (\$67,812), parapet wall returns, (\$32,400), brick entry steps, (\$60,630), French drain system, (\$18,000), and the lobby HVAC (\$85,200). To the extent they are included they are should be considered upgrades.

As to the shower water proofing section, Item 16, the only evidence presented at trial was that a limited number of people had leaks. However, these leaks were repaired. There is no evidence in the record that shower water proofing is necessary.

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### C. EXCESSIVE COSTS

1. Project Photographs - Plaintiffs include a items cost for photographs during repairs in the amount of \$5,380 per building or \$32,280 total. Plaintiffs have not presented evidence that photos are needed. To the extent the court determines they have, then the \$32,280 cost is excessive.

2. Scaffolding – Plaintiff’s estimate has a cost for scaffolding at \$55,159 per building for a total of \$330,954. No credit is given for the fact that the scaffolding is necessary for the removal and replacement of the windows and doors.

3. Project Overhead – Even though Plaintiffs’ estimate Item 1 contains a detailed list of the overhead for the job at totals \$149,737 per building for a total of \$898,422 for all six buildings, the estimate provides for an additional 15% of the total construction amount for “overhead.” This additional 15% in overhead equates to \$135,663 per building for a total of \$813,978 for all six buildings.

4. Item 1 General Conditions – Although all of these line item costs contained in Item 1 of Plaintiffs revised estimate are necessary to effect the window repairs, Defendants have not been given any type of reduction from the partial settlement with the other parties. Accordingly, Defendants, would request that the general conditions contained in Item 1 be pro rated based on the determination of these defendants’ percentage of fault.

### D. LOSS OF VALUE

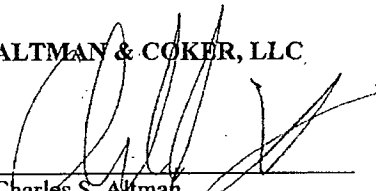
Plaintiffs should not be entitled to damages for loss of value to the units. As Plaintiff’s expert Chris Donato testified at trial, if the units are repaired, then there is no loss of value. To award plaintiffs damages for both repairs and loss of value would constitute a double recovery.

### E. CONCLUSION

Based on the allegations in the complaint and the pretrial settlement, at a minimum, Defendants are entitled to a set off in the full settlement amount of \$7,702,552, not just the amount credited by the Plaintiffs’ in the revised estimate. Moreover, as discussed above, Plaintiffs are not entitled to damages

for certain repairs based on the failure to present evidence that the repairs were needed or caused by original construction. Finally, Plaintiffs should not be awarded damages for acoustic repairs. This is based on the testimony of both Plaintiff and Defendants' experts who testified that the acoustics were up to code and that nothing further could be done to improve the soundproofing. We request the Court not award damages for lost value since the Plaintiffs have received the funds necessary to repair the properties.

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Developers, LLC, and Carriage Hill  
Associates of Charleston, LLC

May 17, 2013

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***EXHIBIT A***

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
DIV 1: Item Description							
Project Manager / Office	12	weeks			\$1,000.00	\$12,000.00	\$12,000
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$16,800
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$16,800
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$16,800
Sub-Total Labor							
Insurance on Labor (included)							
Project General Labor (other)						\$10,000.00	\$10,000
Equipment Rental				\$8,000.00			\$8,000
Construction Power	3	mo	\$150.00	\$450.00			\$450
Silt Fencing	1	ls	\$50.00	\$50.00	\$70.00	\$70.00	\$120
Cell Phones	3	mo	\$200.00	\$600.00			\$600
Small Tools	1	ls	\$5,000.00	\$5,000.00			\$5,000
Dumpster Rental	3	mo	\$600.00	\$1,800.00			\$1,800
Fuel	3	mo	\$500.00	\$1,500.00			\$1,500
Scaffolding (Safeway)	350	lf x 42'					\$55,159
Office management - assistant	240	hr			\$25.00		\$6,000
Edge Protection:	576	lf	0.50	\$288.00	12 mh	\$420	\$708
Sub-Total Miscellaneous:							\$149,737
TOTAL THIS PAGE:							\$149,737

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
REPAIR ESTIMATE PER ITEMIZATION							
AS STIPULATED IN THEODORE							
PADGETT, P.E. REPORT DATED							
APRIL 20, 2010							
ITEM 1: WALL REPAIR AT REAR							
STUCCO FACADE							
100% Replacement of sheathing and							
50% replacement of studs at rear							
elevations not under roof.							
1.1. Remove existing stucco:	1,200	sf			48 mh	\$1,680.00	\$1,680
1.2. Remove stucco at lev 2 columns:	288	sf			8 mh	\$280.00	\$280
1.3. Remove stucco at lev 2 beams:	91	sf			4 mh	\$140.00	\$140
1.4. Remove house wrap.	1,582	sf			4 mh	\$140.00	\$140
1.5. Remove existing sheathing:	1,582	sf			16 mh	\$560.00	\$560
1.6. Remove 50% of studs (2x6x10):	92	ea			32 mh	\$1,120.00	\$1,120
1.7. Remove framing straps:	45	ea			2 mh	\$70.00	\$70
Note: No top or bottom plate removal.							
Note: No rim board removal.							
1.8. Install new 2x6 wall studs:	45	ea	\$6.03	\$271.35	22.5 mh	\$787.50	\$1,059
1.9. Install new 1/2" OSB sheathing:	1,582	sf	\$3.46/sht	\$423.00	16 mh	\$560.00	\$983
1.10. Install 2 layers 15 lf wall felts:	1,582	sf	5 r - \$19.30/r	\$96.50	8 mh	\$280.00	\$377
1.11. Install stucco lath:	notes 1,2						
1.12. Install stucco comer beads:	notes 1,2						
1.13. Install 3 coat stucco:	notes 1,2						
1.14. Landfill fee for stucco:							\$1,200
Note 1: Window replacement in other							

1621

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
section.							
Note 2: Stucco in other section.							
ITEM 1 SUB-TOTAL:							\$7,608
<b>ITEM 2: REPLACE ALL WINDOWS &amp; EXTERIOR DOORS</b>							
2.1. Remove ext windows not on decks:	56	ea			2 mh	\$3,920.00	\$3,920
2.2. Remove ext windows on decks:	26	ea			1 mh	\$910.00	\$910
2.3. Remove front entry door (not installed)	1	ea					
2.4. Remove french door units:	26	ea			2 mh	\$910.00	\$910
2.5. Remove window at front stair:	2	ea			1 mh	\$70.00	\$70
2.6. Prep window opening:	82	ea	\$24.00	\$1,968.00	2 mh	\$5,740.00	\$7,708
2.7. Prep door opening:	26	ea	\$28.00	\$728.00	2 mh	\$1,820.00	\$2,548
2.8. Raise door sills:	26	ea	\$12.00	\$312.00	1 mh	\$910.00	\$1,222
2.9. Install new sill pans at windows:	275	lf	\$10.00	\$2,750.00	64 units	\$2,240.00	\$4,990
2.10. Install new sill pans at doors:	152	lf	\$10.00	\$1,520.00	32 units	\$1,120.00	\$2,640
2.11. New windows:							
Window type NMN level 2:	4	ea	\$1,391.54	\$5,566.16	8 mh	\$1,120.00	\$6,686
Window type P level 2:	2	ea	\$930.90	\$1,861.80	4 mh	\$280.00	\$2,142
Window type S level 2:	2	ea	\$807.32	\$1,614.64	4 mh	\$280.00	\$1,895
Window type U level 2:	8	ea	\$1,047.17	\$8,377.36	4 mh	\$1,120.00	\$9,497
Window type W level 2:	2	ea	\$1,318.78	\$2,637.56	4 mh	\$280.00	\$2,918
Window type NMN level 3:	4	ea	\$1,391.54	\$5,566.16	8 mh	\$1,120.00	\$6,686
Window type P level 3:	2	ea	\$930.90	\$1,861.80	4 mh	\$280.00	\$2,142
Window type R level 3:	1	ea	\$966.75	\$966.75	4 mh	\$140.00	\$1,107
Window type S level 3:	2	ea	\$807.32	\$1,614.64	4 mh	\$280.00	\$1,895

1622

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Window type U level 3:	8	ea	\$1,047.17	\$8,377.36	4 mh	\$1,120.00	\$9,497
Window type W level 3:	2	ea	\$1,318.78	\$2,637.56	4 mh	\$280.00	\$2,918
Window type V level 3:	4	ea	\$1,068.47	\$4,273.88	4 mh	\$560.00	\$4,834
Window type BAB level 4:	2	ea	\$1,711.11	\$3,422.22	8 mh	\$560.00	\$3,982
Window type BCB level 4:	2	ea	\$1,784.59	\$3,569.18	8 mh	\$560.00	\$4,129.18
Window type D level 4:	2	ea	\$1,057.70	\$2,115.40	4 mh	\$280.00	\$2,395
Window type F level 4:	1	ea	\$1,109.32	\$1,109.32	4 mh	\$140.00	\$1,249
Window type G level 4:	2	ea	892.65	1,785.30	4 mh	\$280.00	\$2,065
Window type H level 4:	8	ea	\$1,081.77	\$8,654.16	4 mh	\$1,120.00	\$9,774
Window type J level 4:	2	ea	\$1,553.11	\$3,106.22	4 mh	\$280.00	\$3,386
Window type K level 4:	4	ea	\$1,185.10	\$4,740.40	4 mh	\$560.00	\$5,300
Total # windows:	64			\$73,857.87			
Sealant at windows (average):	64	ea	\$9.00	\$576.00	.5 mh	\$1,120	\$1,696
2.12. New french doors.							
French door type T (pair) level 2:	10	ea	\$2,805.25	\$28,052.50	8 mh	\$2,800	\$30,853
French door type Q (single) level 2:	2	ea	\$1,729.66	\$3,459.32	8 mh	\$560	\$4,019
French door type T (pair) level 3:	6	ea	\$2,805.25	\$16,831.50	8 mh	\$1,680	\$18,512
French door type O (pair) level 3:	2	ea	\$3,056.99	\$6,113.98	8 mh	\$560	\$6,674
French door type Q (single) level 3:	2	ea	\$1,729.66	\$3,459.32	8 mh	\$560	\$4,019
French door type E (single) level 4:	2	ea	\$1,935.10	\$3,870.20	8 mh	\$560	\$4,430
French door type I (pair) level 4:	6	ea	\$3,358.20	\$20,149.20	8 mh	\$1,680	\$21,829
French door type L (pair) level 4:	2	ea	\$3,504.25	\$7,008.50	8 mh	\$560	\$7,569
Total # door units:	32			\$88,944.52			

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
2.13 Sealant at french doors:	32	ea	\$12.00	\$384.00	.5 mh	\$560	\$944
2.14 Water test window units:	64	ea		\$500	2 mh	\$7,040	\$7,540
2.15 Water test french door units:	32	ea			4 mh	\$7,104	\$7,104
2.16. Raise base at fixed units:	12	ea	\$36.00	\$432	2 mh	\$840	\$1,272
2.17. Raise base at operable units:	28	ea	\$36.00	\$1,008	2 mh	\$1,980	\$2,968
2.18 Re-install window casing							
Window type NMN level 2:	112	lf	\$3.00	\$336	12 mh	\$420	\$756
Window type P level 2:	54	lf	\$3.00	\$162	4 mh	\$140	\$302
Window type S level 2:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
Window type U level 2:	176	lf	\$3.00	\$528	16 mh	\$560	\$1,088
Window type W level 2:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
Window type NMN level 3:	112	lf	\$3.00	\$336	12 mh	\$420	\$756
Window type P level 3:	54	lf	\$3.00	\$162	4 mh	\$140	\$302
Window type R level 3:	27	lf	\$3.00	\$81	2 mh	\$70	\$151
Window type S level 3:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
Window type U level 3:	176	lf	\$3.00	\$528	16 mh	\$560	\$1,088
Window type W level 3:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
Window type V level 3:	112	lf	\$3.00	\$336	3 mh	\$280	\$616
Window type BAB level 4:	64	lf	\$3.00	\$192	6 mh	\$210	\$402
Window type BCB level 4 (curve top):	66	lf	\$3.50	\$231	10 mh	\$350	\$581
Window type D level 4:	56	lf	\$3.00	\$168	4 mh	\$140	\$308
Window type F level 4:	56	lf	\$3.00	\$168	2 mh	\$70	\$238
Window type G level 4:	54	lf	\$3.00	\$162	4 mh	\$140	\$302

1624

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Window type H level 4:	192	lf	\$3.00	\$576	16 mh	\$560	\$1,136
Window type J level 4:	60	lf	\$3.00	\$180	4 mh	\$140	\$320
Window type K level 4:	136	lf	\$3.00	\$408	8 mh	\$280	\$688
2.19 Re-install french door casing							
French door type T (pair) level 2:	240	lf	\$3.00	\$720	20 mh	\$700	\$1,420
French door type Q (single) level 2:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
French door type T (pair) level 3:	144	lf	\$3.00	\$432	12 mh	\$420	\$852
French door type O (pair) level 3:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
French door type Q (single) level 3:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
French door type E (single) level 4:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
French door type I (pair) level 4:	174	lf	\$3.00	\$522	12 mh	\$420	\$942
French door type L (pair) level 4:	60	lf	\$3.00	\$180	4 mh	\$140	\$320
ITEM 2 SUB-TOTAL:							\$243,708
3. REMOVE & REPLACE ALL							
3.1. Remove exist stucco (except item	5,469	sf			\$1.75	sub L&M	\$9,571
3.2. Dispose of stucco materials	1	ls					\$1,800
3.3. Install new water barrier:	6,669	sf		\$779	16 mh	\$560.00	\$1,339
3.4. New galv. lath	6,669	sf	in item 3.7				
3.5. Stucco foam bd trim:	880	lf	\$1.00	\$880	\$1.00	\$880.00	\$1,760
3.6. Stucco zinc corner trim:	2,600	lf	in item 3.7				
3.7. Stucco zinc "J" trim:	160	lf	in item 3.7				
3.8. New 7/8" 3 coat stucco system	6,669	sf			\$12.00	sub L&M	\$80,028
3.9. Zinc "U" reveal joint:	140	lf	in item 3.7				

1625

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
3.10. Zinc control joints:	72	lf	In item 3.7				
3.11. Copper sill at brick	160	lf	\$10.00	\$1,600	\$4.00	\$640.00	\$2,240
3.12. Stucco color coat / paint	6,669	sf	In item 3.7				
3.13. Sealant joints at stucco:	160	lf	\$1.30	\$208	\$1.38	\$220.80	\$429
ITEM 3 SUB-TOTAL:							\$97,167
<b>4. REMOVE &amp; REPLACE BRICK</b>							
4.1. Remove existing brick	6,180	sf			\$2.25	\$13,905.00	\$13,905
4.2. Haul off brick / mortar waste:		ls					\$2,000
4.3. Remove existing house wrap:	4,000	sf			32 mh	\$1,120.00	\$1,120
4.4. Install new brick ties:	2800	ea	\$21/100	\$588.00	\$33/100	\$924.00	\$1,512
4.5. Install new brick	48,000	ea	\$336/1000	\$16,128.00	\$450/1000	\$21,600.00	\$37,728
4.6 Weep holes:	130	ea	\$0.50	\$65.00	0.03 mh	\$175.50	\$241
4.7 Cavity screen:	111	lf	\$1.25	\$138.75	0.03 mh	\$149.85	\$289
4.8. Rework / install flashing:	350	lf	\$10.00	\$3,500.00	40 mh	\$1,400.00	\$4,900
4.9. Clean brickwork	6,180	sf	\$0.05	\$309.00	\$0.32	\$1,977.60	\$2,287
4.10. New thru wall flashing (top	294	lf	\$10.00	\$2,940.00	32 mh	\$1,120.00	\$4,060
4.11. Sand:	80	cy	\$3,600.00				\$3,600
4.12. Mortar:	336	bags	\$8.00	\$2,688.00			\$2,688
4.13. Remove / replant landscape work		ls		\$700.00	280 mh	\$9,800.00	\$10,500
ITEM 4 SUB-TOTAL:							\$84,829
<b>5. REPLACE EXTERIOR TRIM</b>							
5.1. Remove 1x8 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$1,120

1626

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
5.2. Remove 1x10 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$1,120
5.3. Allowance 1x8 cement board:	1,000	lf	\$2.14	\$2,140	100 mh	\$3,500.00	\$5,640
5.4. Allowance 1x10 cement board:	1,000	lf	\$2.75	\$2,750	100 mh	\$3,500.00	\$6,250
ITEM 5 SUB-TOTAL:							\$14,130
6. PAINT TRIM							
6.1. Paint wood trim allowance:	4,000	lf		\$400	120 mh	\$5,400.00	\$5,800
ITEM 6 SUB-TOTAL:							\$5,800
7. PAINT PORCH CEILINGS							
7.1. Clean and sand lev 2 porch	563	sf			40 mh	\$1,400.00	\$1,400
7.2. Clean and sand lev 3 porch	357	sf			32 mh	\$1,120.00	\$1,120
7.3. Clean and sand lev 4 porch	357	sf			32 mh	\$1,120.00	\$1,120
7.4. Paint lev 2 porch ceilings:	563	sf		\$300	40 mh	\$1,400.00	\$1,700
7.5. Paint lev 3 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$1,320
7.6. Paint lev 4 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$1,320
ITEM 7 SUB-TOTAL:							\$7,980
8. REPLACE GUARDRAILS							
8.1. Remove existing guardrails:	618	lf			48 mh	\$1,680.00	\$1,680
(72 railing sections)	72	ea	\$40.00	\$2,880			\$2,880
8.2. Disposal of handrails:	1	ls					\$1,000

1627

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
8.2. Install new Fypon bottom rail:	618	lf	\$29.83	\$18,435	60 mh	\$2,100.00	\$20,535
8.3. Install regular Fypon balusters:	612	ea	\$77.83	\$47,632	.5 mh	\$10,710.00	\$58,342
8.4. Install special cut Fypon balusters:	84	ea	\$90.00	\$5,760	1 mh	\$2,240.00	\$8,000
8.5. Install new Fypon top rail:	618	lf	\$29.32	\$18,120	60 mh	\$2,100.00	\$20,220
8.5. Install railing kit:	288	ea	\$36.24	\$10,437	12 mh	\$420.00	\$10,857
8.6. Remove & reinstall iron railings:	12	ea	\$4.00	\$48	4 mh ea	\$1,680.00	\$1,728
8.7. Newel posts:	6	ea	\$250.00	\$1,500.00	8 mh / ea	\$1,680.00	\$3,180

ITEM 8 SUB-TOTAL:

\$128,422

ITEM 9: WALL INSULATION

9.1. Remove 16" wide GB at ceiling:	1,467	sf			96 mh	\$3,360.00	\$3,360
9.2. Install R15 Batt at wall perimeter:	1,410	sf	\$0.38	\$507.60	60 mh	\$2,100.00	\$2,608
9.3. Re-install 1/2" GB ceiling:	1,467	sf	\$0.35	\$513.45	\$2.50	\$3,667.50	\$4,181
9.4. Protection sheeting:	6	du's	\$100.00	\$600.00	16 mh/du	\$3,360.00	\$3,960
9.4. Paint perimeter room ceilings:	11,100	sf	\$0.14	\$1,554.00	\$0.40	\$4,440.00	\$5,994

Note: Removal or replacement of any crown molding not included.

ITEM 9 SUB-TOTAL:

\$20,103

ITEM 10: BRICK ENTRY STEPS

10.1. Remove existing brick	415	sf			32 mh	\$1,120.00	\$1,120
10.2. Shore front columns & porch:	1	ls		\$60.00	4 mh	\$140.00	\$200
10.3 Disposal:	1	ls					\$250
10.3. New bituthene membrane:	360	sf		\$339.00	32 mh	\$1,760.00	\$2,099

1628

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
10.4. Install new brick steps & porch:	1,000	brk	\$336/1000	\$336.00	72 mh	\$3,960.00	\$4,296
10.5. Wood formwork for arch:	1	ea		\$80.00	4 mh	\$140.00	\$220
10.6. Rowlock arch and open brickwork:	1	ls		\$160.00	32 mh	\$1,760.00	\$1,920
<b>ITEM 10 SUB-TOTAL:</b>							<b>\$10,105</b>
<b>ITEM 11: GARAGE SLAB REPAIR</b>							
11.1. Remove bumper stops:	12	ea			8 mh	\$280.00	\$280
11.2. Grind out rough pits / spalls:	quote	ls				\$5,700.00	\$5,700
11.3. New top coat system:	1,892	sf		\$3,784.00	32 mh	\$1,120.00	\$4,904
11.4. Reinstall bumper stops:	12	ea	\$4.00	\$48.00	8 mh	\$280.00	\$328
11.5. Repaint parking lines:	17	ea		\$20.00	2 mh	\$70.00	\$90
<b>ITEM 11 SUB-TOTAL</b>							<b>\$11,302</b>
Note: Item 11 occurs at Bldg 2 only.							
<b>ITEM 12: PARAPET WALL RETURNS</b>							
12.1. Install new angle braces 4x8TS:	5	ea	\$180.00	\$900.00	12 mh ea	\$2,100.00	\$3,000
12.2. Repair roof membrane:	5	ea	\$80.00	\$400.00	\$400.00	\$2,000.00	\$2,400
<b>ITEM 12 SUB-TOTAL:</b>							<b>\$5,400</b>
<b>ITEM 13: FRENCH DRAIN SYSTEM</b>							
13.1. New catch basin and drain:	1	ls					\$3,000
<b>ITEM 13 SUB-TOTAL:</b>							<b>\$3,000</b>

1629

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>ITEM 14: ACOUSTIC MODIFICATIONS</b>							
<b>FLOORS</b>							
14.1. Remove existing refrigerator:	4	ea			2 mh	\$280.00	\$280
14.2. Remove existing range:	4	ea			2 mh + .5e	\$400.00	\$400
14.3. Remove existing oven:	4	ea			2 mh + .5e	\$400.00	\$400
14.4. Remove exist dishwasher:	4	ea			2 mh + .5e + .5p	\$400.00	\$400
14.5. Remove exist washer:	4	ea			2 mh	\$280.00	\$280
14.6. Remove exist dryer:	4	ea			1 mh	\$140.00	\$140
14.6. Remove exist kitchen sink	4	ea			1 mh + .5(p)	\$280.00	\$280
14.7. Remove exist lavs:	20	ea			1 mh + .5(p)	\$1,300.00	\$1,300
14.8. Remove exist toilets:	12	ea			1 mh	\$420.00	\$420
14.9. Remove countertops:	220	lf			8 mh / du	\$1,680.00	\$1,680
14.10. Remove exist back-splashes:	224	lf			4mh / du	\$840.00	\$840
14.11. Remove shower units:	12	ea			2 mh +1p	\$1,140.00	\$1,140
14.12. Remove tub units:	8	ea			2 mh+1p	\$1,040.00	\$1,040.00
14.13. Remove base cabinets:	213	lf			.5 mh	\$3,727.50	\$3,728
14.14. Raise hot water heater:	4	ea			1 mh p	\$240.00	\$240
14.15. Raise HVAC unit	4	ea			2 mh m	\$480.00	\$480
14.16. Remove exist wd base & shoe:	2,422	lf			100 lf / mh	\$847.70	\$848
14.17. Remove exist marble base:	488	lf			60 lf / mh	\$284.67	\$285
14.18. Remove exist wood flooring:	4,881	sf			100 sf /2mh	\$3,416.70	\$3,417
14.19. Remove exist marble flooring:	1,368	sf			60 sf / 2 mh	\$1,596.00	\$1,596
14.20. Undercut exist interior doors:	84	ea			2 mh / dr	\$5,880.00	\$5,880
14.21. Re-mortise bottom door bolt:	4	ea			2 mh/dr	\$280.00	\$280
14.22. Prep sub-floor:	6249	sf			16 mh/du	\$3,360.00	\$3,360

1630

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
14.23. Install QuietZone Acoustic Mat:	6,249	sf	\$0.68	\$4,249	8 mh/du	\$1,680.00	\$5,929
14.24. Install 1.5" gypcrete:	1,718	cf		quote			\$18,900
14.25. Install new tile flooring:	1,500	sf	\$6.50	\$9,750	\$2.50	\$3,750.00	\$13,500
14.26. Install new wood flooring:	5,125	sf	\$5.00	\$25,625.00	\$2.00	\$10,250.00	\$35,875
14.27. Install new wood base (50%):	2,543	lf	\$2.96	\$3,763.64	\$1.50	\$3,814.50	\$7,578
14.28. Install new tile base:	512	lf	\$3.20	\$1,638.40	\$5.80	\$2,969.60	\$4,608
14.29. Urethane floors:	4,881	sf			\$2.50 M&L	\$12,202.50	\$12,203
14.30. Stain & urethane wood base:	2,543	lf		\$2,500.00		\$5,000.00	\$7,000
14.31. Reinstall base cabinets (50%)	213	lf			\$100.00	\$10,650.00	\$10,650
14.32. New base cabinets (50%)	107	lf			\$250 M&L	\$26,750.00	\$26,750
14.33. Reinstall countertops:	330	sf			\$30.00	\$9,900.00	\$9,900
14.34. Reinstall back-splashes (incl in 14.33):	224	lf					
14.35. Reinstall refrigerators:	4	ea			1 mh	\$140.00	\$140
14.36. Reinstall ovens:	4	ea			4 mh +1e	\$820.00	\$820
14.37. Reinstall ranges:	4	ea			4 mh +1e	\$820.00	\$820.00
14.38. Reinstall washers:	4	ea			2 mh	\$280.00	\$280
14.39. Reinstall dryers:	4	ea			2 mh	\$280.00	\$280
14.40. Reinstall kitchen sinks:	4	ea			quote	\$600.00	\$600
14.41. Reinstall lavatories:	20	ea			quote	\$3,000.00	\$3,000
14.42. Reinstall toilets:	12	ea			quote	\$3,000.00	\$3,000
14.43. Reinstall tub units	12	ea			quote	\$4,200.00	\$4,200

Note: Shower rework included in other sections.

ITEM 14 SUB-TOTAL:

\$194,726

1631

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>15. ACOUSTIC CEILING REPAIRS</b>							
15.1 Remove crown molding:	2,910	lf			\$1.00	\$2,910.00	\$2,910
15.2 Remove exst dbl layer gyp bd:	6,050	sf			120 mh	\$4,200.00	\$4,200
15.3 Install new acoustic batt insulation:	6,050	sf			M&L	\$6,050.00	\$6,050
15.4 Kinectics ICW hangers level 2:	500	ea	\$31.96	\$15,980.00	.25 mh	\$4,375.00	\$20,355
15.5 Kinectics ICW hangers level 3:	548	ea	\$31.96	\$17,514.08	.25 mh	\$4,795.00	\$22,309
15.6 2x6 blk for hanger support @ TJL:	1,048	ea	\$0.79	\$829.00	80 mh	\$2,800.00	\$3,629
15.7 2x8 cross blk at hangers (50%)	524	ea	\$1.00	\$524.00	40 mh	\$1,400.00	\$1,924
15.8 1.5" x 1.5" stl. channel frame:	3,625	lf	\$0.43/sf	\$2,860.79	\$1.12/sf	\$7,451.36	\$10,312
15.9 Hat furring channels:	7,250	lf		(incl in 15.8)			
15.10 Lower sprinkler heads:	100	ea	\$20.00	\$2,000.00	2 mh	\$11,000.00	\$13,000
15.11 Lower light fixtures, etc.:	quote						\$11,380
15.12 Lower HVAC grills & exhaust	1	ls		\$3,200.00	64 mh	\$3,520.00	\$6,720
15.10 Install new 5/8" gyp bd:	6,653	sf	\$0.37	\$2,461.61	\$1.12	\$7,451.36	\$9,913
15.11 Install ceiling edge "L" trim:	3,360	lf	\$0.28	\$940.80	\$1.17	\$3,931.20	\$4,872
15.12 Kinectics SRP ceiling edge:	3,360	lf	\$0.15	\$504.00	48 mh	\$1,680.00	\$2,184
15.13 Caulk ceiling perimeter:	3,360	lf	\$0.15	\$504.00	32 mh	\$1,120.00	\$1,624
15.14 Install crown molding:	3,360	lf			\$2.00 M&L		\$6,720
15.15 Prime & 2 coats latex paint	6653	sf			\$0.70 M&L		\$4,657
15.12 Paint crown molding:	3,360	lf			\$0.40 M&L		\$1,344
<b>ITEM 15 SUB-TOTAL:</b>							<b>\$134,103</b>
<b>ITEM 16 - SHOWER</b>							
16.1 Remove shower glass:	6	ea			4 mh	\$1,080.00	\$1,080

1632

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
16.2 Remove existing tile:	852	sf			\$1.50/sf	\$1,278.00	\$1,278
16.3 Remove exist tile backup:	852	sf			\$0.75/sf	\$639.00	\$639
16.4 Material disposal:	1	ls					\$500
16.4 Install 1/2" cem bd backup:	852	sf	\$1.00	\$852.00	\$1.35	\$1,150.20	\$2,002
16.5 Install new waterproof membrane:	122	sf	\$2.60	\$317.20	\$2.35	\$286.70	\$604
16.6 Install tile:	852	sf	\$6.50	\$5,538.00	\$3.00	\$2,556.00	\$8,094
16.7 Reinstall shower glass & caulk:	6	ea	\$10.00	\$60.00	4 mh	\$1,320.00	\$1,380
ITEM 16 SUB-TOTAL:							\$15,577
ITEM 17 - TRIM & PAINT							
17.1 Paint 6 units:	9,200	sf		\$5/sf (M&L)			\$46,000
17.2 "Faux" paint allowance:	3	ls					\$6,000
ITEM 17 SUB-TOTAL:							\$52,000
ITEM 18 - GYP BD REMEDIATION							
18.1 Conduct mold investigation: (at gyp bd at ext walls)	quote					Trident Envir.	\$4,440
18.2 Remove ext gyp bd walls level 2:	3,230	sf			\$1.00		\$3,230
18.3 Remove ext gyp bd wall level 3:	3,730	sf			\$1.00		\$3,730
18.4 Remove ext gyp bd wall level 4:	3,730	sf			\$1.00		\$3,730
18.5 Dispose of hazardous materials:	10,690	sf					\$6,000
Note: Replacement of wall insulation is not included.							
18.6 Install new gyp bd wallboard:	10690	sf	\$0.37	\$3,955.30	\$1.12	\$11,972.80	\$15,928

1633

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
18.7 Primer and 2 coats latex paint:	9,490	sf	\$0.26	\$2,467.40	\$1.05	\$9,964.50	\$12,432
18.8 Allow faux paint at ext walls:	1,200	sf					\$24,000
<b>ITEM 18 SUB-TOTAL:</b>							<b>\$73,490</b>
<b>ITEM 19 - WINDOW TREATMENT</b>							
19.1 Remove & reinstall window	96	units	\$5.00	\$480	2 mh	\$6,720	\$7,200
19.2 Container rental:	3	months	3 units	\$1,350.00			\$1,350
19.3 Remove exist shutters (est. 50%):	48	units			2 mh	\$3,360	\$3,360
19.4 New custom shutters (est. 50%):	2130	sf			\$28 M&L		\$59,640
<b>ITEM 19 SUB-TOTAL:</b>							<b>\$71,550</b>
<b>ITEM 20: HVAC AT LOBBY</b>							
20.1 Hire P.E. for engineering design:	1	ls				\$2,200.00	\$2,200
20.2 Packaged HVAC unit at lobby:	2	ea			\$5000 ea		\$10,000
20.3 Exhaust vent elev lobbies:	1	ea			\$2000 ea		\$2,000
<b>ITEM 20 SUB-TOTAL:</b>							<b>\$14,200</b>
<b>ITEM 21 - CARPET OF STAIRS TO</b>							
21.1 Install carpet on stairs to garage:	23	sy	\$12.00	\$276	\$5.00	\$115.00	\$391
21.2 Install resilient safety nosing:	9	ea	\$3.92	\$35.28	4.5 mh	\$157.50	\$193
21.3 Carpet edge at lower level:	6	lf	\$4.00	\$24.00	1 mh	\$35.00	\$59
<b>ITEM 21 SUB-TOTAL:</b>							<b>\$643</b>

1634

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>ITEM 22 - UPPER LANDING REPAIRS:</b>							
22.1 Paint access stair to roof:	1	ea		\$40	4 mh	\$160	\$200
22.2 Clean carpet at lev 4 landing:	12	sy	\$12.00	\$144	2 mh	\$80	\$224
<b>ITEM 22 SUB-TOTAL:</b>							\$424
<b>ITEM 23 - PROJECT PHOTOGRAPHS :</b>							
23.1 Prior condition photographs:					90 mh	\$4,950.00	\$4,950
23.2 Post construction photographs:					90 mh	\$4,950	\$4,950
23.3 In office production & labeling:				\$10.00	12 mh	\$420.00	\$430
<b>ITEM 23 SUB-TOTAL:</b>							\$5,380
<b>SUMMARY (Building 2):</b>							
<b>DIV 1: GENERAL</b>							\$149,757
1. WALL REPAIR AT REAR							\$7,608
STUCCO FACADE:							
2. REPLACE ALL WINDOWS & EXTERIOR DOORS:							\$243,708
3. REMOVE & REPLACE ALL							\$97,167
4. REMOVE & REPLACE BRICK:							\$84,829
5. REPLACE EXTERIOR TRIM:							\$14,130
6. PAINT TRIM:							\$5,800.00
7. PAINT PORCH CEILINGS:							\$7,980

1635

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
8. REPLACE GUARDRAILS:							\$128,422
9. WALL INSULATION:							\$28,103
10. BRICK ENTRY STEPS:							\$10,105
11. GARAGE SLAB REPAIR:							\$11,302
12. PARAPET WALL RETURNS:							\$5,400
13. FRENCH DRAIN SYSTEM:							\$3,000
14. ACOUSTIC MODIFICATIONS AT FLOORS:							\$194,726
15. ACOUSTIC CEILING REPAIRS:							\$134,103
16. SHOWER WATERPROOFING:							\$15,577
17. TRIM & PAINT:							\$52,000
18. GYP BD REMEDIATION:							\$73,490
19. WINDOW TREATMENT:							\$71,550
20. HVAC AT LOBBY:							\$14,200
21. CARPET OF STAIRS TO GARAGE:							\$643
22. UPPER LANDING REPAIRS:							\$424
23. PROJECT PHOTOGRAPHS:							\$5,380
Work Item Sub-Total:							\$1,359,404
Project Overhead:		15%					\$203,911
Sub-total:							\$1,563,315
Project Profit:		10%					\$156,331
Sub-total:							\$1,719,646

1636

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Permit Fee:							\$3,490
Sub-total:							\$1,723,136
Performance & Payment Bond:	2%						\$34,463
<b>MAJOR ESTIMATE SUB-TOTAL:</b>							<b>\$1,757,599</b>
Contingency Allowance:	10%						\$175,760
<b>COST ESTIMATE BUILDING 2:</b>							<b>\$1,933,359</b>
Note: This estimate is applicable for Building 2 only. See Summary below for other buildings.							
<b>SUMMARY (Building 1, 3, 4, 5, &amp; 6):</b>							
<b>DIV 1: GENERAL</b>							
1. WALL REPAIR AT REAR							\$149,757
STUCCO FACADE:							\$7,608
2. REPLACE ALL WINDOWS & EXTERIOR DOORS:							\$243,708
3. REMOVE & REPLACE ALL STUCCO:							\$97,167
4. REMOVE & REPLACE BRICK:							\$84,829
5. REPLACE EXTERIOR TRIM:							\$14,130
6. PAINT TRIM:							\$5,800.00
7. PAINT PORCH CEILINGS:							\$7,980
8. REPLACE GUARDRAILS:							\$128,422

1637

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
9. WALL INSULATION:							\$28,103
10. BRICK ENTRY STEPS:							\$10,105
11. GARAGE SLAB REPAIR:							
12. PARAPET WALL RETURNS:							\$5,400
13. FRENCH DRAIN SYSTEM:							\$3,000
14. ACOUSTIC MODIFICATIONS AT FLOORS:							\$194,726
15. ACOUSTIC CEILING REPAIRS:							\$134,103
16. SHOWER WATERPROOFING:							\$15,577
17. TRIM & PAINT:							\$52,000
18. GYP. BD REMEDIATION:							\$73,490
19. WINDOW TREATMENT:							\$71,550
20. HVAC AT LOBBY:							\$14,200
21. CARPET OF STAIRS TO GARAGE:							\$643
22. UPPER LANDING REPAIRS:							\$424
23. PROJECT PHOTOGRAPHS:							\$5,380
Work Item Sub-Total:							\$1,348,102
Project Overhead:		15%					\$202,215
Sub-total:							\$1,550,317
Project Profit:		10%					\$155,032
Sub-total:							\$1,705,349
Permit Fee:							\$3,490

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The Oaks at Rivers Edge - COST ESTIMATE by BUILDING  
 prepared by Southeastern Construction Co. date: February 15, 2011

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Sub-total:							\$1,708,839
Performance & Payment Bond:	2%						\$34,177
MAJOR ESTIMATE SUB-TOTAL:							\$1,743,016
Contingency Allowance:	10%						\$174,302
COST ESTIMATE PER BUILDING:							\$1,917,317
<b>CONSTRUCTION SEQUENCING:</b>							
Option 1: All building repairs accomplished at same time frame.							
Building 1 Cost Estimate:							\$1,917,317
Building 2 Cost Estimate:							\$1,933,359
Building 3 Cost Estimate:							\$1,917,317
Building 4 Cost Estimate:							\$1,917,317
Building 5 Cost Estimate:							\$1,917,317
Building 6 Cost Estimate:							\$1,917,317
OPTION 1 TOTAL COST ESTIMATE:							\$11,519,944

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The Oaks at Rivers Edge - COST ESTIMATE by BUILDING  
 prepared by Southeastern Construction Co. date: February 15, 2011

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Option 2: Building repairs accomplished in sequential time frame.							
Building 1 Cost Estimate:		months 1-3					
Building 2 Cost Estimate:		months 4-6					\$1,917,317
Building 3 Cost Estimate:		months 7-9					\$1,952,874
Building 4 Cost Estimate:		months 10-11					\$1,855,663
Building 5 Cost Estimate:		months 12-13					\$1,974,837
Building 6 Cost Estimate:		months 14-16					\$1,994,010
							\$2,013,183
OPTION 1 TOTAL COST ESTIMATE:							\$11,807,884

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***EXHIBIT B***

	Quantity	Units	Material Unit Cost	Mat. Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>DIV 1: Item Description</b>							
Project Manager / Office	12	weeks			\$1,000.00	\$12,000.00	\$ 12,000.00
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$ 16,800.00
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$ 16,800.00
General Laborers (1 person)	480	hr			\$35.00	\$16,800.00	\$ 16,800.00
Sub-Total Labor							
Insurance on Labor (included)							
Project General Labor (other)						\$10,000.00	\$ 10,000.00
Equipment Rental				\$6,000.00			\$ 6,000.00
Construction Power	3	mo	\$150.00	\$450.00			\$ 450.00
Silt Fencing	1	ls	\$50.00	\$50.00	\$70.00	\$70.00	\$ 120.00
Cell Phones	3	mo	\$200.00	\$600.00			\$ 600.00
Small Tools	1	ls	\$5,000.00	\$5,000.00			\$ 5,000.00
Dumpster Rental	3	mo	\$600.00	\$1,800.00			\$ 1,800.00
Fuel	3	mo	\$500.00	\$1,500.00			\$ 1,500.00
Scaffolding (Safeway)	350	lf x 42'					\$ 55,159.00
Office management - assistant	240	hr			\$25.00		\$ 6,000.00
Edge Protection:	576	lf	0.5	\$288.00	12 mh	420	\$ 708.00
Sub-Total Miscellaneous:							\$ 149,737.00
<b>TOTAL THIS PAGE:</b>							<b>\$ 149,737.00</b>
REPAIR ESTIMATE PER ITEMIZATION							
AS STIPULATED IN THEODORE							
PADGETT, P.E., REPORT DATED							
APRIL 20, 2010							

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ITEM 1: WALL REPAIR AT REAR							
<b>STUCCO FACADE</b>							
100% Replacement of sheathing and							
50% replacement of studs at rear							
elevations not under roof.							
1.1. Remove existing stucco:	1,200	sf			48 mh	\$1,680.00	\$ 1,680.00
1.2. Remove stucco at lev 2 columns:	288	sf			8 mh	\$280.00	\$ 280.00
1.3. Remove stucco at lev 2 beams:	91	sf			4 mh	\$140.00	\$ 140.00
1.4. Remove house wrap.	1,582	sf			4 mh	\$140.00	\$ 140.00
1.5. Remove existing sheathing:	1,582	sf			16 mh	\$560.00	\$ 560.00
1.6. Remove 50% of studs (2x6x10'):	92	ea			32 mh	\$1,120.00	\$ 1,120.00
1.7. Remove framing straps:	45	ea			2 mh	\$70.00	\$ 70.00
Note: No top or bottom plate removal.							
Note: No rim board removal.							
1.8. Install new 2x6 wall studs:	45	ea	\$6.03	\$271.35	22.5 mh	\$787.50	\$ 1,058.85
1.9. Install new 1/2" OSB sheathing:	1,582	sf	\$8.46/sht	\$423.00	16 mh	\$560.00	\$ 983.00
1.10. Install 2 layers 15 lf wall felts:	1,582	sf	5 r - \$19.30/r	\$96.50	8 mh	\$280.00	\$ 376.50
1.11. Install stucco lath:	notes 1,2						
1.12. Install stucco corner beads:	notes 1,2						
1.13. Install 3 coat stucco:	notes 1,2						
1.14 Landfill fee for stucco:							\$ 1,200.00
Note 1: Window replacement in other section.							
Note 2: Stucco in other section.							
<b>ITEM 1 SUB-TOTAL:</b>							<b>\$ 7,608.35</b>
<b>ITEM 2: REPLACE ALL WINDOWS &amp; EXT. DOORS</b>							

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2.1. Remove ext windows not on decks:	56	ea	NIS				\$	-
2.2. Remove ext windows on decks:	26	ea	NIS				\$	-
2.3. Remove front entry door (not included)	1	ea	NIS					
2.4. Remove french door units:	26	ea	NIS				\$	-
2.5. Remove window at front stair:	2	ea	NIS				\$	-
2.6. Prep window opening:	82	ea	NIS				\$	-
2.7. Prep door opening:	26	ea	NIS				\$	-
2.8. Raise door sills:	26	ea	NIS				\$	-
2.9. Install new sill pans at windows:	275	lf	NIS				\$	-
2.10. Install new sill pans at doors:	152	lf	NIS				\$	-
2.11. New windows:			NIS					
Window type NMN level 2:	4	ea	NIS				\$	-
Window type P level 2:	2	ea	NIS				\$	-
Window type S level 2:	2	ea	NIS				\$	-
Window type U level 2:	8	ea	NIS				\$	-
Window type W level 2:	2	ea	NIS				\$	-
Window type NMN level 3:	4	ea	NIS				\$	-
Window type P level 3:	2	ea	NIS				\$	-
Window type R level 3:	1	ea	NIS				\$	-
Window type S level 3:	2	ea	NIS				\$	-
Window type U level 3:	8	ea	NIS				\$	-
Window type W level 3:	2	ea	NIS				\$	-
Window type V level 3:	4	ea	NIS				\$	-
Window type BAB level 4:	2	ea	NIS				\$	-
Window type BCB level 4:	2	ea	NIS				\$	-
Window type D level 4:	2	ea	NIS				\$	-
Window type F level 4:	1	ea	NIS				\$	-
Window type G level 4:	2	ea	NIS				\$	-

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Window type H level 4:	8	ea	NIS				\$	-
Window type J level 4:	2	ea	NIS				\$	-
Window type K level 4:	4	ea	NIS				\$	-
Total # windows:	64		NIS					
Sealant at windows (average):	64	ea	NIS				\$	-
2.12. New french doors.			NIS					
French door type T (pair) level 2:	10	ea	NIS				\$	-
French door type Q (single) level 2:	2	ea	NIS				\$	-
French door type T (pair) level 3:	6	ea	NIS				\$	-
French door type O (pair) level 3:	2	ea	NIS				\$	-
French door type Q (single) level 3:	2	ea	NIS				\$	-
French door type E (single) level 4:	2	ea	NIS				\$	-
French door type I (pair) level 4:	6	ea	NIS				\$	-
French door type L (pair) level 4:	2	ea	NIS				\$	-
Total # door units:	32		NIS					
2.13 Sealant at french doors:	32	ea	NIS				\$	-
2.14 Water test window units:	64	ea	NIS				\$	-
2.15 Water test french door units:	32	ea	NIS				\$	-
2.16. Raise base at fixed units:	12	ea	NIS				\$	-
2.17. Raise base at operable units:	28	ea	NIS				\$	-
2.18 Re-install window casing								
Window type NMN level 2:	112	lf	NIS				\$	-
Window type P level 2:	54	lf	NIS				\$	-

Window type S level 2:	46	If	NIS				\$ -
Window type U level 2:	176	If	NIS				\$ -
Window type W level 2:	52	If	NIS				\$ -
Window type NMN level 3:	112	If	NIS				\$ -
Window type P level 3:	54	If	NIS				\$ -
Window type R level 3:	27	If	NIS				\$ -
Window type S level 3:	46	If	NIS				\$ -
Window type U level 3:	176	If	NIS				\$ -
Window type W level 3:	52	If	NIS				\$ -
Window type V level 3:	112	If	NIS				\$ -
Window type BAB level 4:	64	If	NIS				\$ -
Window type BCB level 4 (curve top):	66	If	NIS				\$ -
Window type D level 4:	56	If	NIS				\$ -
Window type F level 4:	56	If	NIS				\$ -
Window type G level 4:	54	If	NIS				\$ -
Window type H level 4:	192	If	NIS				\$ -
Window type J level 4:	60	If	NIS				\$ -
Window type K level 4:	136	If	NIS				\$ -
2.19 Re-install french door casing							
French door type T (pair) level 2:	240	If	NIS				\$ -
French door type Q (single) level 2:	46	If	NIS				\$ -
French door type T (pair) level 3:	144	If	NIS				\$ -
French door type O (pair) level 3:	52	If	NIS				\$ -
French door type Q (single) level 3:	46	If	NIS				\$ -
French door type E (single) level 4:	52	If	NIS				\$ -
French door type I (pair) level 4:	174	If	NIS				\$ -
French door type L (pair) level 4:	60	If	NIS				\$ -

ITEM 2 SUB-TOTAL:							\$	-
<b>3. REMOVE &amp; REPLACE ALL STUCCO</b>								
3.1. Remove exist stucco (exct item	5,469	sf			\$1.75	sub L&M	\$ 9,570.75	
3.2. Dispose of stucco materials	1	ls					\$ 1,800.00	
3.3. Install new water barrier:	6,669	sf		\$779	16 mh	\$560.00	\$ 1,339.00	
3.4. New galv. lath	6,669	sf	in item 3.7					
3.5. Stucco foam bd trim:	880	lf		\$1.00	\$880	\$1.00	\$880.00	\$ 1,760.00
3.6. Stucco zinc corner trim:	2,600	lf	in item 3.7					
3.7. Stucco zinc "J" trim:	160	lf	in item 3.7					
3.8. New 7/8" 3 coat stucco system	6,669	sf			\$12.00	sub L&M	\$ 80,028.00	
3.9. Zinc "U" reveal joint:	140	lf	in item 3.7					
3.10. Zinc control joints:	72	lf	in item 3.7					
3.11. Copper sill at brick:	160	lf		\$10.00	\$1,600	\$4.00	\$640.00	\$ 2,240.00
3.12. Stucco color coat / paint:	6,669	sf	in item 3.7					
3.13. Sealant joints at stucco:	160	lf		\$1.30	\$208	\$1.38	\$220.80	\$ 428.80
ITEM 3 SUB-TOTAL:							\$	97,166.55
<b>4. REMOVE &amp; REPLACE BRICK</b>								
4.1. Remove existing brick:	6,180	sf			\$2.25	\$13,905.00	\$ 13,905.00	
4.2. Haul off brick / mortar waste:		ls					\$ 2,000.00	
4.3. Remove existing house wrap:	4,000	sf			32 mh	\$1,120.00	\$ 1,120.00	
4.4. Install new brick ties:	2800	ea	\$21/100	\$588.00	\$33/100	\$924.00	\$ 1,512.00	
4.5. Install new brick:	48,000	ea	\$336/1000	\$16,128.00	\$450/1000	\$21,600.00	\$ 37,728.00	
4.6. Weep holes:	130	ea	\$0.50	\$65.00	0.03 mh	\$175.50	\$ 240.50	
4.7. Cavity screen:	111	lf	\$1.25	\$138.75	0.03 mh	\$149.85	\$ 288.60	
4.8. Rework / install flashing:	350	lf	\$10.00	\$3,500.00	40 mh	\$1,400.00	\$ 4,900.00	
4.9. Clean brickwork.	6,180	sf	\$0.05	\$309.00	\$0.32	\$1,977.60	\$ 2,286.60	

4.10. New thru wall flashing (top rowlock):	294	lf	\$10.00	\$2,940.00	32 mh	\$1,120.00	\$ 4,060.00
4.11. Sand:	80	cy	\$3,600.00				\$ 3,600.00
4.12. Mortar:	336	bags	\$8.00	\$2,688.00			\$ 2,688.00
4.13. Remove / replant landscape work:		ls		\$700.00	280 mh	\$9,800.00	\$ 10,500.00
<b>ITEM 4 SUB-TOTAL:</b>							<b>\$ 84,828.70</b>
<b>5. REPLACE EXTERIOR TRIM</b>							
5.1. Remove 1x8 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$ 1,120.00
5.2. Remove 1x10 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$ 1,120.00
5.3. Allowance 1x8 cement board:	1,000	lf	\$2.14	\$2,140	100 mh	\$3,500.00	\$ 5,640.00
5.4. Allowance 1x10 cement board:	1,000	lf	\$2.75	\$2,750	100 mh	\$3,500.00	\$ 6,250.00
<b>ITEM 5 SUB-TOTAL:</b>							<b>\$ 14,130.00</b>
<b>6. PAINT TRIM</b>							
6.1. Paint wood trim allowance:	4,000	lf		\$400	120 mh	\$5,400.00	\$ 5,800.00
<b>ITEM 6 SUB-TOTAL:</b>							<b>\$ 5,800.00</b>
<b>7. PAINT PORCH CEILINGS</b>							
7.1. Clean and sand lev 2 porch ceilings:	563	sf			40 mh	\$1,400.00	\$ 1,400.00
7.2. Clean and sand lev 3 porch ceilings:	357	sf			32 mh	\$1,120.00	\$ 1,120.00
7.3. Clean and sand lev 4 porch ceilings:	357	sf			32 mh	\$1,120.00	\$ 1,120.00
7.4. Paint lev 2 porch ceilings:	563	sf		\$300	40 mh	\$1,400.00	\$ 1,700.00
7.5. Paint lev 3 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$ 1,320.00
7.6. Paint lev 4 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$ 1,320.00

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ITEM 7 SUB-TOTAL:							\$	7,980.00
<b>8. REPLACE GUARDRAILS</b>								
8.1. Remove existing guardrails:	618	lf	NIS				\$	-
(72 railing sections)	72	ea	NIS				\$	-
8.2 Disposal of handrails:	1	ls	NIS				\$	-
8.2. Install new Fypon bottom rail:	618	lf	NIS				\$	-
8.3. Install regular Fypon balusters:	612	ea	NIS				\$	-
8.4. Install special cut Fypon balusters:	64	ea	NIS				\$	-
8.5. Install new Fypon top rail:	618	lf	NIS				\$	-
8.5. Install railing kit:	288	ea	NIS				\$	-
8.6. Remove & reinstall iron railings:	12	ea	NIS				\$	-
8.7 Newel posts:	6	ea	NIS				\$	-
ITEM 8 SUB-TOTAL:							\$	-
<b>ITEM 9: WALL INSULATION</b>								
9.1. Remove 16" wide GB at ceiling:	1,467	sf			96 mh	\$3,360.00	\$	3,360.00
9.2. Install R15 Batt at wall perimeter:	1,410	sf	\$0.36	\$507.60	60 mh	\$2,100.00	\$	2,607.60
9.3. Re-install 1/2" GB ceiling:	1,467	sf	\$0.35	\$513.45	\$2.50	\$3,667.50	\$	4,180.95
9.4 Protection sheeting:	6	du's	\$100.00	\$600.00	16 mh/du	\$3,360.00	\$	3,960.00
9.4. Paint perimeter room ceilings:	11,100	sf	\$0.14	\$1,554.00	\$0.40	\$4,440.00	\$	5,994.00
Note: Removal or replacement of any crown molding not included.								
ITEM 9 SUB-TOTAL:							\$	20,102.55
<b>ITEM 10: BRICK ENTRY STEPS</b>								

10.1. Remove existing brick:	415	sf			32 mh	\$1,120.00	\$ 1,120.00
10.2. Shore front columns & porch:	1	ls		\$60.00	4 mh	\$140.00	\$ 200.00
10.3 Disposal:	1	ls					\$ 250.00
10.3. New bituthene membrane:	360	sf		\$339.00	32 mh	\$1,760.00	\$ 2,099.00
10.4. Install new brick steps & porch:	1,000	brk	\$336/1000	\$336.00	72 mh	\$3,960.00	\$ 4,296.00
10.5. Wood formwork for arch:	1	ea		\$80.00	4 mh	\$140.00	\$ 220.00
10.6. Rowlock arch and open brickwork:	1	ls		\$160.00	32 mh	\$1,760.00	\$ 1,920.00
<b>ITEM 10 SUB-TOTAL:</b>							<b>\$ 10,105.00</b>
<b>ITEM 11: GARAGE SLAB REPAIR</b>							
11.1. Remove bumper stops:	12	ea			8 mh	\$280.00	\$ 280.00
11.2. Grind out rough pits / spalls:	quote	ls				\$5,700.00	\$ 5,700.00
11.3. New top coat system:	1,892	sf		\$3,784.00	32 mh	\$1,120.00	\$ 4,904.00
11.4. Reinstall bumper stops:	12	ea	\$4.00	\$48.00	8 mh	\$280.00	\$ 328.00
11.5. Repaint parking lines:	17	ea		\$20.00	2 mh	\$70.00	\$ 90.00
<b>ITEM 11 SUB-TOTAL</b>							<b>\$ 11,302.00</b>
Note: Item 11 occurs at Bldg 2 only.							
<b>ITEM 12: PARAPET WALL RETURNS</b>							
12.1. Install new angle braces 4x6TS:	5	ea	\$180.00	\$900.00	12 mh ea	\$2,100.00	\$ 3,000.00
12.2. Repair roof membrane:	5	ea	\$80.00	\$400.00	\$400.00	\$2,000.00	\$ 2,400.00
<b>ITEM 12 SUB-TOTAL:</b>							<b>\$ 5,400.00</b>
<b>ITEM 13: FRENCH DRAIN SYSTEM</b>							
13.1. New catch basin and drain:	1	ls					\$ 3,000.00

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ITEM 13 SUB-TOTAL:							\$	3,000.00
<b>ITEM 14: ACOUSTIC MODIFICATIONS</b>								
<b>FLOORS</b>								
14.1. Remove existing refrigerator:	4	ea			2 mh	\$280.00	\$	280.00
14.2. Remove existing range:	4	ea			2 mh + .5e	\$400.00	\$	400.00
14.3. Remove existing oven:	4	ea			2 mh + .5e	\$400.00	\$	400.00
14.4. Remove exist dishwasher:	4	ea			2 mh + .5e + .5p	\$400.00	\$	400.00
14.5. Remove exist washer:	4	ea			2 mh	\$280.00	\$	280.00
14.6. Remove exist dryer:	4	ea			1 mh	\$140.00	\$	140.00
14.6. Remove exist kitchen sink:	4	ea			1 mh +.5(p)	\$260.00	\$	260.00
14.7. Remove exist lavs:	20	ea			1 mh +.5(p)	\$1,300.00	\$	1,300.00
14.8. Remove exist toilets:	12	ea			1 mh	\$420.00	\$	420.00
14.9. Remove countertops:	220	lf			8 mh / du	\$1,680.00	\$	1,680.00
14.10. Remove exist back-splashes:	224	lf			4mh / du	\$840.00	\$	840.00
14.11. Remove shower units:	12	ea			2 mh +1p	\$1,140.00	\$	1,140.00
14.12. Remove tub units:	8	ea			2 mh+1p	\$1,040.00	\$	1,040.00
14.13. Remove base cabinets:	213	lf			.5 mh	\$3,727.50	\$	3,727.50
14.14. Raise hot water heater:	4	ea			1 mh p	\$240.00	\$	240.00
14.15. Raise HVAC unit:	4	ea			2 mh m	\$480.00	\$	480.00
14.16. Remove exist wd base & shoe:	2,422	lf			100 lf / mh	\$847.70	\$	847.70
14.17. Remove exist marble base:	488	lf			60 lf / mh	\$284.67	\$	284.67
14.18. Remove exist wood flooring:	4,881	sf			100 sf /2mh	\$3,416.70	\$	3,416.70
14.19. Remove exist marble flooring:	1,368	sf			60 sf / 2 mh	\$1,596.00	\$	1,596.00
14.20. Undercut exist interior doors:	84	ea			2 mh / dr	\$5,880.00	\$	5,880.00
14.21. Re-mortise bottom door bolt:	4	ea			2 mh/dr.	\$280.00	\$	280.00
14.22. Prep sub-floor:	6249	sf			16 mh/du	\$3,360.00	\$	3,360.00
14.23. Install QuietZone Acoustic	6,249	sf	\$0.68	\$4,249	8 mh/du	\$1,680.00	\$	5,929.32
14.24. Install 1.5" gypcrete:	1,718	cf		quote			\$	18,900.00

14.25. Install new tile flooring:	1,500	sf	\$6.50	\$9,750	\$2.50	\$3,750.00	\$ 13,500.00
14.26. Install new wood flooring:	5125	sf	\$5.00	\$25,625.00	\$2.00	\$10,250.00	\$ 35,875.00
14.27. Install new wood base (50%):	2,543	lf	\$2.96	\$3,763.64	\$1.50	\$3,814.50	\$ 7,578.14
14.28. Install new tile base:	512	lf	\$3.20	\$1,638.40	\$5.80	\$2,969.60	\$ 4,608.00
14.29. Urethane floors:	4,881	sf			\$2.50 M&L	\$12,202.50	\$ 12,202.50
14.30. Stain & urethane wood base:	2,543	lf		\$2,500.00		\$5,000.00	\$ 7,000.00
14.31. Reinstall base cabinets (50% new):	213	lf			\$100.00	\$10,650.00	\$ 10,650.00
14.32. New base cabinets (50%)	107	lf			\$250 M&L	\$26,750.00	\$ 26,750.00
14.33. Reinstall countertops:	330	sf			\$30.00	\$9,900.00	\$ 9,900.00
14.34. Reinstall back-splashes (incl in 14.33):	224	lf					
14.35. Reinstall refrigerators:	4	ea			1 mh	\$140.00	\$ 140.00
14.36. Reinstall ovens:	4	ea			4 mh +1e	\$820.00	\$ 820.00
14.37. Reinstall ranges:	4	ea			4 mh +1e	\$820.00	\$ 820.00
14.38. Reinstall washers:	4	ea			2 mh	\$280.00	\$ 280.00
14.39. Reinstall dryers:	4	ea			2 mh	\$280.00	\$ 280.00
14.40. Reinstall kitchen sinks:	4	ea			quote	\$600.00	\$ 600.00
14.41. Reinstall lavatories:	20	ea			quote	\$3,000.00	\$ 3,000.00
14.42. Reinstall toilets:	12	ea			quote	\$3,000.00	\$ 3,000.00
14.43. Reinstall tub units	12	ea			quote	\$4,200.00	\$ 4,200.00
Note: Shower rework included in other sections.							
<b>ITEM 14 SUB-TOTAL:</b>							<b>\$ 194,725.53</b>
<b>15. ACOUSTIC CEILING REPAIRS</b>							
15.1 Remove crown molding:	2,910	lf			\$1.00	\$2,910.00	\$ 2,910.00
15.2 Remove exist dbl layer gyp bd:	6,050	sf			120 mh	\$4,200.00	\$ 4,200.00

15.3 Install new acoustic batt insulation:	6,050	sf			M&L	\$6,050.00	\$ 6,050.00
15.4 Kinectics ICW hangers level 2:	500	ea	\$31.96	\$15,980.00	.25 mh	\$4,375.00	\$ 20,355.00
15.5 Kinectics ICW hangers level 3:	548	ea	\$31.96	\$17,514.08	.25 mh	\$4,795.00	\$ 22,309.08
15.6 2x6 blkq for hanger support @ TJI:	1,048	ea	\$0.79	\$829.00	80 mh	\$2,800.00	\$ 3,629.00
15.7 2x8 cross blkq at hangers (50%)	524	ea	\$1.00	\$524.00	40 mh	\$1,400.00	\$ 1,924.00
15.8 1.5" x 1.5" slt. channel frame:	3,625	lf	\$0.43/sf	\$2,860.79	\$1.12/sf	\$7,451.36	\$ 10,312.15
15.9 Hat furring channels:	7,250	lf		(incl in 15.8)			
15.10 Lower sprinkler heads:	100	ea	\$20.00	\$2,000.00	2 mh	\$11,000.00	\$ 13,000.00
15.11 Lower light fixtures, etc.:	quote						\$ 11,380.00
15.12 Lower HVAC grills & exhaust fans:	1	ls		\$3,200.00	64 mh	\$3,520.00	\$ 6,720.00
15.10 Install new 5/8" gyp bd.:	6,653	sf	\$0.37	\$2,461.61	\$1.12	\$7,451.36	\$ 9,912.97
15.11 Install ceiling edge "L" trim:	3,360	lf	\$0.28	\$940.80	\$1.17	\$3,931.20	\$ 4,872.00
15.12 Kinectics SRP ceiling edge:	3,360	lf	\$0.15	\$504.00	48 mh	\$1,680.00	\$ 2,184.00
15.13 Caulk ceiling perimeter:	3,360	lf	\$0.15	\$504.00	32 mh	\$1,120.00	\$ 1,624.00
15.14 Install crown molding:	3,360	lf			\$2.00 M&L		\$ 6,720.00
15.15 Prime & 2 coats latex paint ceiling:	6653	sf			\$0.70 M&L		\$ 4,657.10
15.12 Paint crown molding:	3,360	lf			\$0.40 M&L		\$ 1,344.00
<b>ITEM 15 SUB-TOTAL:</b>							<b>\$ 134,103.30</b>
<b>ITEM 16 - SHOWER WATERPROOFING</b>							
16.1 Remove shower glass:	6	ea			4 mh	\$1,080.00	\$ 1,080.00
16.2 Remove existing tile:	852	sf			\$1.50/sf	\$1,278.00	\$ 1,278.00
16.3 Remove exist tile backup:	852	sf			\$0.75/sf	\$639.00	\$ 639.00
16.4 Material disposal:	1	ls					\$ 500.00
16.4 Install 1/2" cem bd backup:	852	sf	\$1.00	\$852.00	\$1.35	\$1,150.20	\$ 2,002.20
16.5 Install new waterproof membrane:	122	sf	\$2.60	\$317.20	\$2.35	\$286.70	\$ 603.90
16.6 Install tile:	852	sf	\$6.50	\$5,538.00	\$3.00	\$2,556.00	\$ 8,094.00

16.7 Reinstall shower glass & caulk:	6	ea	\$10.00	\$60.00	4 mh	\$1,320.00	\$ 1,380.00
<b>ITEM 16 SUB-TOTAL:</b>							<b>\$ 15,577.10</b>
<b>ITEM 17 - TRIM &amp; PAINT</b>							
17.1 Paint 6 units:	9,200	sf		\$5/sf (M&L)			\$ 46,000.00
17.2 "Faux" paint allowance:	3	ls					\$ 6,000.00
<b>ITEM 17 SUB-TOTAL:</b>							<b>\$ 52,000.00</b>
<b>ITEM 18 - GYP BD REMEDIATION</b>							
18.1 Conduct mold investigation: (at gyp bd at ext walls)	quote					Trident Envir.	\$ 4,440.00
18.2 Remove ext gyp bd walls level 2:	3,230	sf			\$1.00		\$ 3,230.00
18.3 Remove ext gyp bd wall level 3:	3,730	sf			\$1.00		\$ 3,730.00
18.4 Remove ext gyp bd wall level 4:	3,730	sf			\$1.00		\$ 3,730.00
18.5 Dispose of hazardous materials:	10,690	sf					\$ 6,000.00
Note: Replacement of wall insulation is not included.							
18.6 Install new gyp bd wallboard:	10690	sf	\$0.37	\$3,955.30	\$1.12	\$11,972.80	\$ 15,928.10
18.7 Primer and 2 coats latex paint:	9,490	sf	\$0.26	\$2,467.40	\$1.05	\$9,964.50	\$ 12,431.90
18.8 Allow faux paint at ext walls:	1,200	sf					\$ 24,000.00
<b>ITEM 18 SUB-TOTAL:</b>							<b>\$ 73,490.00</b>
<b>ITEM 19 - WINDOW TREATMENT</b>							
19.1 Remove & reinstall window treatmt:	96	units	NIS				\$ -
19.2 Container rental:	3	months	NIS				\$ -

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19.3 Remove exist shutters (est. 50%):	48	units	NIS				\$	-	
19.4 New custom shutters (est. 50%):	2130	sf	NIS				\$	-	
<b>ITEM 19 SUB-TOTAL:</b>								\$	-
<b>ITEM 20: HVAC AT LOBBY</b>									
20.1 Hire P.E. for engineering design:	1	ls				\$2,200.00	\$	2,200.00	
20.2 Packaged HVAC unit at lobby:	2	ea			\$5000 ea		\$	10,000.00	
20.3 Exhaust vent elev lobbies:	1	ea			\$2000 ea		\$	2,000.00	
<b>ITEM 20 SUB-TOTAL:</b>								\$	14,200.00
<b>ITEM 21 - CARPET OF STAIRS TO GAR:</b>									
21.1 Install carpet on stairs to garage:	23	sy	\$12.00	\$276	\$5.00	\$115.00	\$	391.00	
21.2 Install resilient safety nosing:	9	ea	\$3.92	\$35.28	4.5 mh	\$157.50	\$	192.78	
21.3 Carpet edge at lower level:	6	lf	\$4.00	\$24.00	1 mh	\$35.00	\$	59.00	
<b>ITEM 21 SUB-TOTAL:</b>								\$	642.78
<b>ITEM 22 - UPPER LANDING REPAIRS:</b>									
22.1 Paint access stair to roof:	1	ea		\$40	4 mh	\$160	\$	200.00	
22.2 Clean carpet at lev 4 landing:	12	sy	\$12.00	\$144	2 mh	\$80	\$	224.00	
<b>ITEM 22 SUB-TOTAL:</b>								\$	424.00
<b>ITEM 23 - PROJECT PHOTOGRAPHS</b>									
23.1 Prior condition photographs:					90 mh	\$4,950.00	\$	4,950.00	
23.2 Post construction photographs:					90 mh	\$4,950	\$	4,950.00	
23.3 In office production & labeling:				\$10.00	12 mh	\$420.00	\$	430.00	

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ITEM 23 SUB-TOTAL:						\$ 5,380.00
<b>SUMMARY (Building 2):</b>						
DIV 1: GENERAL						\$ 149,757.00
1. WALL REPAIR AT REAR						\$ 7,608.00
STUCCO FACADE:						
2. REPLACE ALL WINDOWS &						\$ -
EXTERIOR DOORS:						
3. REMOVE & REPLACE ALL						\$ 97,167.00
STUCCO:						
4. REMOVE & REPLACE BRICK:						\$ 84,829.00
5. REPLACE EXTERIOR TRIM:						\$ 14,130.00
6. PAINT TRIM:						\$ 5,800.00
7. PAINT PORCH CEILINGS:						\$ 7,980.00
8. REPLACE GUARDRAILS:						\$ -
9. WALL INSULATION:						\$ 28,103.00
10. BRICK ENTRY STEPS:						\$ 10,105.00
11. GARAGE SLAB REPAIR:						\$ 11,302.00
12. PARAPET WALL RETURNS:						\$ 5,400.00
13. FRENCH DRAIN SYSTEM:						\$ 3,000.00
14. ACOUSTIC MODIFICATIONS						\$ 194,726.00
AT FLOORS:						
15. ACOUSTIC CEILING REPAIRS:						\$ 134,103.00
16. SHOWER WATERPROOFING:						\$ 15,577.00
17. TRIM & PAINT:						\$ 52,000.00
18. GYP BD REMEDIATION:						\$ 73,490.00
19. WINDOW TREATMENT:						\$ -

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20. HVAC AT LOBBY:						\$ 14,200.00
21. CARPET OF STAIRS TO GARAGE:						\$ 643.00
22. UPPER LANDING REPAIRS:						\$ 424.00
23. PROJECT PHOTOGRAPHS:						\$ 5,380.00
Work Item Sub-Total:						\$ 915,724.00
Project Overhead:	15%					\$ 137,358.60
Sub-total:						\$ 1,053,082.60
Project Profit:	10%					\$ 105,308.26
Sub-total:						\$ 1,158,390.86
Permit Fee:						\$ 3,490.00
Sub-total:						\$ 1,161,880.86
Performance & Payment Bond:	2%					\$ 23,237.62
MAJOR ESTIMATE SUB-TOTAL:						\$ 1,185,118.48
Contingency Allowance:	10%					\$ 118,511.85
COST ESTIMATE BUILDING 2:						\$ 1,303,630.32
Note: This estimate is applicable for Building 2 only. See Summary below for other buildings.						
SUMMARY (Building 1, 3, 4, 5, & 6):						
DIV 1: GENERAL						\$ 149,757.00

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1. WALL REPAIR AT REAR										\$ 7,608.00
.STUCCO FACADE:										
2. REPLACE ALL WINDOWS & EXTERIOR DOORS:										\$ -
3. REMOVE & REPLACE ALL STUCCO:										\$ 97,167.00
4. REMOVE & REPLACE BRICK:										\$ 84,829.00
5. REPLACE EXTERIOR TRIM:										\$ 14,130.00
6. PAINT TRIM:										\$ 5,800.00
7. PAINT PORCH CEILINGS:										\$ 7,980.00
8. REPLACE GUARDRAILS:										\$ -
9. WALL INSULATION:										\$ 28,103.00
10. BRICK ENTRY STEPS:										\$ 10,105.00
11. GARAGE SLAB REPAIR:										
12. PARAPET WALL RETURNS:										\$ 5,400.00
13. FRENCH DRAIN SYSTEM:										\$ 3,000.00
14. ACOUSTIC MODIFICATIONS AT FLOORS:										\$ 194,726.00
15. ACOUSTIC CEILING REPAIRS:										\$ 134,103.00
16. SHOWER WATERPROOFING:										\$ 15,577.00
17. TRIM & PAINT:										\$ 52,000.00
18. GYP BD REMEDIATION:										\$ 73,490.00
19. WINDOW TREATMENT:										\$ -
20. HVAC AT LOBBY:										\$ 14,200.00
21. CARPET OF STAIRS TO GARAGE:										\$ 643.00
22. UPPER LANDING REPAIRS:										\$ 424.00
23. PROJECT PHOTOGRAPHS:										\$ 5,380.00
Work Item Sub-Total:										\$ 904,422.00

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Project Overhead:	15%					\$ 135,663.30
Sub-total:						\$ 1,040,085.30
Project Profit:	10%					\$ 104,008.53
Sub-total:						\$ 1,144,093.83
Permit Fee:						\$ 3,490.00
Sub-total:						\$ 1,147,583.83
Performance & Payment Bond:	2%					\$ 22,951.68
MAJOR ESTIMATE SUB-TOTAL:						\$ 1,170,535.51
Contingency Allowance:	10%					\$ 117,053.55
COST ESTIMATE PER BUILDING:						\$ 1,287,589.06
<b>CONSTRUCTION SEQUENCING:</b>						
Option 1: All building repairs accomplished at same time frame.						
Building 1 Cost Estimate:						\$ 1,287,589.06
Building 2 Cost Estimate:						\$ 1,303,630.32
Building 3 Cost Estimate:						\$ 1,287,589.06
Building 4 Cost Estimate:						\$ 1,287,589.06
Building 5 Cost Estimate:						\$ 1,287,589.06
Building 6 Cost Estimate:						\$ 1,287,589.06

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OPTION 1 TOTAL COST ESTIMATE:							\$ 7,741,575.61
Option 2: Building repairs accomplished in sequential time frame.							
Building 1 Cost Estimate:	months 1-3						\$ 1,287,589.06
Building 2 Cost Estimate:	months 4-6						\$ 1,316,505.00
Building 3 Cost Estimate:	months 7-9						\$ 1,313,340.00
Building 4 Cost Estimate:	months 10-11						\$ 1,326,215.00
Building 5 Cost Estimate:	months 12-13						\$ 1,339,090.00
Building 6 Cost Estimate:	months 14-16						\$ 1,351,965.00
OPTION 1 TOTAL COST ESTIMATE:							\$ 7,934,704.06

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY )

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

---

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

---

GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

---

THE OAKS AT RIVERS EDGE PROPERTY

C/A. No.: 2008-CP-08-2714

OWNERS ASSOCIATION, INC., JOHN E. )  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH )  
E. CHIOVAROU, JR., PEYTON H. COOK, JR., )  
BRENDA COOK, JOHN W. EDELEN, KAREN )  
A. NELSON, ROBERT J. GRAHAM, MAUREEN )  
S. GRAHAM, NANCY K. JOHNSON as trustee )  
for the Nancy K. Johnson Revocable Trust, )  
WILLIAM JUNG, CHARLES MARAZITI, )  
PATRICIA MARAZITI, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, )  
CAROLYN M. JENNINGS, THOMAS EDWARD )  
KEANE, EDWARD WALLACE BARR, III, )  
RICHARD B. PEKRUHN, PAULINE PEKRUHN, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

C/A. No.: 2009-CP-08-3916

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., COASTAL )  
ROOFING, CO., INC., COASTAL CAULKING, )  
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS )  
MASONRY, GERALD RUMPLICK, EDWARD J. )  
D'ORAZIO, and RICH BEHRINGER, )

Defendants. )

**DEFENDANTS, DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC  
AND CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,'S  
MOTION FOR ORDER REQUIRING ELECTION OF REMEDIES**

Pursuant to S.C. Code § 15-38-15, Defendants Daniel Island Riverside Developers, LLC,  
and Carriage Hill Associates of Charleston, LLC, hereby move for the trier of fact to allocate  
damages between and among parties with regard to judgment in the above case. In support of  
this Motion, Defendants state as follows:

1. The Honorable J.C. Nicholson, Jr., sitting as the trier of fact, entered judgment against the Defendants Daniel Island Riverside Developers, LLC, and Carriage Hill Associates of Charleston, LLC, (hereinafter collectively the Defendants), in the above-captioned matter by Order entered October 25, 2013.

2. Defendants file this motion without waiving any remedies sought in their other motions filed concurrently herewith.

3. Due to the court sitting as trier of fact and due to certain procedural aspects of the trial, there was neither a standard nor special verdict form. The Court rendered its verdict as to liability and damages and entered a single Order on or about October 25, 2013.

4. Prior to the entry of the Court's Order, Plaintiff The Oaks at Riversedge Property Owners Association, Inc., ("POA"), was required to elect its remedies. Instead, the Order of the Court entering judgment found Defendant Carriage Hill Associates of Charleston, LLC, and Defendant Daniel Island Riverside Developers, LLC, liable for myriad causes of action.

5. Each and every cause of action for which the two Defendants were found liable was predicated upon the same evidence proffered by Plaintiff POA.

6. "When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both." Cowart v. Poore, 337 S.C. 359, 364, 523 S.E.2d 182, 185 (Ct. App. 1999) (citing Save Charleston Foundation v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct.App.1985)). See also Creach v. Sara Lee Corporation, 331 S.C. 461, 502 S.E.2d 923 (Ct. App. 1998).

7. When applying the doctrine of election of remedies, courts examine the underlying facts in the causes of action and determine if different conduct supports distinct injuries. Creach v. Sara Lee Corp., 331 S.C. 461, 502 S.E.2d 923 (Ct.App.1998); Jones v. Winn-Dixie Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct.App.1995).

8. As such, Defendants are entitled to an Order compelling the election of remedies and an amended Order for Judgment, as more fully set forth in Defendants' Motion to Alter or Amend filed concurrently herewith.

9. Moreover, the Court's award of lost market value to individual homeowner Plaintiffs and the full estimate of the POA scope of repair, amounts to a double recovery. While either the cost of repair or lost market value is, individually, an accepted measure of damages, the award of both results in individual homeowners who will, upon completion of the repairs, be the owners of real estate at full market value plus have been awarded in excess of Three or Four Hundred Thousand Dollars.

10. The Court recognized during the examination of Christopher D'Onato, Plaintiffs' appraisal expert, the potential for a double recovery that an award of lost value and the cost or repair would involve.

11. As such, the individual unit owners and the POA should be compelled to elect their remedies with regard to the double recovery as to lost value and cost of repair.

12. Furthermore, notwithstanding the above issues, the individual Plaintiffs were awarded a sum for the lost value, as well as a sum for the loss of quiet enjoyment.<sup>1</sup>

13. Again during the testimony of D'Onato, the Court recognized that there may be an element of damages relating to loss of quiet enjoyment, but that an award for "inconvenience" and an award for lost value again presented the issue of double recovery. In fact, quiet enjoyment has a value which would necessarily be included in D'Onato's valuation of lost market value.

14. As such, the individual unit owners should be compelled to elect their remedies (to the extent that they survive Defendants' Motion to Alter or Amend) with regard to lost value and loss of quiet enjoyment, and to the extent applicable, to lost rents as well.

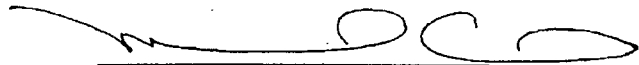
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<sup>1</sup> Defendants contend that the amount awarded for loss of quiet enjoyment is not supported by the record, and does not waive its arguments set forth in its Motion to Alter or Amend.

WHEREFORE, for the reasons stated hereinabove, Defendants Carriage Hill Associates of Charleston, LLC, and Daniel Island Riverside Developers, LLC, are entitled to an Order requiring Plaintiff POA to elect its respective remedies, for the Plaintiffs as a group to elect certain remedies, and for the individual homeowner Plaintiffs to elect their respective remedies, as appropriate.

Respectfully submitted this 14<sup>th</sup> day of November, 2013.

**ALTMAN & COKER, LLC**



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And

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Attorneys for Daniel Island Riverside  
Developers, LLC, and Carriage Hill  
Associates of Charleston, LLC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY )

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

---

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

---

GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2008-CP-08-2714

---

THE OAKS AT RIVERS EDGE PROPERTY

OWNERS ASSOCIATION, INC., JOHN E. )  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH )  
E. CHIOVAROU, JR., PEYTON H. COOK, JR., )  
BRENDA COOK, JOHN W. EDELEN, KAREN )  
A. NELSON, ROBERT J. GRAHAM, MAUREEN )  
S. GRAHAM, NANCY K. JOHNSON as trustee )  
for the Nancy K. Johnson Revocable Trust, )  
WILLIAM JUNG, CHARLES MARAZITI, )  
PATRICIA MARAZITI, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, )  
CAROLYN M. JENNINGS, THOMAS EDWARD )  
KEANE, EDWARD WALLACE BARR, III, )  
RICHARD B. PEKRUHN, PAULINE PEKRUHN, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

C/A. No.: 2009-CP-08-3916

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., COASTAL )  
ROOFING, CO., INC., COASTAL CAULKING, )  
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS )  
MASONRY, GERALD RUMPLICK, EDWARD J. )  
D'ORAZIO, and RICH BEHRINGER, )

Defendants. )

**DEFENDANTS, DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC  
AND CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,'S  
MOTION FOR ALLOCATION OF DAMAGES**

Pursuant to S.C. Code § 15-38-15, Defendants Daniel Island Riverside Developers, LLC,  
and Carriage Hill Associates of Charleston, LLC, hereby move for the trier of fact to allocate  
damages between and among parties with regard to judgment in the above case. In support of  
this Motion, Defendants state as follows:

1. The Honorable J.C. Nicholson, Jr., sitting as the trier of fact, entered judgment against the Defendants Daniel Island Riverside Developers, LLC, and Carriage Hill Associates of Charleston, LLC, (hereinafter collectively the Defendants), in the above-captioned matter by Order entered October 25, 2013.

2. Defendants file this motion without waiving any remedies sought in their other motions filed concurrently herewith.

3. Due to the court sitting as trier of fact and due to certain procedural aspects of the trial, there was neither a standard nor special verdict form in which the trier of fact allocated damages as among the putative tortfeasors.

4. The Court rendered its verdict as to liability and damages and entered a single Order on or about October 25, 2013.

5. S.C. Code § 15-38-15(A) states, in relevant part:

In an action to recover damages resulting from . . . damage to property or to recover damages for economic loss . . . , if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

6. S.C. Code § 15-38-15(C) provides that “the court if there is no jury, shall . . . specify the amount of damages [and] determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning ‘comparative negligence.’” “[U]pon a motion by at least one defendant, where there is a verdict . . . for damages against two or more defendants for the same indivisible injury, death, or damage to property, [the court shall] specify in a separate verdict . . . the percentage of liability that

proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, . . . attributable to each defendant whose actions are a proximate cause.”

7. Prior to trial, numerous Defendants named in the litigation settled with Plaintiffs. Moreover, other Defendants were named who did not appear at trial. This group of Defendants included Carriage Hill Associates, Inc.; Weather Shield Manufacturing, Inc.; The Muhler Co., Inc.; A.C. Construction, Inc.; Coastal Roofing, Co., Inc.; Coastal Caulking, Inc.; Mike Phillips d/b/a Mike Phillips Masonry; Gerald Rumplick; Edward J. D’Orazio; and Rich Behringer.

8. Additionally, damages were awarded for items such as HVAC repair and garage slab improvements, among other items; to the extent that these damages are proper, the contractors responsible for the installation and maintenance of those items (including, as to maintenance, those hired by the POA) should be allocated a portion, if not all, of the damages incurred to those respective items.

9. Pursuant to S.C. Code § 15-38-15(D), the evidence presented at trial supports a finding that the acts and omissions of the Defendants listed in Paragraph 7, as well as other unnamed Defendants “contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by [the Plaintiffs].”

10. A substantial amount of the Plaintiffs’ damages were the actual and proximate result of acts and omissions committed by parties other than the moving Defendants: More than fifty (50%) percent of the damages at issue in the case were caused by said parties.

11. Moreover, evidence was presented at trial that a portion of the damage was caused by or exacerbated by the POA’s failure to adequately maintain the premises.

12. No allocation has been made with regard to certain elements of the Plaintiff POA’s scope of repair; to the damages awarded to individual homeowner Plaintiffs; nor to the POA’s damages relating to movement, storage, and living expenses during repair.

13. As such, Defendants Daniel Island Riverside Developers, LLC, and Carriage Hill Associates of Charleston, LLC, are entitled to a special verdict allocating the damages suffered by Plaintiffs between and among Plaintiffs, the moving Defendants, the parties set forth in Paragraph 7, and other parties who installed or maintained items for which repair damages were sought and awarded.

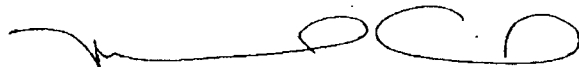
14. Defendants are entitled to request oral argument as to the proposed allocation of damages between and among all of the parties to the action, as well as other unnamed potential tortfeasors.

15. Defendants are further entitled to a set-off of the judgment attributable to each Defendant in an amount set forth in the Settlement Agreement entered into prior to the commencement of trial.

WHEREFORE, for the reasons stated hereinabove, Defendants Carriage Hill Associates of Charleston, LLC, and Daniel Island Riverside Developers, LLC, are entitled to an allocation and apportionment of Plaintiffs' damages.

Respectfully submitted this 14<sup>th</sup> day of November, 2013.

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Developers, LLC, and Carriage Hill  
Associates of Charleston, LLC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY )

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

C/A. No.: 2009-CP-08-1068

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A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

C/A. No.: 2009-CP-08-1413

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GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

C/A. No.: 2008-CP-08-2714

THE OAKS AT RIVERS EDGE PROPERTY )  
OWNERS ASSOCIATION, INC., JOHN E. )  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH )  
E. CHIOVAROU, JR., PEYTON H. COOK, JR., )  
BRENDA COOK, JOHN W. EDELEN, KAREN )  
A. NELSON, ROBERT J. GRAHAM, MAUREEN )  
S. GRAHAM, NANCY K. JOHNSON as trustee )  
for the Nancy K. Johnson Revocable Trust, )  
WILLIAM JUNG, CHARLES MARAZITI, )  
PATRICIA MARAZITI, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, )  
CAROLYN M. JENNINGS, THOMAS EDWARD )  
KEANE, EDWARD WALLACE BARR, III, )  
RICHARD B. PEKRUHN, PAULINE PEKRUHN, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

C/A. No.: 2009-CP-08-3916

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., COASTAL )  
ROOFING, CO., INC., COASTAL CAULKING, )  
INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS )  
MASONRY, GERALD RUMPLICK, EDWARD J. )  
D'ORAZIO, and RICH BEHRINGER, )

Defendants.

**DEFENDANTS, DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC AND CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,'S MOTION FOR SET-OFF**

Defendants Daniel Island Riverside Developers, LLC, and Carriage Hill Associates of Charleston, LLC, hereby move for a set off of the judgment entered in the above case. In support of this Motion, Defendants state as follows:

1. The Honorable J.C. Nicholson, Jr., sitting as the trier of fact, entered judgment against the Defendants Daniel Island Riverside Developers, LLC, and Carriage Hill Associates of Charleston, LLC, (hereinafter collectively the Defendants), in the above-captioned matter by Order entered October 25, 2013.

2. Defendants file this motion without waiving any remedies sought in their other motions filed concurrently herewith.

3. The judgment verdict entered against both verdicts was entered in favor of The Oaks at Riversedge Property Owners Association, Inc., ("POA") and certain individual homeowners, in the following amounts:

POA	\$ 9,389,134.47
Atkinson/Strandquist	\$ 416,625.00
Chiovarou	\$ 422,721.80
Barr/Keene	\$ 422,721.80
Cook	\$ 388,250.00
Edelen/Nelson	\$ 446,625.00
Graham	\$ 453,633.00
Jennings	\$ 468,265.00
Johnson	\$ 395,750.00
Jung	\$ 418,512.92
Maraziti	\$ 422,721.80
Pekruhn	\$ 374,825.00
Pollard	\$ 425,896.80
Reece	\$ 451,625.00
Ruvo	\$ 422,742.00
Severance	\$ 423,704.20

4. The total amount of the verdicts is therefore \$ 15,743,753.79.

5. S.C. Code § 15-38-50 states, in relevant part, "[w]hen a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury[,] it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater . . . ."

6. In this case, certain parties entered into a Settlement Agreement with the POA and the individual homeowners prior to the entry of the verdict. The total amount paid under the Agreement to the POA is set forth in the Agreement.<sup>1</sup>

7. In the event that the Court so orders, due to the confidentiality terms of the settlement agreement, the Defendants are willing to produce a copy of the agreement to the Court for an *in camera* inspection, upon notice to the other parties to the settlement.<sup>2</sup>

8. Moreover, a portion of the above settlement proceeds is required to be paid by the moving Defendants.

9. A set-off is mandated by statute and is not within the Court's discretion. *See Ellis v. Ellis*, 515 S.E.2d 268, 271 (S.C. Ct.App. 1999); *Vortex Sports & Entertainment, Inc., v. Ware*, 662 S.E.2d 444,451 (S.C. Ct.App. 2008).

10. The set-off is an operation of law and does not require a post-trial motion to be filed, although Defendants move for such relief in supplement to and in the alternative to Defendants' Rule 59 Motions filed concurrently herewith.

11. Plaintiffs conceded in their opening statement that Defendants were entitled to a set-off.<sup>3</sup>

12. Defendants are entitled to set-off of the verdict in the amount of the total amount of the settlement previously entered into by the POA.

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<sup>1</sup> The terms of the Settlement are confidential, as are the allocations between the parties paying the settlement amounts to the POA.

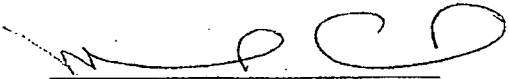
<sup>2</sup> The Court has been previously provided a copy of this Settlement Agreement during pretrial matters and further reviewed the original document contemporaneously therewith. A copy of the Settlement Agreement was made a Court Exhibit and filed under seal.

<sup>3</sup> Plaintiffs' presentation of evidence of damages at trial included damages caused by other Defendants and other unnamed contractors; Defendants' witness Mike Parker's expert testimony proved that substantial amounts of the remaining claimed damages were proximately and actually caused by defective product and work of other Defendants. Items included in the scope of repair presented by Plaintiffs, such as removal of brick work and stucco and exterior trim, would have been required if the sole defects had been caused by the settling Defendants.

WHEREFORE, for the reasons stated hereinabove, Defendants Carriage Hill Associates of Charleston, LLC, and Daniel Island Riverside Developers, LLC, are entitled to a reduction in the judgment in the amount of the settlement proceeds.

Respectfully submitted this 14<sup>th</sup> day of November, 2013.

**ALTMAN & COKER, LLC**



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Attorneys for Daniel Island Riverside  
Developers, LLC, and Carriage Hill  
Associates of Charleston, LLC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, and CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, )

Plaintiffs, )

vs. )

WEATHER SHIELD MANUFACTURING, INC., )  
THE MUHLER CO., INC., and A.C. )  
CONSTRUCTION, INC., )

Defendants. )

C/A. No.: 2009-CP-08-1068

---

A.C. CONSTRUCTION, INC., )

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, and TRAVELERS CASUALTY AND )  
SURETY COMPANY OF AMERICA, )

Defendants. )

C/A. No.: 2009-CP-08-1413

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GEOFFREY C. CIPKALA and SAMUEL C. )  
AGEE, as tenants in common of the common )  
elements of the Oaks at River's Edge Horizontal )  
Property Regime and on behalf of themselves and )  
all other tenants in common, )

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., )

C/A. No.: 2008-CP-08-2714

Defendants.

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

C/A. No.: 2009-CP-08-3916

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC, CARRIAGE HILL ASSOCIATES, INC., WEATHER SHIELD MANUFACTURING, INC., THE MUHLER CO., INC., A.C. CONSTRUCTION, INC., COASTAL ROOFING, CO., INC., COASTAL CAULKING, INC., MIKE PHILLIPS d/b/a MIKE PHILLIPS MASONRY, GERALD RUMPLICK, EDWARD J. D'ORAZIO, and RICH BEHRINGER,

Defendants.

**DEFENDANTS MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL ABSOLUTE FOR NEW TRIAL NISI REMITTITUR, TO AMEND OR ALTER THE JUDGMENT, AND FOR RELIEF FROM ORDER**

YOU WILL PLEASE TAKE NOTICE, that the Defendants Carriage Hill associates of Charleston and Daniel Island Riverside Developers, LLC, will move before this Honorable Court for an Order granting a new trial absolute, a new trial nisi remittitur, and or in the alternative, and Order amending the judgment in this matter pursuant to Rules 50, 59, and 60 of the South Carolina Rules of Civil Procedure. In Support of this motion, these Defendants submit that the Plaintiffs cannot recover the amount of damages rendered against them because 1) the Order granting the damages is in contradiction of the facts of this case, 2) the evidence is insufficient to prove Defendant's liability as to all of the causes of action, 3) the damages awarded result in a double recovery for the Plaintiffs, 4) the damages awarded include those attributable to other parties, 5) the damages awarded in the matter are excessive, and 6) the Order of the Court fails to account for election of remedies by, between, and among the parties, fails to allocate damages between and among the parties involved, and fails to set-off the judgment amount by the funds received by Plaintiffs in settlement.

**Legal Standard for Judgment Notwithstanding the Verdict,  
New Trial Absolute, New Trial Nisi Remittitur and to Amend the Judgment**

Pursuant to Rule 50 of the South Carolina Rules of Civil Procedure, this court may grant judgment notwithstanding the verdict entered in the case by

Order of the Court entered October 25, 2013. Rule 50(b), SCRPC, states in relevant part:

Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion . . . . A motion for a new trial may be joined with this motion . . . ."

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, this court may grant a new trial absolute in this case. "In non-jury actions a new trial may be granted 'for any of the reasons for which rehearings have heretofore been granted in the courts of [this state].'" Blejski v. Blejski, 325 S.C. 491, 480, S.E.2d 462, 466 n.4 (Ct. App. 1997). "If the amount of the verdict is *grossly* inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute." (emphasis in original) (citing O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (S.C. 1993). Curtis v. Blake, 392 S.C. 494, 500, 709 S.E.2d 79, 82 (S.C. Ct. App. 2011). "When a verdict is '*grossly* excessive and the amount awarded is so shockingly disproportionate to the injuries . . . it

becomes the duty of this Court, as well as the trial court, to set aside the verdict." Id.

In the event this Court will not grant these Defendants a new trial, these Defendants move this Court to grant a new trial nisi remittitur. "When the jury's verdict is inadequate or excessive, the trial judge has the discretionary power to grant a new trial nisi." V.E. Amick & Assocs., LLC v. Palmetto Envtl. Group, Inc., 394 S.C. 538, 548, 716 S.E.2d 295, 300 (S.C. Ct. App. 2011) "A motion for a new trial nisi remittitur asks the trial court to reduce the verdict because the verdict is merely excessive." Curtis v. Blake, 392 S.C. 494, 500, 709 S.E.2d 79, 82 (S.C. Ct. App. 2011). The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." Id.

In the alternative, these Defendants move this Court to amend the judgment in this matter. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (S.C. 1992). "Rule 59 SCRPC provides, *inter alia*, that on a motion for a new trial, the court may open the judgment if one has been entered and amend his findings of fact and conclusions of law or make new

findings and conclusions and direct the entry of a new judgment." NCNB South Carolina v. Floyd, 303 S.C. 261, 399 S.E.2d 794 (S.C. Ct. App. 1990). "[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court "alter or amend the judgment," but also as a vehicle to seek "reconsideration" of issues and arguments. A motion under Rule 59(e) long has been viewed as "motion for reconsideration" despite the absence of those words from the rule. Consequently, a party usually is allowed ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented . . . There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity." Elam v. S.C. DOT, 361 S.C. 9, 21, 602 S.E.2d 772, 778-9 (S.C. 2004).

Finally, pursuant to Rule 60, SCRCP, Defendants seek relief from the Order entered October 25, 2013, as certain elements of damages were mistakenly included; the Order failed to set-off the judgment by the prior settlement amounts; the Order failed to address the allocation of damages; and the Order was entered prior to the Plaintiffs' election of remedies.

### Argument

The Defendants' motions are based on three general arguments which are broken out and discussed separately below. First, the damages awarded in the order are improper in that they are speculative and not supported by the evidence presented at trial; moreover, damages awarded to the HOA for the cost of repair and additional damages awarded to individual plaintiffs constitute a double recovery. Second, the findings of fact and conclusions of law fail to address evidence presented by these Defendants at trial and erroneously stated that several issues were not contested at trial. Third, the Court allowed Plaintiffs to submit evidence after the conclusion of the trial, and subsequently considered this evidence. Defendants were not afforded the opportunity to present evidence or testimony to contradict this evidence. As such, the Defendants are entitled to a new trial remitter. In the alternative, the Defendants request that the amount of damages be reduced to those discussed below.

**I. THE DAMAGES AWARDED ARE NOT SUPPORTED BY THE EVIDENCE, ARE SPECULATIVE AND CONSTITUTE A DOUBLE RECOVERY.**

As an initial matter, for ease of reference and to prevent repetition, the Defendants by reference and as an attachment to this motion, incorporate the Damages Memoranda submitted to the Court on May 17, 2013. Defendant

reasserts all of the arguments presented in its May 17, 2013, for the reasons stated therein. Defendants further assert and supplement with the arguments discussed below. Based on the arguments therein, Defendants contend that the damages awarded to the POA Plaintiff should be decreased by (1) those repairs and related costs which are the proximate result of the defective work and product of others, (2) items for which no evidence was presented at trial and which are not repairs but rather "upgrades," and (3) items which are, on their face, grossly excessive:

**A. The Damages Award of \$7,934,704.06, is not supported by the evidence in that it erroneously includes the cost remove and replace the stucco and the brick (\$1,091,971.50).**

The court erroneously held the brick and stucco had to be removed and replaced due to code violations. According to the order the court based this holding on the erroneous belief that 1.) Mickael Parker, PE, Defendants expert, "did not evaluate the brick or the stucco" and 2.) that "[plaintiffs expert's] testimony is uncontradicted that the stucco and brick veneer contains defects in violation of industry standards . . ." This finding is not supported by the testimony at trial. Rather the testimony presented at trial supports a finding that even if the stucco and brick installation were absolutely perfect, the stucco and brick would still have to be removed and replaced due to water intrusion

and damage caused by the defective and leaky windows, and issue that was resolved prior to trial by the plaintiffs via settlement.

**1. Michael Parker, PE testified that he evaluated the stucco.**

Michael Parker, PE, was qualified as an expert in water source and water penetration. (p.982, lines 10-25). Parker testified that as part of his investigation into the buildings at issue in this matter that he also looked at "the field of wall stucco as party of [his] investigation." (R.p.991, line 21-p.992, line 2.). Parker stated, that they "did a lot of test cuts . . . just in the wall of the stucco to see if there was any evidence that the stucco was contributing to the leakage. And we didn't find any." (Id.).

Parker further testified that as part of his window investigation, they removed all of the stucco, except for around three feet at the top of the roof to wall intersection to determine the extent of the window leakage. (R.p.992, line 18-p.993, line 4). Again, when asked about field testifying on the stucco, Parker testified, "Yes. During the -- as I said earlier, we cut D-ports in there . . . to see if there was leaks associated with the stucco. We didn't see any." (R.p.998, lines 11-16). He continued to explain that he cut through the Tyvek and that the sheathing was dry and fastened properly, and that he "didn't see a problem with the stucco." (R.p.998, lines 21-24).

**2. Michael Parker, PE, testified that water intrusion from the windows and doors would necessitate the removal of all the stucco and brick.**

The court erroneously held that removal and replacement of all the brick and stucco is necessary based on plaintiff's experts "uncontradicted testimony" that such removal and replacement is necessary to repair the damage caused by such defects.

Again, Michael Parker, PE, testified at trial that, "in [his] opinion, all the stucco and all the brick have got to come off these buildings." (R.p.1006, lines 2-3). Parker offered two reasons as to why the window and door repair would necessitate a complete removal and replacement of the stucco and brick. The first explanation involved the fact that the leaking window allowed water into the wall cavity both down the wall and out to the sides of the window resulting in a "tremendous amount of rotten wood." (R.p.1006, lines 11-18; R.p.1007, lines 10-17). The second explanation involved the fact that when performing a surgical repair it is very difficult to match brick color and mortar color. (R.p.1006, lines 21-25; R.p.1011, lines 16-23). The same problem exists for stucco. Parker testified that when tying old stucco to new stucco, you have to worry about bonding the materials together to try to prevent splits in the future, and putting different coats over the materials to hide the crack. (R.p.1008, lines 11-14). Parker stated, "at the end of the day my

recommendation, my opinion, is all of it should come off." (R.p.1008, lines 15-19).

Plaintiff's own expert Ted Padgett, PE, testified at trial that "surgical repairs in stucco are very difficult" (R.p.814, lines 22-24), and that "[s]urgical repairs in brick become a matching problem." (R.p.814, line 25-p.815, line 2). Mr. Padgett testified that he agreed the most economical way to deal with the problem is to reclad:

Q: So that I bring that full statement all the way around: if we're going to remove the windows, remove the doors, instead of surgically trying to chip away each brick, wipe it clean, lets's do it all over again?

A: We'll do it right this time.

Q: Bt the answer is yes?

A: Yes.

(R.p.815, lines 6-12).

Plaintiffs have gone to great lengths to stress upon the Court that they paid for "luxury" when it comes to their units. Based on this position, it is impossible to accept Plaintiffs' argument that but for the claimed defects in the brick and stucco, they would have only removed a small percentage of the brick and the stucco in connection with the window repair, which according to Plaintiffs' expert would equate to 18.5% of the stucco and 14% of the brick.

As such, \$582,999.30 for replacement of the stucco and \$508,972.20, for a total of \$1,091,971.50, should be removed from the total award to the HOA for cost of repair, as these costs are attributable to the acts and omissions of other parties.

**B. The Award of Damages for Acoustic Repairs/Sound Remediation is not Supported by the Evidence Presented at Trial.**

The court's finding that the sound remediation performed by the Defendants "was simply to make the best of a defective situation rather than perform a remediation that would meet industry standards is in error and not supported by the testimony and evidence presented at trial. Moreover, the Court overlooked evidence presented that 1.) the remediation did in fact bring the acoustical issues up to code, and 2.) Plaintiffs' proposed sound remediation repair would not improve the acoustical/sound issues from its current state.

At trial, a report prepared by Plaintiff's own acoustical expert, Quietly Making Noise, was admitted into evidence. (See Exhibit 229; R.p.244, lines, 2-10). The report states in pertinent parts:

The ASTC ratings exceeded the minimum building code requirements for the original and modified floor/ceiling systems designs.

The FIIC rating with wood floor coverings was 41 for the original construction which falls below the minimum building code requirement. An increase of 8 points

was realized for the modified construction, resulting in an FIIC rating of 49 which meets the applicable criterion.

...  
The design modification shave clearly made a significant improvement. The improvements to the ceiling are consistent with the recommendations that QMN [Quietly Making Noise], would have made and further changes to the ceiling design are unlikely to result in much more of an increase in the ratings.

(Exhibit 229, p.9)

Further, Noral Stewart, Phd, Defendants' witness who was qualified by the court as an expert in acoustical noise, testified that the sound remediation repairs conducted by Defendants meets the building code. (R.p.853, line 1; p.854, lines 2-7; p.855, lines 7-13).

Mr. Stewart also testified that in his opinion, the acoustical remediation proposed by Ted Padgett<sup>1</sup>, Plaintiffs expert, would not provide "anything significantly better, and could in fact, run some risks of not get as well." (R.p.856, lines 10-17.). Specifically, Mr. Stewart testified that he "would strongly disagree with any idea about trying . . . to redo the ceiling beyond what we have done. (R.p.856, lines 18-20). When asked by Plaintiffs' counsel what

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<sup>1</sup> To the extent the court relied on Ted Padgett's testimony regarding the noise remediation, such reliance is improper. Mr. Padgett was not qualified as an expert in acoustical noise. Moreover, the Testimony at trial established that Mr. Padgett has never been retained to design acoustical plans; Mr. Padgett is not a member of any professional organization with regard to acoustical professionals; Mr. Padgett has never written any papers, or reviews on acoustical construction in buildings, nor has he ever been peer-reviewed by any engineers in South Carolina, or nationally, as to opinions as they relate to whether or not a building as been acoustically built in a sound manner. R.p.799, line 25 -p.802, line 7)

the "goal" of the remediation was, Mr. Stewart stated "the absolute goal was to meet the code." (R.p.870, lines 9-11).

Nowhere in the record is there any testimony from Mr. Stewart that the "goal of the remediation was simply to make the best of a defective situation rather than perform a remediation that would meet industry standards," as stated in the order. Furthermore, there is no evidence to support the finding that any improvement will be gained if the acoustical repair recommended by Mr. Padgett is implemented. As previously stated, both Defendant and Plaintiff experts testified that the remediation meets code requirements, and that little if any improvement would be achieved by additional work. As such, the award for acoustical repairs in the amount of \$1,973,134.98 (based on Defendants' estimate), is not supported by the evidence and should not be included in any damages award.

**C. The Award for both Cost of Repair and Loss of Market Access constitutes a double recovery.**

The court erroneously awarded the HOA damages to repair the buildings and damages to the individuals for "loss of market access." Such award constitutes a double recovery. Moreover, the court defines "loss of market access" as damages attributed to the lost opportunity to sell their unit from 2008 to 2011. In this regard, the damages are speculative, and were not proven

by the plaintiff's by a preponderance of the evidence. See Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992).

"[I]n absence of evidence of specific damages, measure of damages to real property is diminution in value . . . [the] cost of repair or restoration is a valid measure of damages for injury to a building although compensation may be limited to the value of the building before the damage was inflicted. Scott v. Fort Roofing & Sheet Metal Works, Inc., 299 S.C. 449, 385 S.E.2d 826 (S.C. 1989).

"If as a result of the repairs the property is not restored to a condition in which its market value is equal to the market value before the injury, then the measure of damages is the difference in the market value of the property immediately before the injury and its market value immediately thereafter, in its condition of partial restoration, together with the reasonable cost of the repairs made and the value of the use of which the owner was deprived during the time reasonably required to repair the property." Coleman v. Levkoff, 128 S.C. 487, 122 S.E. 875 (S.C. 1924). The two measurements of damage are exclusive, not complementary.

Mr. Donato, plaintiff's expert, testified at trial that if the units are repaired, then the value would revert back to market value. (R.p.712, lines 1-10). Mr. Donato further stated that once the problems at the units are repaired, the loss

of value goes away. (R. p.713, lines 8-14). As such, an award to the HOA for the cost to repair the units as well as an award to the individual plaintiffs for loss of value, is a double recovery that would put plaintiffs in a position over and above being made whole. The plaintiffs will receive the benefit of a fully repaired unit, plus an additional award for lost value, which by their own expert's testimony, no longer exists.

Further, there is no recognized award for "loss of market access." The Plaintiffs are merely renaming their purported damages for diminution in value. While damages do not have to be proven with a mathematical certainty, they cannot be based on speculation. "The law does not require absolute certainty of data upon which lost profits are to be estimated, but all that is required is such reasonable certainty that damages may not be based wholly upon speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy." South Carolina Finance Corp. v. West Side Finance Co., 236 S.C. 109, S.E.2d 329 (S.C. 1960). Moreover, Plaintiffs' still have the burden of proving by the preponderance of the evidence that they are entitled to such damages.

Plaintiffs advance the argument that they were denied access to the sales market due to the defects. The evidence proffered at trial, however, was too scarce, too inconsistent, and too speculative to support any such finding, even if this "access" were a recognized element of damages.<sup>2</sup> Few Plaintiffs proffered any evidence that they had made any attempt to sell or refinance the property; those that did agreed that at least some of their inability to do so was caused by the overall saturation and real estate bubble existing at the time. Certain Plaintiffs did not testify at all. Nevertheless, the individual Plaintiffs were each awarded a substantial amount (in some cases, almost half of the original cost) for the purported loss to market. No purchase offers, contracts of sale, listing agreements, listings, or loan applications were proffered at trial. No plaintiff presented any evidence that the sale of a unit fell through due to notification of construction defects.

The Plaintiffs have received an additional double recovery in the award for loss of quiet enjoyment. The Order provides for an award calculated at 1373 (or less, for those that sold) days at \$125.00 per day. The loss of quiet enjoyment and any related inconvenience must first be actually suffered in order to support an award of any damages. As more fully stated herein, most

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<sup>2</sup> Plaintiffs are attempting to substitute "lack of access to the market" for a diminution of value to evade the clear double recovery this would provide.

of the Plaintiffs did not actually suffer this purported injury, as they did not reside in the units for the duration of their ownership, if at all. "No one is entitled to absolute quiet in the enjoyment of his property; he may only insist upon a degree of quietness consistent with the standard of comfort prevailing in the locality in which he dwells. The location and surroundings must be considered, since noise which amounts to a nuisance in one locality may be entirely proper in another." Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 255-6, 125 S.E.2d 628, 633-4 (S.C. 1962). The right to quiet enjoyment is just one of the "bundle of sticks" that make up the rights of property ownership; as such, the level of quiet enjoyment is necessarily a consideration in calculating the value of a piece of property, just as square footage, view, and location are. For the Plaintiffs to receive awards for both loss of quiet enjoyment and lost value is, by definition, as double recovery.

As such, the award to the HOA for cost of repairs and an award to the individuals for loss value is a double recovery and improper. Further, the award for loss of market access is not supported by any evidence and is speculative and therefore, not recoverable. As such, the loss of Market Access to the individuals should not be awarded. In the alternative, the Plaintiffs'

should be required to elect, either the award of cost to repair or the loss of Market Value/Access.

**D. The amounts awarded are grossly excessive.**

Additionally, certain amounts awarded to the HOA and the individual Plaintiffs are, on their face, excessive. With regard to the HOA, award was made for several items for which evidence was not presented at trial, and which could only be considered "upgrades" or standard maintenance items. These include without limitation, installation of French drains, HVAC repair, Garage Slab maintenance, repainting porch ceilings, and other related items. Moreover, the award to Plaintiffs relating to the scaffolding, construction photography, and overhead amounts is grossly excessive and well above market.

Furthermore, the hotel and storage costs for the buildings is grossly excessive. Most of the Plaintiffs testified that they did not live in their respective units, so no hotel would be necessary; furthermore, Plaintiff's testimony provided that the buildings would have to be remedied consecutively, not concurrently. Even assuming all units were occupied, this means that each building, or six units, would be "moved out" for the course two months. In other words, six condominiums, houses, or apartments could be rented for a year that were comparable to the square footage and location of

the Oaks at Riversedge. At Two Hundred and Fifty Dollars and day (plus storage costs), this equates to six rental homes at Eight Thousand Dollars per month, *each*. While no evidence was offered other than rough assumptions at trial, certain Plaintiffs did testify that they were currently renting other homes for between Fifteen Hundred and Three Thousand Dollars per month.

Likewise, the amounts awarded to the Plaintiffs for "inconvenience" are excessive and not supported by the evidence. No credible evidence supports the finding that the Plaintiffs were inconvenienced to the tune of One Hundred and Twenty-Five Dollars per day, nor was any evidence presented as to the value of "loss of quiet enjoyment."<sup>3</sup> Based upon an average month, this amount calculates to Three Thousand Seven Hundred and Fifty Dollars. By way of comparison, a thirty-year mortgage for \$685,000.00 results in a principal and interest payment of \$ 3677.23.

As to certain Plaintiffs, there is no evidence as to whether they lived in or ever visited the units, whether they were inconvenienced at all, and therefore whether they actually experienced any loss of quiet enjoyment. Of the Plaintiffs who did testify, several did not now or ever live in their respective units; of those who had tenants, there is no evidence that each and every tenant

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<sup>3</sup> As more fully set out below, Defendants additionally contend that the loss of quiet enjoyment is an element of the calculations provided by D'Onato as to diminution of value.

suffered a loss of quiet enjoyment or any inconvenience.<sup>4</sup> The Ruvo Defendants have never spent one day in the unit, and live in San Francisco. (R. p. 268, LL. 12-13; p. 273, ll. 2-3); the Johnson Defendants have not lived in the unit (R. p. 298, ll. 15-16); the Atkinson / Strandquist defendants live in Pennsylvania and visit about three (3) weeks per year (R. p. 314, ll. 23-24; p. 316, ll. 8-11); the Jung Defendants have never lived in the unit (R. p. 410, ll. 7-9); the Marazitis own and reside in another house on Daniel Island (R. p. 533, ll. 3-8); the Cook Defendant did not provide any evidence that she ever resided in the subject unit; the Nelson / Edelson defendants were only in the unit on occasion (R. p. 555, ll. 22-25); the Graham defendants did not reside in the unit (R. p. 571, ll. 8-10); the Barr / Keane defendant testified he resides on Sullivans Island (R. p. 585, ll. 19-20); the Severance defendants stayed for about one year (R. p. 610, ll. 10-14); and the Jennings defendant lives on Ashley Avenue in Charleston (R. p. 642, ll. 14-15).

Finally, those Plaintiffs with tenants and to whom the Court awarded lost rents or an election of loss of market access, the "loss of market access," even if a proper measure of damages, were awarded excessive amounts for that "loss of market access." The loss calculation does not take into account, nor was

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<sup>4</sup> For those Plaintiffs that testified as to lost rents, to the extent those amounts are supported by sufficient evidence, the Plaintiffs have already been awarded their damages in the form of lost rent.

there evidence as to the rent revenues collected during the period at issue. At a minimum, the award would necessarily need to be reduced by any revenues so received. With respect to Atkinson / Strandquist defendants' award of lost ability to refinance, this number likewise is duplicative of any "market access" award. Property owners generally may choose to reside in, rent out, borrow against equity, or sell their homes. Just as the landlord owners were required to elect their specific remedies by the Court, the Atkinsons must be required to elect their specific remedy.

**II. THE EVIDENCE DOES NOT SUPPORT THE FINDING THAT THE DEFENDANTS FAILED TO INFORM THE PLAINTIFFS' OF ALLEGED CONSTRUCTION DEFECTS.**

In several instances in its findings of fact and conclusions of law, the order erroneously states that the Defendants failed to inform the Plaintiffs of alleged construction defects. This is not supported by the testimony at trial.

First, Mr. Donato, Plaintiff's expert, testified that he based a certain date in his report for valuation on March 2008 because "that's the date the homeowner, as well as the property owners, received a letter from Carriage Hill Associates, the developer, which stated publically about all of the defects and the problems that they were having. (R.p.654, lines 5-14).

Mr. Padgett testified that he worked with Michael Parker, PE, Defendants' expert on the investigation into the buildings and as to proposed repairs. (R.p.817, lines 1-4).

**III. THE EVIDENCE DOES NOT SUPPORT THE FINDING OF NEGLIGENT REPRESENTATION; BREACH OF FIDUCIARY DUTY; IMPLIED WARRANTY OF HABITABILITY; WORKMANLIKE SERVICE AND GROSS NEGLIGENCE.**

The finding of fact that the Defendants falsely represented to the Plaintiffs's that the condominiums would be constructed to "luxury standards" is not supported by the evidence.

First, to the extent the Plaintiff's rely on marketing materials submitted at trial, the marketing material specifically stated that the representations were subject to change and should not be relied upon. (R. p.218, line 9 -p.219, line 25).

Second, Plaintiffs have agreed that marketing contains, for lack of a better term, sales puffery. When Mr. Donato, was asked regarding a 2011 sales listing for a unit at the project that described the property as "luxurious brick and stucco," Mr. Donato testified, "it's a typical fluff real estate listing. You wouldn't expect him to say inexpensive-don't come condo." (R.p.693, lines 1-9). In fact the court even recognized, that "we'll concede there's fluff in the marketing." (R.p.693, lines 1-12).

Second, the finding that Defendants failed to inform the Plaintiffs of the acoustical problems is not supported by the evidence. It is undisputed that the Plaintiffs had to elect and grant to Defendants permission to go into their units to perform the remediation work. Moreover, the finding of fact that the goal of the acoustical remediation was not to bring the sound level to code, but driven by the desire of the Defendants to save money, is not supported by the evidence. As discussed in section I. B., Mr. Stewart testified that the goal was to meet the code, that the code was met with the completion of the sound remediation. Additionally, Plaintiffs own sound expert's report states that the remediation performed by the Defendants brought the sound issue up to code. (see section I.B).

Under South Carolina law, "[g]ross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do." Richardson v. Hambright, 296 S.C. 504, 374 S.E.2d 296 (1988) (citing Ford v. Atlantic CoastLine Railroad, 169 S.C. 41, 168 S.E. 143 (1932)); see also Hollins v. Richland County School Dist. One, 310 S.C. 486, 427 S.E.2d 654 (1993). In order to prove a gross negligence claim, a plaintiff must show: (1) the defendant owed plaintiff a duty of care; (2) the defendant breached the duty by failing to exercise a slight degree of care; (3) plaintiff was injured; and (4) the defendant's breach of duty proximately caused the injury. See Rice v. School Dist. of

Fairfield, 317 S.C. 87, 93, 452 S.E.2d 352, 355 (Ct. App. 1994) (citations omitted).

Even several Plaintiffs testified that there were several meetings, letters, phone calls, and other forms of communications between and among the developer, the construction manager, and the owners with regard to a plan to remedy certain issues; that the Defendants could not force other parties to meet their obligations in doing so is not sufficient to support a finding of gross negligence.

Likewise, the evidence presented simply did not rise to the necessary preponderance of the evidence standard with respect to the warranty claims; the misrepresentation claim; and the fiduciary duty claim.

**IV. DEFENDANTS WERE NOT AFFORDED THE OPPORTUNITY TO CONTEST OR SUBMIT EVIDENCE IN CONTRADICTION TO DOCUMENTS PROVIDED TO THE COURT AFTER THE CONCLUSION OF THE TRIAL.**

After the close of evidence, Plaintiffs provided to the Court and opposing counsel a cost estimate for scope of repair which included amounts and items not previously set forth on the cost estimate provided to Defendants prior to trial. As the evidence had closed, Defendants were afforded no opportunity to contest the findings of David Willis, both to the scope of repair and the charges estimated. As more fully set forth above, Defendants contend that several of these charges are grossly excessive. Plaintiffs' final cost estimate was over Four Million Dollars in excess of the prior estimate, taking into consideration the settlement amounts paid.

**V. THE DEFENDANTS ARE ENTITLED TO COMPEL ELECTION OF REMEDIES; ALLOCATION OF DAMAGES; AND SET-OFF.**

Contemporaneously herewith, Defendants are filing three additional Motions for Post-Trial Relief, as to the election of remedies, the allocation of damages among tortfeasors and parties, and the right to a set-off. Defendants incorporate by reference these Motions herein to the extent they are properly considered as Rule 59 or Rule 60 Motions. Moreover, Defendants reserve the right and intend to rely upon supporting memoranda to those motions, any oral argument, and all the pleadings filed previously hereto.

Wherefore, based on the foregoing arguments and authorities, the Defendants' additional motions filed the same date hereto, memoranda, argument, and the pleadings, Defendants are entitled to and respectfully request the relief set forth herein.

Respectfully submitted this 14<sup>th</sup> day of November, 2013.



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Island Riverside Developers LLC and  
Carriage Hill Associates of  
Charleston, LLC

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

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A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

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GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

---

THE OAKS AT RIVERS EDGE PROPERTY  
OWNERS ASSOCIATION, INC., JOHN E.  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH  
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,  
BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN  
S. GRAHAM, KEVIN O. HUX, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson  
Revocable Trust, WILLIAM JUNG, CHARLES

C/A. No.: 2009-CP-08-1068

**MEMORANDUM IN OPPOSITION**  
**TO DEFENDANTS POST TRIAL**  
**MOTIONS**

C/A. No.: 2009-CP-08-1413

C/A. No.: 2008-CP-08-2714

C/A. No.: 2008-CP-08-3916

MARAZITI, PATRICIA MARAZITI, DONNA )  
DEE MORAN, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, ROBERT )  
FARINA, MARY ANN FARINA, CAROLYN M. )  
JENNINGS, THOMAS EDWARD KEANE, )  
EDWARD WALLACE BARR, III, RICHARD B. )  
PEKRUHN, PAULINE PEKRUHN, GREGORY )  
B. NATHAN, and RICHARD JENNINGS, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., and )  
COASTAL ROOFING, CO., INC., COASTAL )  
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE )  
PHILLIPS MASONRY, GERALD RUMPLICK, )  
EDWARD J. D'ORAZIO, and RICH )  
BEHRINGER, )

Defendants )

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THE MUHLER CO., INC., )

Third- Party Plaintiffs, )

vs. )

CASTLE SIDING, INC. and CAOBA DOORS, )

Third-Party Defendants. )

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Plaintiffs The Oaks at Rivers Edge Property Owners Association, Inc., John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia

Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance and Elizabeth Ashley Phillips Severance ("Plaintiffs") hereby submit this response to Defendants Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC ("Moving Defendants") post trial motions.

#### Procedural History

A trial in this matter was held before the Honorable J.C. Nicholson, Jr. on April 8-11, 2013. On October 25, 2013, this Court entered an order (the "Order") in favor of the Plaintiffs. On November 14, 2013, the Moving Defendants filed four (4) post trial motions as follows: (1) a motion for Allocation of Damages; (2) a motion for a set-off; (3) a motion requiring election of remedies; and (4) a motion for new trial absolute, a new trial nisi remittitur, and/or in the alternative a motion to amend the judgment pursuant to Rules 50, 59, and 60, SCRPC. The arguments overlap in large part and are addressed herein in a single response.

#### Argument

##### **I. Moving Defendants are not entitled to an allocation.**

The Moving Defendants argue that they are "entitled to a special verdict allocating the damages suffered by the Plaintiffs" between other parties pursuant to S.C. Code Ann. Section 15-38-15. The Moving Defendants are not entitled to any allocation pursuant to the plain terms of Section 15-38-15 (attached hereto as Exhibit A). Subsection (F) of 15-38-15 clearly states that "This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional." In this case, both of the Moving Defendants were determined by the Court to have been grossly negligent. See Paragraph 63 of the Order. For this reason alone, Section 15-38-15 does not apply. Moreover, there is no

evidence that the Moving Defendants (which can be treated as one party pursuant to Section 15-38-15(C)(3)(a)) were less than 50% at fault as they were the developer and construction manager for the entire project. Therefore, no allocation is necessary under Section 15-38-15(A). Indeed, the Moving Defendants would have been responsible for putting in any evidence of degree or percentages of fault during the trial. See S.C. Code Ann. Section 15-38-15(C)(3)(B). There is no such evidence and no evidence can be submitted at the hearing on these post trial motions. *Id.* The Moving Defendants are not entitled to any allocation

**II. The Moving Defendants are not entitled to a set-off.**

There were two settlements prior to the trial of this action and prior to the judgment against the Moving Defendants. First, the Plaintiffs settled and granted a release to various defendants (the "window defendants"). The terms and amounts of the settlement were confidential but will be presented to the Court at oral argument. Importantly, the window defendant settlement resulted in the Plaintiffs removing from their claim, ultimately presented at trial, a scope of work which had a cost in excess of the settlement amount from the window defendants. As a result, the Moving Defendants are necessarily not entitled to a set-off in the amount paid by the window defendants because they have already received the benefit of the removal of those claims from the amount claimed at trial. Indeed, the removal of the items from the scope actually gave the Moving Defendants more value. Moreover, the Moving Defendants received full releases from the window defendants in that settlement. Therefore, the Moving Defendants also received the benefit of a release from cross-claims for indemnification. The Moving Defendants are not entitled to a set-off as they have already received the "reduction" contemplated by Section 15-38-50. In fact, they have received even more of a benefit.

With regard to the second settlement, the Moving Defendants were parties to that settlement. As a result of that settlement, the Plaintiffs released the Moving Defendants for

certain causes of action including unfair trade practices, punitive damages, and amalgamation. The Moving Defendants have already received the benefit from that settlement because the Plaintiffs released them for certain causes of action that they did not present at trial.

Essentially, the Moving Defendants improperly seek a set-off for amounts they have already received the benefit of from the Plaintiffs. The Moving Defendants are not entitled to a set-off.

**III. The damages awarded are not a double recovery and the Plaintiffs should not be required to further elect.**

The Moving Defendants argue that the award of damages for the cost of repair to the Plaintiff HOA and the award of damages to the individuals for loss of market access amounts to a double recovery. This is simply not the case. The premise upon which the Moving Defendants base their argument as to double recovery is flawed. The Moving Defendants mistakenly assert that when the buildings are repaired the full value of the units will return. In a typical case, this may be true. However, in this case, the theory of damages put forth in evidence (that was not factually disputed by any other evidence) was that the individuals were denied market access during a time in which the Moving Defendants knew that the buildings needed to be repaired and refused to do so. Therefore, even if the buildings are fully repaired, the individual Plaintiffs will not be made whole. The Court found in its Order, in pertinent part, as follows:

(66) I find that the individual Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by the Individual Unit Owners were not speculative, were reasonable, foreseeable, and were proximately caused by the negligence of the Developer and the Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owner and of Donato. With regard to the testimony of the Individual Unit Owner Plaintiffs, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by the Unit Owners through Donato are separate and distinct from the damages claimed by the HOA as the repair of the common elements will not make the Individual Plaintiffs whole. As described by Donato, even if the buildings are repaired, the damages claimed by the Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between

the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

This is necessarily not a double recovery. This is also the exact undisputed testimony of Christopher Donato. *See* Testimony of Donato attached as Exhibit B.

**IV. The damages awarded were not speculative and are not grossly excessive.**

The Plaintiffs presented evidence of damages from three qualified experts, each of the individual Plaintiffs, and representatives from the Plaintiff HOA. The experts quantified each element of damages to a reasonable degree of certainty. The HOA damages were supported by the estimate of Southeastern Construction and David Willis, a licensed general contractor. The SECC estimate was based upon a scope of work created by Ted Padgett, a licensed professional engineer. These damages are not speculative. Moreover, there is no question that the damages awarded by the Court were consistent with the actual, and in large part undisputed, evidence of damages presented at trial. As such, these damages were not grossly excessive.

The Moving Defendants argue that the Court erroneously held that the stucco and brick had to be removed because of code violations. This is, however, the exact testimony given by Ted Padgett, P.E. *See* Testimony of Padgett attached as Exhibit C. The Moving Defendants argue that Mike Parker did evaluate the brick and stucco. This is simply not the evidence at trial. Parker testified that he did not evaluate the brick and stucco for code or workmanship. *See* Testimony of Parker attached as Exhibit D. Therefore, the testimony of Padgett that the brick and stucco had to be removed and replaced, regardless of the other issues, was not contradicted and the Court did not error in so finding and in awarding the damages associated with the removal of the brick and stucco. Moreover, even if this was disputed, the Court sitting as the finder of fact was free to find the facts as it saw fit.

The award for sound remediation/acoustic repairs was fully in line with the evidence presented at trial. As stated above, the damage numbers were supported by the testimony and

opinions of a licensed general contractor and a licensed professional engineer familiar with condominium construction in South Carolina. The Moving Defendants argue that Ted Padgett was not qualified as an "expert in acoustical noise," and his testimony on the issue of sound remediation was improper. Mr. Padgett is a licensed professional engineer. His testimony with regard to sound remediation and acoustical repairs was given without objection. See Testimony of Padgett attached as Exhibit E. Mr. Padgett has been involved in the construction of condominiums in South Carolina, and Charleston specifically, for 30 years. He is more than qualified to give an opinion on industry standards with regard to the construction of sound proofing and the appropriate methods and industry standards for such construction in condominiums. The Moving Defendants argue that the "repairs" undertaken by in 2007 and 2008 brought the buildings "up to code," and, therefore, no damages could be awarded. This ignores the real issue. The issue was compliance with industry standards for this type of luxury condominium-not mere code compliance. It is axiomatic that the violation of an industry standard can give rise to a tort claim. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989). The Court found as follows:

(28) Theodore Padgett, a licensed professional engineer in South Carolina with over 30 years of experience in multifamily and condominium design and construction, was qualified without objection as an expert on industry standards for multifamily construction. He testified that the original design and construction relative to sound and the repairs that were made during the sound repairs did not meet industry standards because of the significant sound transfer between units, the absence of gypcrete, and the sheetrock attached directly to the wood floor trusses. Padgett testified that representatives of Developer and Construction Manager informed him after the construction of the Project that they simply did not know that gypcrete and suspended ceilings was the industry standard in construction of this type. The testimony Padgett was credible and based upon significant experience in the Charleston area as well as his experience with the Project. Padgett was the only witness to testify as to industry standards for condominium construction in South Carolina and the only witness to testify as to the requirements for gypcrete on wood framed multi-family construction. Stewart testified he was not qualified to give an opinion as to industry standards in construction of multi-family condominiums in South Carolina, though he did acknowledge that gypcrete was included in his recommendations to any client seeking to use wood floor joists in multi family construction.

Indeed, the expert for the Moving Defendants unequivocally testified that the remediation was the best they could do with a bad situation and that it was not what you would expect in new construction. See Testimony of Stewart attached as Exhibit F. This is exactly what the Court ordered.

**V. The evidence was overwhelming that the Moving Defendants were grossly negligent.**

The evidence is clear that the Moving Defendants knowingly developed and constructed this Project using an unlicensed architect. This in and of itself is enough for a finding of gross negligence. Second, the sheer number of code violations is sufficient evidence to give rise to gross negligence.<sup>1</sup> The evidence is clear that the Moving Defendants were told by their expert, Mike Parker, that they needed to perform significant repairs at the project, and the Moving Defendants knowingly refused to follow the recommendation of their engineer and refused to perform the repairs. See Testimony of Parker attached as Exhibit G. This conduct is evidence of gross negligence and the Court properly found that the Moving Defendants were grossly negligent.

**Conclusion**


For the reasons stated herein and for the reasons presented at oral argument, the post-trial motions should be denied.

[signature page follows]

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<sup>1</sup> The violation of a building code is negligence per se. Kincaid v. Landing Development Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct.App. 1986). The negligence per se doctrine, well settled in South Carolina, arises when a statute or an ordinance creates a legal duty or standard of care to be observed in a particular situation. Norton v. Opening Break, 313 S.C. 508, 443 S.E.2d 406 (Ct.App. 1994), aff'd, 319 S.C. 469, 462 S.E.2d 861 (1995). "The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness." Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct.App. 2004) citing Wise v. Broadway, 315 S.C. 273, 433 S.E.2d 857 (1993); see also Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct.App. 1986) ("violation of a statute may warrant the inference of reckless, willful, and wanton conduct."). "Recklessness is a higher degree of negligence than gross negligence. Where negligence is so gross as to amount to recklessness, it assumes the nature of willfulness." 18 S.C. Juris. Negligence § 9 (2006) citing Jeffers v. Hardeman, 231 S.C. 578, 99 S.E.2d 402 (1957).

SMITH, BUNDY, BYBEE & BARNETT, P.C.



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Nancy K. Johnson as trustee for the Nancy K. Johnson  
Revocable Trust, William Jung, Charles Maraziti,  
Patricia Maraziti, George S. Pollard, Eleanor J.  
Pollard, Robert Reece, Gerard M. Ruvo and Sue S.  
Ruvo as trustees for the Ruvo 2006 Living Trust,  
Carolyn M. Jennings, Thomas Edward Keane, Edward  
Wallace Barr, III, Richard B. Pekruhn, Pauline  
Pekruhn, Matthew J. Severance, and Elizabeth Ashley  
Phillips Severance.*

Mt. Pleasant, South Carolina  
May 23, 2013

# EXHIBIT A

CHAPTER 38

South Carolina Contribution Among Tortfeasors Act

Sec.  
15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

§ 15-38-10. Short title.

Notes of Decisions

1. In general

*G & P Trucking v. Parks Auto Sales Service & Salvage, Inc.* (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

*Andrade v. Johnson* (S.C.App. 2001) 345 S.C. 216, 546 S.E.2d 665, [main volume] rehearing denied, certiorari granted, reversed 356 S.C. 238, 588 S.E.2d 588.

Because the Contribution Among Tortfeasors Act is in derogation of the common law, it must

be strictly construed. *Cowden Enterprises, Inc. v. East Coast Millwork Distributors* (S.C.App. 2005) 363 S.C. 540, 611 S.E.2d 259, rehearing denied, certiorari denied. Contribution ©-5(2)

2. Joint tortfeasors

*G & P Trucking v. Parks Auto Sales Service & Salvage, Inc.* (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

§ 15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

(A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

(B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

(1) specify the amount of damages;

(2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning "comparative negligence"; and

(3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict

under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff's recoverable damages (as determined under item (2) above).

(a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

(D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.

**HISTORY:** 2005 Act No. 27, § 6, eff. July 1, 2005; 2005 Act No. 32, § 16, eff. July 1, 2005.

**Editor's Note**

2005 Act No. 27, § 11, provides as follows:

"If any provision of Section 6 [adding this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 6, and to this end, the provisions of Section 6 are not severable."

2005 Act No. 27, § 16(4), provides as follows:

"Section 6 [adding this section] takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements."

2005 Act No. 32, § 17, provides as follows:

"If any provision of Section 16 [amending this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 16, and to this end, the provisions of Section 16 are not severable."

2005 Act No. 32, § 21(A), provides as follows:

# EXHIBIT B

1 liquidated and sold at fire-sale prices?

2 A. Yes.

3 MR. MAYBANK: Thanks, Mr. Donato.

4 THE COURT: Any redirect?

5 MR. BUNDY: Just a little, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BUNDY:

8 Q. Mr. Donato, will the opportunity that was lost  
9 by my clients in 2008 be returned to them when these units  
10 are fixed, if they ever are?

11 A. No, sir.

12 Q. So that opportunity, the ability to not loose  
13 270,000, 330,000, whatever that number is, that train has  
14 pulled out of the station; correct?

15 A. Yes, sir.

16 When you and I were feeling the effects of the  
17 current real estate recession, we had the opportunity to  
18 get out.

19 Q. Now, this litigation was filed in 2009. You're  
20 aware of that; right?

21 A. Yes, sir. I am, sir.

22 Q. And do you have any experience with lawyers  
23 doing closings on behalf of buyers and sellers?

24 A. I do, sir.

25 Q. Do you think a decent lawyer would go look in

MIA PERRON, CVR-CM-M

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# EXHIBIT C

1 Q. And the only way to get the waterproofing  
2 underneath the support magically is to pour the  
3 waterproofing before you put the support up?

4 A. Got to do it.

5 Q. Does that give you evidence of just a basic  
6 misunderstanding of construction?

7 A. Yes, sir.

8 Q. Is it more evidence of lack of supervision?

9 A. It could be both.

10 Q. Any excuse for it?

11 A. There's none.

12 Q. I mean, have you ever seen it before in your  
13 experience?

14 A. I've not seen this before, no.

15 The next one, this is number 26. This  
16 photograph was taken in 2008. And what you're looking at  
17 here is up at the top, this is the top plate, this is the  
18 second-third floor line --

19 Q. I hate to interrupt you, but let me -- I need to  
20 close a few things up here.

21 As it relates to the brick --

22 A. Okay.

23 Q. -- do you have an opinion to a reasonable degree  
24 of engineering certainty whether or not all the bricks on  
25 all these buildings need to come off?

The Oaks at Rivers Edge v. Daniel Island Riverside Development  
Bench Trial - Volume 3 of 4  
April 10, 2013

1 A. Yes, sir.

2 Q. And that is what?

3 A. They need to be replaced.

4 Q. Okay. And they need to be replaced because they  
5 violate the building code in numerous particulars and are  
6 unsafe?

7 A. Yes, sir.

8 Q. So let me ask you this. Assuming that there was  
9 nothing else wrong with this building but the brick --  
10 windows were put in right, everything was done, the stucco  
11 was right, perfect job except the brick that's out there  
12 was put in exactly like it is -- do you have an opinion to  
13 a reasonable degree of engineering certainty whether or  
14 not the brick would still have to come off?

15 A. Yes, sir. All the problems I just described to  
16 you don't depend on anything else, so, yes, it would still  
17 have to come off.

18 Q. Okay. Go ahead.

19 A. The wall insulation was actually -- is actually  
20 missing. This is the exterior. This is building five --  
21 building five taken in November of 2008. Up here is the  
22 -- this is the fourth floor, third, fourth floor, and this  
23 is the lower floor. Anyway, this is the floor truss and  
24 you can see there's insulation here, which is like six-  
25 inch batt insulation.

MIA FERRON, CVR-CM-M

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1 windows were great windows, that they were properly  
2 caulked, and everything regarding the windows, the  
3 balustrades, and everything else on this building was  
4 absolutely perfect. Do you have an opinion to a  
5 reasonable degree of engineering certainty whether or not  
6 this stucco would still have to come off?

7 A. Yes, sir.

8 Q. Why is that?

9 A. You've got all this proliferation of  
10 installation defects, code violations. The lack of  
11 drainage is not -- drainage is not provided. There would  
12 be damage otherwise. And the rest of these, the  
13 installation of life goes to long-term performance in  
14 things like wind, windstorms. So in order to get what  
15 they were supposed to have, all the stucco has got to go.

16 Q. As a result, do you have an opinion to a  
17 reasonable degree of engineering certainty whether or not  
18 this defective stucco installation caused damage to other  
19 products and materials and/or resulting damage to the  
20 building?

21 A. There was damage to sheathing, to studs. There  
22 was damage to insulation. And there were a couple more  
23 codes, but there were a couple more violations associated  
24 with the stucco, Mr. Bundy.

25 Q. Do you have an opinion to a reasonable degree of

1 certainty whether or not at least part of the reason for  
2 this defective installation was failure of the general  
3 contractor or the construction manager to properly  
4 supervise the installers of this material?

5 A. That would be my opinion, yes.

6 Q. Because you found these problems to be  
7 widespread?

8 A. Yes, sir.

9 You know, while we started investigating stucco  
10 in May of 2008, the stucco has been subject to  
11 investigation by me, by Mark, and others, off an on for  
12 five years now. I see the same defects every time walls  
13 get opened.

14 Q. Do you have an opinion to a reasonable degree of  
15 certainty whether or not a properly qualified general  
16 contractor, building six individual buildings one right  
17 after the other, should have seen these things at some  
18 point in time?

19 A. They should have seen them, yes.

20 Q. Did you see any evidence at any time in any of  
21 your investigations that the subcontractors, the general  
22 contractor, or the construction manager ever got any  
23 better at building these buildings?

24 A. No, sir.

25 Q. So instead of having experience of building six

# EXHIBIT D

1 development?

2 A. I have no idea. I mean, you know, it's normal  
3 practice to put ties in. I don't know. I didn't survey  
4 the brick, so I don't know.

5 Q. If they used them in one building, would you  
6 assume that they used them in all the buildings?

7 MR. BUNDY: I object. Ask the witness to  
8 speculate. He said he didn't know.

9 MR. MAYBANK: I was just curious. I heard  
10 Mr. Bundy ask --

11 THE COURT: I'll sustain -- I mean, excuse me.  
12 I'll overrule the objection. If he knows, he knows;  
13 if he doesn't, he doesn't.

14 A. If the same mason did the work and they put the  
15 ties on one building, you would anticipate they would put  
16 the ties on the other building.

17 MR. MAYBANK: Thank you.

18 CROSS-EXAMINATION

19 BY MR. BUNDY:

20 Q. Mr. Parker, is it correct that you did not  
21 evaluate the brick or the stucco for code or workmanship  
22 compliance?

23 A. Yes.

24 Q. That you only concentrated on water intrusion?

25 A. Yes.

1 Q. So you do not have an opinion to a reasonable  
2 degree of certainty regarding the code compliance or  
3 workmanship on the stucco or the brick?

4 A. Correct.

5 Q. Now, this photograph, this one dated 2009 -- see  
6 that one?

7 A. Yes.

8 Q. You're looking at it.

9 What's the exhibit? Do you have an exhibit  
10 number on that, the 2009 photograph?

11 Q. [Whereupon, the witness reviews documents]

12 THE COURT: Talking about the June the 2nd?

13 MR. BUNDY: Yes, sir, June the 2nd.

14 THE COURT: What number? She's got it up here.

15 MR. BUNDY: I'm sorry.

16 THE COURT: What number is it, Mia?

17 MR. BUNDY: It is 237.

18 Q. [Mr. Bundy] Now, is that the original  
19 construction?

20 A. No.

21 Q. So that's a remediation, right?

22 A. Yes.

23 Q. So that's not proof that the brick ties were on  
24 this building, is it, originally?

25 A. No.

# EXHIBIT E

1 ceiling and hat-channel system to be able to properly  
2 acoustically support this -- a proper ceiling.

3 Q. Right. And then you've got to go to work on the  
4 floor upstairs and put the Gyp-Crete in?

5 A. That's right.

6 Q. All right. What's next?

7 A. Then in 2010 --

8 Q. Let me ask you this. Do you have an opinion to  
9 a reasonable degree of engineering certainty whether or  
10 not the original design was adequate for soundproofing?

11 A. I don't believe it was, no.

12 Q. Do you have an opinion to a reasonable degree of  
13 engineering certainty whether the remediation was adequate  
14 for adequate soundproofing?

15 A. It was not.

16 Q. Is it your opinion to a reasonable degree of  
17 engineering certainty that at a minimum, at a minimum,  
18 this condominium should have had a Gyp-Crete floor and the  
19 appropriate acoustical hanging ceiling?

20 A. Yes, sir.

21 Q. And in your opinion, to a reasonable degree of  
22 engineering certainty, can that be achieved any way now  
23 other than what you have proposed in your fix?

24 A. No, sir.

25 Q. Okay. Go ahead.

# EXHIBIT F

1 finish line? In other words, when you play football you  
2 can run six yards and you're farther along than you were.  
3 But the goal is to get across the goal line and score some  
4 points; right?

5 A. Yes.

6 Q. Because if you don't do it within four plays,  
7 you lose the ball; right?

8 A. Yes.

9 Q. So with that analogy in mind, okay, where was  
10 the goal line when they hired you?

11 A. Well, the absolute goal was to meet the code.

12 Q. Okay. And that was it?

13 A. That was the primary goal.

14 Q. And if meeting that goal did not result in a  
15 sound situation that was liveable in this circumstance, or  
16 not very rarely a problem, to use your words, I believe,  
17 do you still think you achieved what needed to be  
18 achieved?

19 A. We achieved the kind of result that is typically  
20 achieved in these retrofit situations, not up to a new  
21 construction type of --

22 Q. Right.

23 A. -- goal.

24 Q. You were delivered a wrecked automobile and  
25 asked to fix it as best you could; right?

1 A. Yes.

2 Q. Now, they sold my client a Ferrari. Did you  
3 give them a Ferrari when you fixed that wrecked  
4 automobile?

5 A. Well, no, I would not call it a Ferrari, not  
6 a -- not the absolute best that could be done under new  
7 construction type of situation.

8 Q. You did the best you could do; right? You're  
9 satisfied, Dr. Stewart, I did the best I could do, right,  
10 with what I was given?

11 A. With the situation you have in hand, with the  
12 limitations of working on the ceiling and not the floor,  
13 which is the common situation that's done in these  
14 retrofit situations, every one I have ever been involved  
15 in, that's been what the situation has been.

16 Q. Did you give them luxury? Have my clients got  
17 luxury in terms of soundproofing over there? They living  
18 in luxury?

19 A. Well, somebody would have to define the luxury  
20 standard.

21 Q. How long have you been in the courtroom? Just  
22 today?

23 A. Just today.

24 Q. So you didn't get to hear any of the plaintiffs'  
25 talk about what it's like living in the best you could do,

# EXHIBIT G

1 Q. All it does is prove that when you went back and  
2 did it, you put brick ties in? Somebody did?

3 A. Yes.

4 Q. And the brick ties that are used there are  
5 different from the ones that we saw in those couple of  
6 photographs before, right?

7 A. Yes.

8 Q. You testified that you knew in 2008 that all the  
9 windows and doors in this project needed to be replaced --

10 A. I believe I --

11 Q. -- is that correct?

12 A. -- testified to. Correct.

13 Q. And you told your client that, did you not?

14 A. Correct.

15 Q. And the only reason that your client -- who  
16 built and sold this development to my clients -- didn't do  
17 that at that time, based upon your recommendation, is  
18 because they would not spend the money necessary to go out  
19 and buy new windows and doors and replace them at the  
20 time, correct?

21 MR. MAYBANK: Objection. Speculation, Your  
22 Honor.

23 THE COURT: Overruled.

24 A. I don't know why -- I don't know why they didn't  
25 do it. I mean --

1 Q. [Mr. Bundy] Should they have done it --

2 A. I don't --

3 Q. -- if they wanted to fix it right?

4 A. You know, a lot of people don't do what I  
5 recommend. A lot of people, whether it's contractors,  
6 developers, owners --

7 THE COURT: The question was should they have  
8 done it. That's the question. If you would answer it  
9 and --

10 A. I recommended that they --

11 THE COURT: -- you can explain it.

12 A. Yes, I recommended that they do it.

13 THE COURT: Now you may explain it. I'm not  
14 trying to cut you short on your explanation.

15 A. Okay. I recommended it. Like I testified  
16 before, when you have profuse water intrusion on a wood-  
17 frame structure, it deteriorates very rapidly.

18 Q. [Mr. Bundy] They hired you as an engineer to  
19 give them recommendations about how to fix their buildings  
20 -- or my clients' buildings; correct?

21 A. Correct.

22 Q. How much are they paying you for those -- how  
23 much have they paid you in total in this case, or your  
24 firm?

25 A. I have no idea.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,  
Plaintiffs,

C/A. No.: 2009-CP-08-1068

vs.

PLAINTIFFS' SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION  
TO DEFENDANTS' POST TRIAL  
MOTIONS

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,  
Defendants.

\_\_\_\_\_  
A.C. CONSTRUCTION, INC.,  
Plaintiffs,

vs.

C/A. No.: 2009-CP-08-1413

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,  
Defendants.

\_\_\_\_\_  
GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,  
Plaintiffs,

C/A. No.: 2008-CP-08-2714

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,  
Defendants.

\_\_\_\_\_  
THE OAKS AT RIVERS EDGE PROPERTY  
OWNERS ASSOCIATION, INC., JOHN E.  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH  
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,  
BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN  
S. GRAHAM, KEVIN O. HUX, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson  
Revocable Trust, WILLIAM JUNG, CHARLES

C/A. No.: 2008-CP-08-3916

MARAZITI, PATRICIA MARAZITI, DONNA )  
DEE MORAN, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, ROBERT )  
FARINA, MARY ANN FARINA, CAROLYN M. )  
JENNINGS, THOMAS EDWARD KEANE, )  
EDWARD WALLACE BARR, III, RICHARD B. )  
PEKRUHN, PAULINE PEKRUHN, GREGORY )  
B. NATHAN, and RICHARD JENNINGS, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., and )  
COASTAL ROOFING, CO., INC., COASTAL )  
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE )  
PHILLIPS MASONRY, GERALD RUMPLICK, )  
EDWARD J. D'ORAZIO, and RICH )  
BEHRINGER, )

Defendants )

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THE MUHLER CO., INC., )

Third- Party Plaintiffs, )

vs. )

CASTLE SIDING, INC. and CAOBA DOORS, )

Third-Party Defendants. )

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On May 23, 2014, a hearing was held on the post-trial motions in this matter filed by Defendants Daniel Island Riverside Developer, LLC and Carriage Hill Associates of Charleston, Inc. ("Moving Defendants") At the hearing, the focus<sup>1</sup> of the motions was on two

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<sup>1</sup> The Plaintiffs submitted additional briefs and documents to the Court at the hearing on the motions. Those

issues argued by the parties. The Plaintiffs submit this supplemental brief on those two issues.

### Argument

**I. The Moving Defendants are not entitled to a set-off from any of the pre-trial settlements.**

The Moving Defendants argue they are entitled to a set-off for amounts paid in pre-trial settlements. There were two settlements prior to the trial of this action and prior to the judgment against the Moving Defendants. First, the Plaintiffs settled and granted a release to various defendants (the "window defendants"). The terms and amounts of the settlement were confidential but were presented to the Court at oral argument. **Importantly, the window defendant settlement resulted in the Plaintiffs removing from their claim, ultimately presented at trial, a scope of work which had a cost in excess of the settlement amount from the window defendants.** As a result, the Moving Defendants are necessarily not entitled to a set-off in the amount paid by the window defendants because they have already received the benefit of the removal of those claims from the amount claimed at trial. Indeed, the removal of the items from the scope actually gave the Moving Defendants **more** value than a reduction of the amount paid by the window defendants. Moreover, the Moving Defendants received full releases from the window defendants in that settlement. Therefore, the Moving Defendants also received the benefit of a release from cross-claims for indemnification. The Moving Defendants are not entitled to a set-off as they have already received the "reduction" contemplated by Section 15-38-50. In fact, they have received even more of a benefit.

With regard to the second settlement, the Moving Defendants **were parties to that settlement.** Only a non-settling party may be entitled to a set-off. See Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct.App. 2012)(a "nonsettling" defendant may be entitled to a

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briefs and the oral argument of Plaintiffs' counsel address other issues.

setoff); *accord Smalls v. South Carolina Dept. of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (Ct.App. 2000) (“nonsettling” tortfeasor may be entitled to setoff); *Vaughn v. City of Anderson*, 300 S.C. 55, 386 S.E.2d 297 (Ct.App. 1989); *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967); *Welch v. Epstein*, 342 S.C. 279, 312-13, 536 S.E.2d 408, 425-26 (Ct.App. 2000). Indeed, Section 15-38-50 of the South Carolina Code expressly states that a party claiming setoff must not be a party to the settlement and release as it states that a setoff is only applicable when a release is given “to one of two or more persons liable in tort for the same injury...” (Emphasis supplied).

Moreover, because the Moving Defendants were parties to the second settlement and release, the Plaintiffs released the Moving Defendants for entire causes of action including fraud, unfair trade practices, punitive damages, breach of contract accompanied by a fraudulent act, aiding and abetting, amalgamation and any damages, punitive damages, attorneys’ fees, and trebling that was associated with such causes of action. As a result of the partial release of the Moving Defendants, the Plaintiffs did not present those specific causes of action against the Moving Defendants at the trial of this case. The language of the release is clear<sup>2</sup> that the Moving Defendants received the benefit of the Plaintiffs’ release of certain causes of action against them. See *DAR Metal Works, Inc. v. SIR Machinery Repair, Inc.*,

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<sup>2</sup> Releases and settlement documents are treated as contracts and, as such, they are governed by general contract law. Cf. *Bowers v. S.C. Dep’t of Transp.*, 360 S.C. 149, 600 S.E.2d 543 (Ct.App.2004) (stating a release is a contract, to which the general principles of contract law apply). “The law in this state regarding the construction and interpretation of contracts is well settled.” *ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct.App.2011). “In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties.” *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). “If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract’s language determines the instrument’s force and effect.” *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004); see also *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm’n*, 296 S.C. 373, 377-78, 373 S.E.2d 584, 586 (1988) (observing where a contract is clear and unambiguous, “[e]xtrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible”); *Ecclesiastes Prod. Ministries v. Outparcel Assocs.*, 374 S.C. 483, 497-98, 649 S.E.2d 494, 501-02 (Ct.App.2007) (stating a court must first look to the language of the entire contract to determine the parties’ intent and if the language is perfectly plain, “it alone determines the document’s force and effect”). “Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions.” *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976).

288 S.C. 347, 342 S.E.2d 610 (Ct.App. 1986)(when the language of a settlement or release is clear the Court is without authority to alter its terms). The benefit of that release is further highlighted by the Court's statement at the hearing that absent the release for the fraud type claims, the Court may have found the Moving Defendants liable for fraudulent conduct. The Court's statement on the record shows at least two things imperatively relevant to the current post-trial motions: (1) the Plaintiffs, in consideration for the second settlement amount, released a valid fraud/unfair trade practices act/attorneys' fees/punitive damages claim(s) and the Moving Defendants received the benefit of such a release; and (2) even if this Court were to go beyond the plain language of the release and apply equitable principles in addressing the motion for setoff, the fraudulent conduct of the Moving Defendants bars any claimed equitable relief as they have unclean hands and seek equity without doing equity. *See* Roger Young and Stephen Spitz, SUEM—SPITZ'S ULTIMATE EQUITABLE MAXIM: In Equity Good Guys Should Win and Bad Guys Should Lose, 55 S.C. L. Rev. 175 (SC Law Review Fall 2003).

In sum, the Moving Defendants have already received the bargained benefit from the first and second settlements. The Plaintiffs' did not claim the damages sought in the first settlement in the trial of the case against the Moving Defendants. The Plaintiffs released Moving Defendants for certain causes of action and damages that they did not present at trial as a result of the second settlement. The Moving Defendants simply improperly seek a set-off for amounts they have already received the benefit of from the Plaintiffs. The Moving Defendants are not entitled to a set-off.

## **II. Moving Defendants are not entitled to an allocation.**

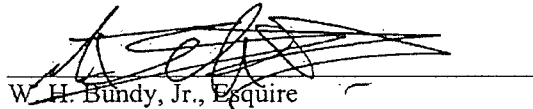
The Moving Defendants argue that they are "entitled to a special verdict allocating the damages suffered by the Plaintiffs" between other parties pursuant to S.C. Code Ann. Section 15-38-15. The Moving Defendants are not entitled to any allocation pursuant to the plain

terms of Section 15-38-15 (attached hereto as **Exhibit A**). Subsection (F) of 15-38-15 clearly states that "This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional." In this case, both of the Moving Defendants were determined by the Court to have been grossly negligent. See Paragraph 63 of the Order. For this reason alone, Section 15-38-15 does not apply. Moreover, there is no evidence that the Moving Defendants (which can be treated as one party pursuant to Section 15-38-15(C)(3)(a)) were less than 50% at fault as they were the developer and construction manager for the entire project. Therefore, no allocation is necessary under Section 15-38-15(A). Indeed, the Moving Defendants would have been responsible for putting in any evidence of degree or percentages of fault during the trial. See S.C. Code Ann. Section 15-38-15(C)(3)(B). There is no such evidence and no evidence can be submitted at the hearing on these post-trial motions. Id. The Moving Defendants are not entitled to any allocation.

#### **Conclusion**

For the reasons stated herein, the briefs previously submitted to the Court and for the reasons presented at oral argument, the post-trial motions should be denied.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



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H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A.  
Nelson, Robert J. Graham, Maureen S. Graham,  
Nancy K. Johnson as trustee for the Nancy K. Johnson  
Revocable Trust, William Jung, Charles Maraziti,  
Patricia Maraziti, George S. Pollard, Eleanor J.  
Pollard, Robert Reece, Gerard M. Ruvo and Sue S.  
Ruvo as trustees for the Ruvo 2006 Living Trust,*

*Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance*

Mt. Pleasant, South Carolina  
June 3, 2014

**CERTIFICATE OF SERVICE**

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANTS' POST TRIAL MOTIONS were served on all parties via Hand Delivery and Electronic Mail this 3rd day of June 2014, as follows:

**Via Hand Delivery and Electronic Mail:**

The Honorable J. C. Nicholson, Jr.  
Active/Retired Circuit Court Judge  
100 Broad Street, Ste. 106  
Charleston, SC 29401  
[JNicholsonLC@sccourts.org](mailto:JNicholsonLC@sccourts.org)

**Via Electronic Mail:**

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Meredith Coker, Esquire  
Altman & Coker, LLC  
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Charleston, SC 29401  
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Developers, Carriage Hill Associates of  
Charleston, LLC, Carriage Hill Associates, Inc.  
and Rich Behringer  
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[mcoker@altmancoker.com](mailto:mcoker@altmancoker.com)

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Developers, Carriage Hill Associates of  
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Inc. and Rich Behringer  
[roy@maybanklaw.com](mailto:roy@maybanklaw.com)  
[amanda@maybanklaw.com](mailto:amanda@maybanklaw.com)

  
\_\_\_\_\_  
Sarah Foster Rock

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

---

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

---

GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

---

THE OAKS AT RIVERS EDGE PROPERTY  
OWNERS ASSOCIATION, INC., JOHN E.  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH  
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,  
BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN  
S. GRAHAM, KEVIN O. HUX, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson  
Revocable Trust, WILLIAM JUNG, CHARLES

C/A. No.: 2009-CP-08-1068

PLAINTIFFS' RESPONSE TO  
DEFENDANTS' SUPPLEMENTAL  
MEMORADUM IN SUPPORT OF  
DEFENDANTS' POST TRIAL  
MOTIONS

C/A. No.: 2009-CP-08-1413

C/A. No.: 2008-CP-08-2714

C/A. No.: 2008-CP-08-3916

MARAZITI, PATRICIA MARAZITI, DONNA  
DEE MORAN, GEORGE S. POLLARD,  
ELEANOR J. POLLARD, ROBERT REECE,  
GERARD M. RUVO AND SUE S. RUVO as  
trustees for the Ruvo 2006 Living Trust, ROBERT  
FARINA, MARY ANN FARINA, CAROLYN M.  
JENNINGS, THOMAS EDWARD KEANE,  
EDWARD WALLACE BARR, III, RICHARD B.  
PEKRUHN, PAULINE PEKRUHN, GREGORY  
B. NATHAN, and RICHARD JENNINGS,  
MATTHEW J. SEVERANCE, and ELIZABETH  
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC., WEATHER SHIELD  
MANUFACTURING, INC., THE MUHLER CO.,  
INC., A.C. CONSTRUCTION, INC., and  
COASTAL ROOFING, CO., INC., COASTAL  
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE  
PHILLIPS MASONRY, GERALD RUMPLICK,  
EDWARD J. D'ORAZIO, and RICH  
BEHRINGER,

Defendants

---

THE MUHLER CO., INC.,

Third- Party Plaintiffs,

vs.

CASTLE SIDING, INC. and CAOBA DOORS,

Third-Party Defendants.

---

On May 23, 2014, a hearing was held on the post-trial motions in this matter filed by Defendants Daniel Island Riverside Developer, LLC and Carriage Hill Associates of Charleston, Inc. ("Moving Defendants"). At the hearing and subsequent to the hearing, the Plaintiffs filed various memoranda in opposition to the motions, including a Memorandum in

Opposition and a Supplemental Memorandum in Opposition of the Moving Defendants' Post-Trial Motions filed on June 3, 2014—all of which are incorporated herein and attached hereto as Exhibits 1 and 2. On August 14, 2014, the Moving Defendants filed a Supplemental Memorandum of Support of their Post-Trial Motions. The Plaintiffs provide this brief response to the issues raised in the Moving Defendants Supplemental Memorandum.

### Argument

#### I. Moving Defendants are not entitled to an allocation.

The Moving Defendants argue that they are “entitled to a special verdict allocating the damages suffered by the Plaintiffs” between other parties pursuant to S.C. Code Ann. Section 15-38-15. The Moving Defendants are not entitled to any allocation pursuant to the plain terms of Section 15-38-15. Subsection (F) of 15-38-15 clearly states that “This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional.” In this case, both of the Moving Defendants were determined by the Court to have been grossly negligent. See Paragraph 63 of the Order. For this reason alone, Section 15-38-15 does not apply. Moreover, there is no evidence that the Moving Defendants (which can be treated as one party pursuant to Section 15-38-15(C)(3)(a)) were less than 50% at fault as they were the developer and construction manager for the entire project. Therefore, no allocation is necessary under Section 15-38-15(A). Indeed, the Moving Defendants would have been responsible for putting in any evidence of degree or percentages of fault during the trial. See S.C. Code Ann. Section 15-38-15(C)(3)(B). There is no such evidence and no evidence can be submitted with post-trial motions. *Id.* The Moving Defendants are not entitled to any allocation.

**II. The Moving Defendants are not entitled to a set-off from any of the pre-trial settlements.**

The Moving Defendants argue they are entitled to a set-off for amounts paid in pre-trial settlements. There were two settlements prior to the trial of this action and prior to the judgment against the Moving Defendants. First, the Plaintiffs settled and granted a release to various defendants (the "window defendants"). The terms and amounts of the settlement were confidential but were presented to the Court at oral argument. **Importantly, the window defendant settlement resulted in the Plaintiffs removing from their claim, ultimately presented at trial, a scope of work which had a cost in excess of the settlement amount from the window defendants.** As a result, the Moving Defendants are necessarily not entitled to a set-off in the amount paid by the window defendants because they have already received the benefit of the removal of those claims from the amount claimed at trial. Indeed, the removal of the items from the scope actually gave the Moving Defendants **more** value than a reduction of the amount paid by the window defendants. Moreover, the Moving Defendants received full releases from the window defendants in that settlement. Therefore, the Moving Defendants also received the benefit of a release from cross-claims for indemnification. The Moving Defendants are not entitled to a set-off as they have already received the "reduction" contemplated by Section 15-38-50. In fact, they have received even more of a benefit.

With regard to the second settlement, the Moving Defendants were parties to that settlement. Only a non-settling party may be entitled to a set-off. See Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct.App. 2012)(a "nonsettling" defendant may be entitled to a setoff); accord Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct.App. 2000)("nonsettling" tortfeasor may be entitled to setoff); Vaughn v. City of

Anderson, 300 S.C. 55, 386 S.E.2d 297 (Ct.App. 1989); Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759 (1967); Welch v. Epstein, 342 S.C. 279, 312-13, 536 S.E.2d 408, 425-26 (Ct.App. 2000). Indeed, Section 15-38-50 of the South Carolina Code expressly states that a party claiming setoff must not be a party to the settlement and release as it states that a setoff is only applicable when a release is given "to one of two or more persons liable in tort for the same injury..." (Emphasis supplied).

Moreover, because the Moving Defendants were parties to the second settlement and release, the Plaintiffs released the Moving Defendants for entire causes of action including fraud, unfair trade practices, punitive damages, breach of contract accompanied by a fraudulent act, aiding and abetting, amalgamation and any damages, punitive damages, attorneys' fees, and trebling that was associated with such causes of action. As a result of the partial release of the Moving Defendants, the Plaintiffs did not present those specific causes of action against the Moving Defendants at the trial of this case. The language of the release is clear that the Moving Defendants received the benefit of the Plaintiffs' release of certain causes of action against them. See DAR Metal Works, Inc. v. SIR Machinery Repair, Inc., 288 S.C. 347, 342 S.E.2d 610 (Ct.App. 1986) (when the language of a settlement or release is

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<sup>1</sup> Releases and settlement documents are treated as contracts and, as such, they are governed by general contract law. Cf. Bowers v. S.C. Dept of Transp., 360 S.C. 149, 600 S.E.2d 543 (Ct.App.2004) (stating a release is a contract, to which the general principles of contract law apply). "The law in this state regarding the construction and interpretation of contracts is well settled." ERIE Ins. Co. v. Winter Constr. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct.App.2011). "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." D.A. Davis Constr. Co. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004); see also C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n, 296 S.C. 373, 377-78, 373 S.E.2d 584, 586 (1988) (observing where a contract is clear and unambiguous, "[e]xtrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible"); Ecclesiastes Prod. Ministries v. Outparcel Assocs., 374 S.C. 483, 497-98, 649 S.E.2d 494, 501-02 (Ct.App.2007) (stating a court must first look to the language of the entire contract to determine the parties' intent and if the language is perfectly plain, "it alone determines the document's force and effect"). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." Blakeley v. Rabon, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976).

clear the Court is without authority to alter its terms). The benefit of that release is further highlighted by the Court's statement at the hearing that absent the release for the fraud type claims, the Court may have found the Moving Defendants liable for fraudulent conduct. The Court's statement on the record shows at least two things imperatively relevant to the current post-trial motions: (1) the Plaintiffs, in consideration for the second settlement amount, released a valid fraud/unfair trade practices act/attorneys' fees/punitive damages claim(s) and the Moving Defendants received the benefit of such a release; and (2) even if this Court were to go beyond the plain language of the release and apply equitable principles in addressing the motion for setoff, the fraudulent conduct of the Moving Defendants bars any claimed equitable relief as they have unclean hands and seek equity without doing equity. See Roger Young and Stephen Spitz, SUEM—SPITZ'S ULTIMATE EQUITABLE MAXIM: In-Equity Good Guys Should Win and Bad Guys Should Lose, 55 S.C. L. Rev. 175 (SC Law Review Fall 2003).

In sum, the Moving Defendants have already received the bargained benefit from the first and second settlements. The Plaintiffs' did not claim the damages sought in the first settlement in the trial of the case against the Moving Defendants. The Plaintiffs released Moving Defendants for certain causes of action and damages that they did not present at trial as a result of the second settlement. The Moving Defendants simply improperly seek a set-off for amounts they have already received the benefit of from the Plaintiffs. The Moving Defendants are not entitled to a set-off.

**III. The Plaintiffs are not required to elect remedies.**

The Moving Defendants argue that the award of damages for the cost of repair to the Plaintiff HOA and the award of damages to the individuals for loss of market access amounts

to a double recovery. This is simply not the case. The premise upon which the Moving Defendants base their argument as to double recovery is flawed. The Moving Defendants mistakenly assert that when the buildings are repaired the full value of the units will return. In a typical case, this may be true. However, in this case, the theory of damages put forth in evidence (that was not factually disputed by any other evidence) was that the individuals were denied market access during a time in which the Moving Defendants knew that the buildings needed to be repaired and refused to do so. Therefore, even if the buildings are fully repaired, the individual Plaintiffs will not be made whole. The Court found in its Order, in pertinent part, as follows:

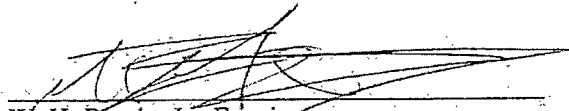
(66) I find that the individual Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by the Individual Unit Owners were not speculative, were reasonable, foreseeable, and were proximately caused by the negligence of the Developer and the Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owner and of Donato. With regard to the testimony of the Individual Unit Owner Plaintiffs, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by the Unit Owners through Donato are separate and distinct from the damages claimed by the HOA as the repair of the common elements will not make the Individual Plaintiffs whole. As described by Donato, even if the buildings are repaired, the damages claimed by the Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

This is simply not a double recovery. Indeed, this is also the exact undisputed testimony of Christopher Donato. See Testimony of Donato attached as **Exhibit 3**.

**Conclusion**

For the reasons stated herein, the briefs previously submitted to the Court and for the reasons presented at oral argument, the post-trial motions should be denied.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



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M. Brent McDonald, Esquire  
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Telephone: (843) 881-1623

*Attorney for Plaintiffs The Oaks at River's Edge Property Owners Association, Inc., John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance, and Elizabeth Ashley Phillips Severance*

Mt. Pleasant, South Carolina  
August 20, 2014

**CERTIFICATE OF SERVICE**

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the PLAINTIFFS' RESPONSE TO DEFENDANTS' SUPPLEMENTAL MEMORADUM IN SUPPORT OF DEFENDANTS' POST TRIAL MOTIONS were served on all parties via Hand Delivery and Electronic Mail this 20th day of August 2014, as follows:

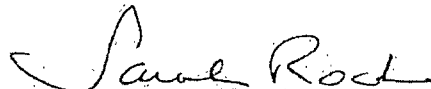
**Via Hand Delivery and Electronic Mail:**

The Honorable J. C. Nicholson, Jr.  
Active/Retired Circuit Court Judge  
100 Broad Street, Ste. 106  
Charleston, SC 29401  
[JNicholsonLC@sccourts.org](mailto:JNicholsonLC@sccourts.org)

**Via Electronic Mail:**

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Meredith Coker, Esquire  
Altman & Coker, LLC  
575 King Street, Suite A  
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Charleston, LLC, Carriage Hill Associates, Inc.  
and Rich Behringer  
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[mcoker@altmancoker.com](mailto:mcoker@altmancoker.com)

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Charleston, LLC, Carriage Hill Associates,  
Inc. and Rich Behringer  
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[amanda@maybanklaw.com](mailto:amanda@maybanklaw.com)

  
\_\_\_\_\_  
Sarah Foster Rock

# EXHIBIT 1

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

---

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

---

GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

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THE OAKS AT RIVERS EDGE PROPERTY  
OWNERS ASSOCIATION, INC., JOHN E.  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH  
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,  
BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN  
S. GRAHAM, KEVIN O. HUX, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson  
Revocable Trust, WILLIAM JUNG, CHARLES

C/A. No.: 2009-CP-08-1068

**MEMORANDUM IN OPPOSITION**  
**TO DEFENDANTS POST TRIAL**  
**MOTIONS**

C/A. No.: 2009-CP-08-1413

C/A. No.: 2008-CP-08-2714

C/A. No.: 2008-CP-08-3916

MARAZITI, PATRICIA MARAZITI, DONNA  
DEE MORAN, GEORGE S. POLLARD,  
ELEANOR J. POLLARD, ROBERT REECE,  
GERARD M. RUVO AND SUE S. RUVO as  
trustees for the Ruvo 2006 Living Trust, ROBERT  
FARINA, MARY ANN FARINA, CAROLYN M.  
JENNINGS, THOMAS EDWARD KEANE,  
EDWARD WALLACE BARR, III, RICHARD B.  
PEKRUHN, PAULINE PEKRUHN, GREGORY  
B. NATHAN, and RICHARD JENNINGS,  
MATTHEW J. SEVERANCE, and ELIZABETH  
ASHLEY PHILLIPS SEVERANCE,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC., WEATHER SHIELD  
MANUFACTURING, INC., THE MUHLER CO.,  
INC., A.C. CONSTRUCTION, INC., and  
COASTAL ROOFING, CO., INC., COASTAL  
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE  
PHILLIPS MASONRY, GERALD RUMPLICK,  
EDWARD J. D'ORAZIO, and RICH  
BEHRINGER,

Defendants

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THE MUHLER CO., INC.,

Third- Party Plaintiffs,

vs.

CASTLE SIDING, INC. and CAOBA DOORS,

Third-Party Defendants.

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Plaintiffs The Oaks at Rivers Edge Property Owners Association, Inc., John E. Atkinson, Joan D. Strandquist, Joseph E. Chiovarou, Jr., Peyton H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A. Nelson, Robert J. Graham, Maureen S. Graham, Nancy K. Johnson as trustee for the Nancy K. Johnson Revocable Trust, William Jung, Charles Maraziti, Patricia

Maraziti, George S. Pollard, Eleanor J. Pollard, Robert Reece, Gerard M. Ruvo and Sue S. Ruvo as trustees for the Ruvo 2006 Living Trust, Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekruhn, Matthew J. Severance and Elizabeth Ashley Phillips Severance ("Plaintiffs") hereby submit this response to Defendants Daniel Island Riverside Developers, LLC and Carriage Hill Associates of Charleston, LLC ("Moving Defendants") post trial motions.

#### Procedural History

A trial in this matter was held before the Honorable J.C. Nicholson, Jr. on April 8-11, 2013. On October 25, 2013, this Court entered an order (the "Order") in favor of the Plaintiffs. On November 14, 2013, the Moving Defendants filed four (4) post trial motions as follows: (1) a motion for Allocation of Damages; (2) a motion for a set-off; (3) a motion requiring election of remedies; and (4) a motion for new trial absolute, a new trial nisi remittitur, and/or in the alternative a motion to amend the judgment pursuant to Rules 50, 59, and 60, SCRPC. The arguments overlap in large part and are addressed herein in a single response.

#### Argument

##### **I. Moving Defendants are not entitled to an allocation.**

The Moving Defendants argue that they are "entitled to a special verdict allocating the damages suffered by the Plaintiffs" between other parties pursuant to S.C. Code Ann. Section 15-38-15. The Moving Defendants are not entitled to any allocation pursuant to the plain terms of Section 15-38-15 (attached hereto as Exhibit A). Subsection (F) of 15-38-15 clearly states that "This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional." In this case, both of the Moving Defendants were determined by the Court to have been grossly negligent. See Paragraph 63 of the Order. For this reason alone, Section 15-38-15 does not apply. Moreover, there is no

evidence that the Moving Defendants (which can be treated as one party pursuant to Section 15-38-15(C)(3)(a)) were less than 50% at fault as they were the developer and construction manager for the entire project. Therefore, no allocation is necessary under Section 15-38-15(A). Indeed, the Moving Defendants would have been responsible for putting in any evidence of degree or percentages of fault during the trial. *See* S.C. Code Ann. Section 15-38-15(C)(3)(B). There is no such evidence and no evidence can be submitted at the hearing on these post trial motions. *Id.* The Moving Defendants are not entitled to any allocation.

**II. The Moving Defendants are not entitled to a set-off.**

There were two settlements prior to the trial of this action and prior to the judgment against the Moving Defendants. First, the Plaintiffs settled and granted a release to various defendants (the "window defendants"). The terms and amounts of the settlement were confidential but will be presented to the Court at oral argument. Importantly, the window defendant settlement resulted in the Plaintiffs removing from their claim, ultimately presented at trial, a scope of work which had a cost in excess of the settlement amount from the window defendants. As a result, the Moving Defendants are necessarily not entitled to a set-off in the amount paid by the window defendants because they have already received the benefit of the removal of those claims from the amount claimed at trial. Indeed, the removal of the items from the scope actually gave the Moving Defendants more value. Moreover, the Moving Defendants received full releases from the window defendants in that settlement. Therefore, the Moving Defendants also received the benefit of a release from cross-claims for indemnification. The Moving Defendants are not entitled to a set-off as they have already received the "reduction" contemplated by Section 15-38-50. In fact, they have received even more of a benefit.

With regard to the second settlement, the Moving Defendants were parties to that settlement. As a result of that settlement, the Plaintiffs released the Moving Defendants for

certain causes of action including unfair trade practices, punitive damages, and amalgamation. The Moving Defendants have already received the benefit from that settlement because the Plaintiffs' released them for certain causes of action that they did not present at trial.

Essentially, the Moving Defendants improperly seek a set-off for amounts they have already received the benefit of from the Plaintiffs. The Moving Defendants are not entitled to a set-off.

**III. The damages awarded are not a double recovery and the Plaintiffs should not be required to further elect.**

The Moving Defendants argue that the award of damages for the cost of repair to the Plaintiff HOA and the award of damages to the individuals for loss of market access amounts to a double recovery. This is simply not the case. The premise upon which the Moving Defendants base their argument as to double recovery is flawed. The Moving Defendants mistakenly assert that when the buildings are repaired the full value of the units will return. In a typical case, this may be true. However, in this case, the theory of damages put forth in evidence (that was not factually disputed by any other evidence) was that the individuals were denied market access during a time in which the Moving Defendants knew that the buildings needed to be repaired and refused to do so. Therefore, even if the buildings are fully repaired, the individual Plaintiffs will not be made whole. The Court found in its Order, in pertinent part, as follows:

(66) I find that the individual Unit Owners presented damages as depicted on Exhibit A and Exhibit B to this Order. I find that the damages presented by the Individual Unit Owners were not speculative, were reasonable, foreseeable, and were proximately caused by the negligence of the Developer and the Construction Manager. I further find that the damages were based on the uncontradicted testimony of each of the Unit Owner and of Donato. With regard to the testimony of the Individual Unit Owner Plaintiffs, I find that their testimony as to their damages had a reasonable basis and that a property owner is capable of testifying as to his or her damages. Moreover, I find that the damages presented by the Unit Owners through Donato are separate and distinct from the damages claimed by the HOA as the repair of the common elements will not make the Individual Plaintiffs whole. As described by Donato, even if the buildings are repaired, the damages claimed by the Unit Owners will not be rectified as those damages regardless of whether the buildings are fully repaired have already been sustained. I do however find that any Unit Owner claiming lost rent must elect between

the recovery of lost rent damages and the damages attributed to the lost opportunity to sell their unit from 2008 to 2011 as those damages are mutually exclusive.

This is necessarily not a double recovery. This is also the exact undisputed testimony of Christopher Donato. See Testimony of Donato attached as Exhibit B.

**IV. The damages awarded were not speculative and are not grossly excessive.**

The Plaintiffs presented evidence of damages from three qualified experts, each of the individual Plaintiffs, and representatives from the Plaintiff HOA. The experts quantified each element of damages to a reasonable degree of certainty. The HOA damages were supported by the estimate of Southeastern Construction and David Willis, a licensed general contractor. The SECC estimate was based upon a scope of work created by Ted Padgett, a licensed professional engineer. These damages are not speculative. Moreover, there is no question that the damages awarded by the Court were consistent with the actual, and in large part undisputed, evidence of damages presented at trial. As such, these damages were not grossly excessive.

The Moving Defendants argue that the Court erroneously held that the stucco and brick had to be removed because of code violations. This is, however, the exact testimony given by Ted Padgett, P.E. See Testimony of Padgett attached as Exhibit C. The Moving Defendants argue that Mike Parker did evaluate the brick and stucco. This is simply not the evidence at trial. Parker testified that he did not evaluate the brick and stucco for code or workmanship. See Testimony of Parker attached as Exhibit D. Therefore, the testimony of Padgett that the brick and stucco had to be removed and replaced, regardless of the other issues, was not contradicted and the Court did not error in so finding and in awarding the damages associated with the removal of the brick and stucco. Moreover, even if this was disputed, the Court sitting as the finder of fact was free to find the facts as it saw fit.

The award for sound remediation/acoustic repairs was fully in line with the evidence presented at trial. As stated above, the damage numbers were supported by the testimony and

opinions of a licensed general contractor and a licensed professional engineer familiar with condominium construction in South Carolina. The Moving Defendants argue that Ted Padgett was not qualified as an "expert in acoustical noise," and his testimony on the issue of sound remediation was improper. Mr. Padgett is a licensed professional engineer. His testimony with regard to sound remediation and acoustical repairs was given without objection. See Testimony of Padgett attached as Exhibit E. Mr. Padgett has been involved in the construction of condominiums in South Carolina, and Charleston specifically, for 30 years. He is more than qualified to give an opinion on industry standards with regard to the construction of sound proofing and the appropriate methods and industry standards for such construction in condominiums. The Moving Defendants argue that the "repairs" undertaken by in 2007 and 2008 brought the buildings "up to code," and, therefore, no damages could be awarded. This ignores the real issue. The issue was compliance with industry standards for this type of luxury condominium—not mere code compliance. It is axiomatic that the violation of an industry standard can give rise to a tort claim: Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989). The Court found as follows:

(28) Theodore Padgett, a licensed professional engineer in South Carolina with over 30 years of experience in multifamily and condominium design and construction, was qualified without objection as an expert on industry standards for multifamily construction. He testified that the original design and construction relative to sound and the repairs that were made during the sound repairs did not meet industry standards because of the significant sound transfer between units, the absence of gypcrete, and the sheetrock attached directly to the wood floor trusses. Padgett testified that representatives of Developer and Construction Manager informed him after the construction of the Project that they simply did not know that gypcrete and suspended ceilings was the industry standard in construction of this type. The testimony Padgett was credible and based upon significant experience in the Charleston area as well as his experience with the Project. Padgett was the only witness to testify as to industry standards for condominium construction in South Carolina and the only witness to testify as to the requirements for gypcrete on wood framed multi-family construction. Stewart testified he was not qualified to give an opinion as to industry standards in construction of multi-family condominiums in South Carolina, though he did acknowledge that gypcrete was included in his recommendations to any client seeking to use wood floor joists in multi family construction.

Indeed, the expert for the Moving Defendants unequivocally testified that the remediation was the best they could do with a bad situation and that it was not what you would expect in new construction. See Testimony of Stewart attached as Exhibit F. This is exactly what the Court ordered.

**V. The evidence was overwhelming that the Moving Defendants were grossly negligent.**

The evidence is clear that the Moving Defendants knowingly developed and constructed this Project using an unlicensed architect. This in and of itself is enough for a finding of gross negligence. Second, the sheer number of code violations is sufficient evidence to give rise to gross negligence.<sup>1</sup> The evidence is clear that the Moving Defendants were told by their expert, Mike Parker, that they needed to perform significant repairs at the project, and the Moving Defendants knowingly refused to follow the recommendation of their engineer and refused to perform the repairs. See Testimony of Parker attached as Exhibit G. This conduct is evidence of gross negligence and the Court properly found that the Moving Defendants were grossly negligent.


**Conclusion**

For the reasons stated herein and for the reasons presented at oral argument, the post trial motions should be denied.

[signature page follows]

<sup>1</sup> The violation of a building code is negligence per se. Kincaid v. Landing Development Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct.App. 1986). The negligence per se doctrine, well settled in South Carolina, arises when a statute or an ordinance creates a legal duty or standard of care to be observed in a particular situation. Norton v. Opening Break, 313 S.C. 508, 443 S.E.2d 406 (Ct.App. 1994), aff'd, 319 S.C. 469, 462 S.E.2d 861 (1995). "The causative violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness..." Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct.App. 2004) citing Wise v. Broadway, 315 S.C. 273; 433 S.E.2d 857 (1993); see also Bethea v. Pedro Land, Inc., 290 S.C. 341, 350 S.E.2d 392 (Ct.App. 1986) ("violation of a statute may warrant the inference of reckless, willful, and wanton conduct."). "Recklessness is a higher degree of negligence than gross negligence. Where negligence is so gross as to amount to recklessness, it assumes the nature of willfulness." 18 S.C. Juris. Negligence § 9 (2006) citing Jeffers v. Hardeman, 231 S.C. 578, 99 S.E.2d 402 (1957).

SMITH, BUNDY, BYBEE & BARNETT, P.C.



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Nancy K. Johnson as trustee for the Nancy K. Johnson  
Revocable Trust, William Jung, Charles Maraziti,  
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Pollard, Robert Reece, Gerard M. Ruvo and Sue S.  
Ruvo as trustees for the Ruvo 2006 Living Trust,  
Carolyn M. Jennings, Thomas Edward Keane, Edward  
Wallace Barr, III, Richard B. Pekruhn, Pauline  
Pekruhn, Matthew J. Severance, and Elizabeth Ashley  
Phillips Severance*

Mt. Pleasant, South Carolina  
May 23, 2013.

# EXHIBIT A

CHAPTER 38

South Carolina Contribution Among Tortfeasors Act

Sec.

15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

§ 15-38-10. Short title.

Notes of Decisions

1. In general

G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

Andrade v. Johnson (S.C.App. 2001) 345 S.C. 216, 546 S.E.2d 865, [main volume] rehearing denied, certiorari granted, reversed 356 S.C. 258, 588 S.E.2d 588.

Because the Contribution Among Tortfeasors Act is in derogation of the common law, it must

be strictly construed. Cowden Enterprises, Inc. v. East Coast Millwork Distributors (S.C.App. 2005) 365 S.C. 640, 611 S.E.2d 259, rehearing denied, certiorari denied. Contribution © 5(2)

2. Joint tortfeasors

G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

§ 15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

(A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property, or to recover damages for economic loss or for non-economic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

(B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

(1) specify the amount of damages;

(2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning "comparative negligence"; and

(3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict

62.

under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above; that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff's recoverable damages (as determined under item (2) above).

(a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

(D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be willful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.

HISTORY: 2005 Act No. 27, § 6, eff July 1, 2005; 2005 Act No. 32, § 16, eff July 1, 2005.

Editor's Note

2005 Act No. 27, § 11, provides as follows:

"If any provision of Section 6 [adding this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 6, and to this end, the provisions of Section 6 are not severable."

2005 Act No. 27, § 16(d), provides as follows:

"Section 6 [adding this section] takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements[.]"

2005 Act No. 32, § 17, provides as follows:

"If any provision of Section 15 [amending this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 16, and to this end, the provisions of Section 16 are not severable."

2005 Act No. 32, § 21(A), provides as follows:

# EXHIBIT B

1 liquidated and sold at fire-sale prices?

2 A. Yes.

3 MR. MAYBANK: Thanks, Mr. Donato.

4 THE COURT: Any redirect?

5 MR. BUNDY: Just a little, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BUNDY:

8 Q. Mr. Donato, will the opportunity that was lost  
9 by my clients in 2008 be returned to them when these units  
10 are fixed, if they ever are?

11 A. No, sir.

12 Q. So that opportunity, the ability to not lose  
13 270,000, 330,000, whatever that number is, that train has  
14 pulled out of the station; correct?

15 A. Yes, sir.

16 When you and I were feeling the effects of the  
17 current real estate recession, we had the opportunity to  
18 get out.

19 Q. Now, this litigation was filed in 2009. You're  
20 aware of that; right?

21 A. Yes, sir. I am, sir.

22 Q. And do you have any experience with lawyers  
23 doing closings on behalf of buyers and sellers?

24 A. I do, sir.

25 Q. Do you think a decent lawyer would go look in

MIA PERRON, CVR-CM-M

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# EXHIBIT C

1 Q. And the only way to get the waterproofing  
2 underneath the support magically is to pour the  
3 waterproofing before you put the support up?

4 A. Got to do it.

5 Q. Does that give you evidence of just a basic  
6 misunderstanding of construction?

7 A. Yes, sir.

8 Q. Is it more evidence of lack of supervision?

9 A. It could be both.

10 Q. Any excuse for it?

11 A. There's none.

12 Q. I mean, have you ever seen it before in your  
13 experience?

14 A. I've not seen this before, no.

15 The next one, this is number 26. This  
16 photograph was taken in 2008. And what you're looking at  
17 here is up at the top, this is the top plate, this is the  
18 second-third floor line --

19 Q. I hate to interrupt you, but let me -- I need to  
20 close a few things up here.

21 As it relates to the brick --

22 A. Okay.

23 Q. -- do you have an opinion to a reasonable degree  
24 of engineering certainty whether or not all the bricks on  
25 all these buildings need to come off?

The Oaks at Rivers Edge v. Daniel Island Riverside Development  
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April 10, 2013

1 A. Yes, sir.

2 Q. And that is what?

3 A. They need to be replaced.

4 Q. Okay. And they need to be replaced because they  
5 violate the building code in numerous particulars and are  
6 unsafe?

7 A. Yes, sir.

8 Q. So let me ask you this. Assuming that there was  
9 nothing else wrong with this building but the brick --  
10 windows were put in right, everything was done, the stucco  
11 was right, perfect job except the brick that's out there  
12 was put in exactly like it is -- do you have an opinion to  
13 a reasonable degree of engineering certainty whether or  
14 not the brick would still have to come off?

15 A. Yes, sir. All the problems I just described to  
16 you don't depend on anything else, so, yes, it would still  
17 have to come off.

18 Q. Okay. Go ahead.

19 A. The wall insulation was actually -- is actually  
20 missing. This is the exterior. This is building five --  
21 building five taken in November of 2008. Up here is the  
22 -- this is the fourth floor, third, fourth floor, and this  
23 is the lower floor. Anyway, this is the floor truss and  
24 you can see there's insulation here, which is like six-  
25 inch batt insulation.

MIA FERRON, CVR-CM-M

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1 windows were great windows, that they were properly  
2 caulked, and everything regarding the windows, the  
3 balustrades, and everything else on this building was  
4 absolutely perfect. Do you have an opinion to a  
5 reasonable degree of engineering certainty whether or not  
6 this stucco would still have to come off?

7 A. Yes, sir.

8 Q. Why is that?

9 A. You've got all this proliferation of  
10 installation defects, code violations. The lack of  
11 drainage is not -- drainage is not provided. There would  
12 be damage otherwise. And the rest of these, the  
13 installation of life goes to long-term performance in  
14 things like wind, windstorms. So in order to get what  
15 they were supposed to have, all the stucco has got to go.

16 Q. As a result, do you have an opinion to a  
17 reasonable degree of engineering certainty whether or not  
18 this defective stucco installation caused damage to other  
19 products and materials and/or resulting damage to the  
20 building?

21 A. There was damage to sheathing, to studs. There  
22 was damage to insulation. And there were a couple more  
23 codes, but there were a couple more violations associated  
24 with the stucco, Mr. Bundy.

25 Q. Do you have an opinion to a reasonable degree of

1 certainty whether or not at least part of the reason for  
2 this defective installation was failure of the general  
3 contractor or the construction manager to properly  
4 supervise the installers of this material?

5 A. That would be my opinion, yes.

6 Q. Because you found these problems to be  
7 widespread?

8 A. Yes, sir.

9 You know, while we started investigating stucco  
10 in May of 2008, the stucco has been subject to  
11 investigation by me, by Mark, and others, off and on for  
12 five years now. I see the same defects every time walls  
13 get opened.

14 Q. Do you have an opinion to a reasonable degree of  
15 certainty whether or not a properly qualified general  
16 contractor, building six individual buildings one right  
17 after the other, should have seen these things at some  
18 point in time?

19 A. They should have seen them, yes.

20 Q. Did you see any evidence at any time in any of  
21 your investigations that the subcontractors, the general  
22 contractor, or the construction manager ever got any  
23 better at building these buildings?

24 A. No, sir.

25 Q. So instead of having experience of building six

# EXHIBIT D

1 development?

2 A. I have no idea. I mean, you know, it's normal  
3 practice to put ties in. I don't know. I didn't survey  
4 the brick, so I don't know.

5 Q. If they used them in one building, would you  
6 assume that they used them in all the buildings?

7 MR. BUNDY: I object. Ask the witness to  
8 speculate. He said he didn't know.

9 MR. MAYBANK: I was just curious. I heard  
10 Mr. Bundy ask --

11 THE COURT: I'll sustain -- I mean, excuse me.  
12 I'll overrule the objection. If he knows, he knows;  
13 if he doesn't, he doesn't.

14 A. If the same mason did the work and they put the  
15 ties on one building, you would anticipate they would put  
16 the ties on the other building.

17 MR. MAYBANK: Thank you.

18 CROSS-EXAMINATION

19 BY MR. BUNDY:

20 Q. Mr. Parker, is it correct that you did not  
21 evaluate the brick or the stucco for code or workmanship  
22 compliance?

23 A. Yes.

24 Q. That you only concentrated on water intrusion?

25 A. Yes.

MIA PERRON, CVR-CM-M

-1014-

1 Q. So you do not have an opinion to a reasonable  
2 degree of certainty regarding the code compliance or  
3 workmanship on the stucco or the brick?

4 A. Correct.

5 Q. Now, this photograph, this one dated 2009 -- see  
6 that one?

7 A. Yes.

8 Q. You're looking at it.

9 What's the exhibit? Do you have an exhibit  
10 number on that, the 2009 photograph?

11 Q. [Whereupon, the witness reviews documents]

12 THE COURT: Talking about the June the 2nd?

13 MR. BUNDY: Yes, sir, June the 2nd.

14 THE COURT: What number? She's got it up here.

15 MR. BUNDY: I'm sorry.

16 THE COURT: What number is it, Mia?

17 MR. BUNDY: It is 237.

18 Q. [Mr. Bundy] Now, is that the original  
19 construction?

20 A. No.

21 Q. So that's a remediation, right?

22 A. Yes.

23 Q. So that's not proof that the brick ties were on  
24 this building, is it, originally?

25 A. No.

# EXHIBIT E

1 ceiling and hat-channel system to be able to properly  
2 acoustically support this -- a proper ceiling.

3 Q. Right. And then you've got to go to work on the  
4 floor upstairs and put the Gyp-Crete in?

5 A. That's right.

6 Q. All right. What's next?

7 A. Then in 2010 --

8 Q. Let me ask you this. Do you have an opinion to  
9 a reasonable degree of engineering certainty whether or  
10 not the original design was adequate for soundproofing?

11 A. I don't believe it was, no.

12 Q. Do you have an opinion to a reasonable degree of  
13 engineering certainty whether the remediation was adequate  
14 for adequate soundproofing?

15 A. It was not.

16 Q. Is it your opinion to a reasonable degree of  
17 engineering certainty that at a minimum, at a minimum,  
18 this condominium should have had a Gyp-Crete floor and the  
19 appropriate acoustical hanging ceiling?

20 A. Yes, sir.

21 Q. And in your opinion, to a reasonable degree of  
22 engineering certainty, can that be achieved any way now  
23 other than what you have proposed in your fix?

24 A. No, sir.

25 Q. Okay. Go ahead.

# EXHIBIT F

1 finish line? In other words, when you play football you  
2 can run six yards and you're farther along than you were.  
3 But the goal is to get across the goal line and score some  
4 points; right?

5 A. Yes.

6 Q. Because if you don't do it within four plays,  
7 you lose the ball; right?

8 A. Yes.

9 Q. So with that analogy in mind, okay, where was  
10 the goal line when they hired you?

11 A. Well, the absolute goal was to meet the code.

12 Q. Okay. And that was it?

13 A. That was the primary goal.

14 Q. And if meeting that goal did not result in a  
15 sound situation that was liveable in this circumstance, or  
16 not very rarely a problem, to use your words, I believe,  
17 do you still think you achieved what needed to be  
18 achieved?

19 A. We achieved the kind of result that is typically  
20 achieved in these retrofit situations, not up to a new  
21 construction type of --

22 Q. Right.

23 A. -- goal.

24 Q. You were delivered a wrecked automobile and  
25 asked to fix it as best you could; right?

The Oaks at Rivers Edge v. Daniel Island Riverside Development  
Bench Trial - Volume 3 of 4  
April 10, 2013

1 A. Yes.

2 Q. Now, they sold my client a Ferrari. Did you  
3 give them a Ferrari when you fixed that wrecked  
4 automobile?

5 A. Well, no, I would not call it a Ferrari, not  
6 a -- not the absolute best that could be done under new  
7 construction type of situation.

8 Q. You did the best you could do, right? You're  
9 satisfied, Dr. Stewart, I did the best I could do, right,  
10 with what I was given?

11 A. With the situation you have in hand, with the  
12 limitations of working on the ceiling and not the floor,  
13 which is the common situation that's done in these  
14 retrofit situations, every one I have ever been involved  
15 in, that's been what the situation has been.

16 Q. Did you give them luxury? Have my clients got  
17 luxury in terms of soundproofing over there? They living  
18 in luxury?

19 A. Well, somebody would have to define the luxury  
20 standard.

21 Q. How long have you been in the courtroom? Just  
22 today?

23 A. Just today.

24 Q. So you didn't get to hear any of the plaintiffs'  
25 talk about what it's like living in the best you could do,

MIA PERRON, CVR-CM-M

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# EXHIBIT G

1 Q. All it does is prove that when you went back and  
2 did it, you put brick ties in? Somebody did?

3 A. Yes.

4 Q. And the brick ties that are used there are  
5 different from the ones that we saw in those couple of  
6 photographs before, right?

7 A. Yes.

8 Q. You testified that you knew in 2008 that all the  
9 windows and doors in this project needed to be replaced --

10 A. I believe I --

11 Q. -- is that correct?

12 A. -- testified to. Correct.

13 Q. And you told your client that, did you not?

14 A. Correct.

15 Q. And the only reason that your client -- who  
16 built and sold this development to my clients -- didn't do  
17 that at that time, based upon your recommendation, is  
18 because they would not spend the money necessary to go out  
19 and buy new windows and doors and replace them at the  
20 time, correct?

21 MR. MAYBANK: Objection: Speculation, Your  
22 Honor.

23 THE COURT: Overruled.

24 A. I don't know why -- I don't know why they didn't  
25 do it. I mean --

1 Q. [Mr. Bundy] Should they have done it --

2 A. I don't --

3 Q. -- if they wanted to fix it right?

4 A. You know, a lot of people don't do what I  
5 recommend. A lot of people, whether it's contractors,  
6 developers, owners --

7 THE COURT: The question was should they have  
8 done it. That's the question. If you would answer it  
9 and --

10 A. I recommended that they --

11 THE COURT: -- you can explain it.

12 A. Yes, I recommended that they do it.

13 THE COURT: Now you may explain it. I'm not  
14 trying to cut you short on your explanation.

15 A. Okay. I recommended it. Like I testified  
16 before, when you have profuse water intrusion on a wood-  
17 frame structure, it deteriorates very rapidly.

18 Q. [Mr. Bundy] They hired you as an engineer to  
19 give them recommendations about how to fix their buildings  
20 -- or my clients' buildings; correct?

21 A. Correct.

22 Q. How much are they paying you for those -- how  
23 much have they paid you in total in this case, or your  
24 firm?

25 A. I have no idea.

# EXHIBIT 2

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF BERKELEY ) NINTH JUDICIAL CIRCUIT  
)

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC,

Plaintiffs,

vs.

WEATHER SHIELD MANUFACTURING, INC.,  
THE MUHLER CO., INC., and A.C.  
CONSTRUCTION, INC.,

Defendants.

A.C. CONSTRUCTION, INC.,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants.

GEOFFREY C. CIPKALA and SAMUEL C.  
AGEE, as tenants in common of the common  
elements of the Oaks at River's Edge Horizontal  
Property Regime and on behalf of themselves and  
all other tenants in common,

Plaintiffs,

vs.

DANIEL ISLAND RIVERSIDE DEVELOPERS,  
LLC, CARRIAGE HILL ASSOCIATES OF  
CHARLESTON, LLC, CARRIAGE HILL  
ASSOCIATES, INC.,

Defendants.

THE OAKS AT RIVERS EDGE PROPERTY  
OWNERS ASSOCIATION, INC., JOHN E.  
ATKINSON, JOAN D. STRANDQUIST, JOSEPH  
E. CHIOVAROU, JR., PEYTON H. COOK, JR.,  
BRENDA COOK, JOHN W. EDELEN, KAREN  
A. NELSON, ROBERT J. GRAHAM, MAUREEN  
S. GRAHAM, KEVIN O. HUX, NANCY K.  
JOHNSON as trustee for the Nancy K. Johnson  
Revocable Trust, WILLIAM JUNG, CHARLES

C/A. No.: 2009-CP-08-1068

PLAINTIFFS' SUPPLEMENTAL  
MEMORANDUM IN OPPOSITION  
TO DEFENDANTS' POST TRIAL  
MOTIONS

C/A. No.: 2009-CP-08-1413

C/A. No.: 2008-CP-08-2714

2014 JUN -5 PM 1:24  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

C/A. No.: 2008-CP-08-3916

MARAZITI, PATRICIA MARAZITI, DONNA )  
DEE MORAN, GEORGE S. POLLARD, )  
ELEANOR J. POLLARD, ROBERT REECE, )  
GERARD M. RUVO AND SUE S. RUVO as )  
trustees for the Ruvo 2006 Living Trust, ROBERT )  
FARINA, MARY ANN FARINA, CAROLYN M. )  
JENNINGS, THOMAS EDWARD KEANE, )  
EDWARD WALLACE BARR, III, RICHARD B. )  
PEKRUHN, PAULINE PEKRUHN, GREGORY )  
B. NATHAN, and RICHARD JENNINGS, )  
MATTHEW J. SEVERANCE, and ELIZABETH )  
ASHLEY PHILLIPS SEVERANCE, )

Plaintiffs, )

vs. )

DANIEL ISLAND RIVERSIDE DEVELOPERS, )  
LLC, CARRIAGE HILL ASSOCIATES OF )  
CHARLESTON, LLC, CARRIAGE HILL )  
ASSOCIATES, INC., WEATHER SHIELD )  
MANUFACTURING, INC., THE MUHLER CO., )  
INC., A.C. CONSTRUCTION, INC., and )  
COASTAL ROOFING, CO., INC., COASTAL )  
CAULKING, INC., MIKE PHILLIPS d/b/a MIKE )  
PHILLIPS MASONRY, GERALD RUMPLICK, )  
EDWARD J. D'ORAZIO, and RICH )  
BEHRINGER, )

Defendants )

---

THE MUHLER CO., INC., )

Third- Party Plaintiffs, )

vs. )

CASTLE SIDING, INC. and CAOBA DOORS, )

Third-Party Defendants. )

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On May 23, 2014, a hearing was held on the post-trial motions in this matter filed by Defendants Daniel Island Riverside Developer, LLC and Carriage Hill Associates of Charleston, Inc. ("Moving Defendants") At the hearing, the focus<sup>1</sup> of the motions was on two

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<sup>1</sup>The Plaintiffs submitted additional briefs and documents to the Court at the hearing on the motions. Those

issues argued by the parties. The Plaintiffs submit this supplemental brief on those two issues.

### Argument

#### **I. The Moving Defendants are not entitled to a set-off from any of the pre-trial settlements.**

The Moving Defendants argue they are entitled to a set-off for amounts paid in pre-trial settlements. There were two settlements prior to the trial of this action and prior to the judgment against the Moving Defendants. First, the Plaintiffs settled and granted a release to various defendants (the "window defendants"). The terms and amounts of the settlement were confidential but were presented to the Court at oral argument. **Importantly, the window defendant settlement resulted in the Plaintiffs removing from their claim, ultimately presented at trial, a scope of work which had a cost in excess of the settlement amount from the window defendants.** As a result, the Moving Defendants are necessarily not entitled to a set-off in the amount paid by the window defendants because they have already received the benefit of the removal of those claims from the amount claimed at trial. Indeed, the removal of the items from the scope actually gave the Moving Defendants more value than a reduction of the amount paid by the window defendants. Moreover, the Moving Defendants received full releases from the window defendants in that settlement. Therefore, the Moving Defendants also received the benefit of a release from cross-claims for indemnification. The Moving Defendants are not entitled to a set-off as they have already received the "reduction" contemplated by Section 15-38-50. In fact, they have received even more of a benefit.

With regard to the second settlement, the Moving Defendants were parties to that settlement. Only a non-settling party may be entitled to a set-off. See Smith v. Widener, 397 S.C. 468, 724 S.E.2d 188 (Ct.App. 2012)(a "nonsettling" defendant may be entitled to a

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briefs and the oral argument of Plaintiffs' counsel address other issues.

setoff); accord Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct.App. 2000) (“nonsettling” tortfeasor may be entitled to setoff); Vaughn v. City of Anderson, 300 S.C. 55, 386 S.E.2d 297 (Ct.App. 1989); Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759 (1967); Welch v. Epstein, 342 S.C. 279, 312-13, 536 S.E.2d 408, 425-26 (Ct.App. 2000). Indeed, Section 15-38-50 of the South Carolina Code expressly states that a party claiming setoff must not be a party to the settlement and release as it states that a setoff is only applicable when a release is given “to one of two or more persons liable in tort for the same injury...” (Emphasis supplied).

Moreover, because the Moving Defendants were parties to the second settlement and release, the Plaintiffs released the Moving Defendants for entire causes of action including fraud, unfair trade practices, punitive damages, breach of contract accompanied by a fraudulent act, aiding and abetting, amalgamation and any damages, punitive damages, attorneys’ fees, and trebling that was associated with such causes of action. As a result of the partial release of the Moving Defendants, the Plaintiffs did not present those specific causes of action against the Moving Defendants at the trial of this case. The language of the release is clear<sup>2</sup> that the Moving Defendants received the benefit of the Plaintiffs’ release of certain causes of action against them. See DAR Metal Works, Inc. v. SIR Machinery Repair, Inc.,

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<sup>2</sup> Releases and settlement documents are treated as contracts and, as such, they are governed by general contract law. Cf. Bowers v. S.C. Dep’t of Transp., 360 S.C. 149, 600 S.E.2d 543 (Ct.App.2004) (stating a release is a contract, to which the general principles of contract law apply). “The law in this state regarding the construction and interpretation of contracts is well settled.” ERIE Ins. Co. v. Winter Constr. Co., 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct.App.2011). “In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties.” D.A. Davis Constr. Co. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). “If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract’s language determines the instrument’s force and effect.” Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004); see also C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm’n, 296 S.C. 373, 377-78, 373 S.E.2d 584, 586 (1988) (observing where a contract is clear and unambiguous, “[e]xtrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible”); Ecclesiastes Prod. Ministries v. Outparcel Assocs., 374 S.C. 483, 497-98, 649 S.E.2d 494, 501-02 (Ct.App.2007) (stating a court must first look to the language of the entire contract to determine the parties’ intent and if the language is perfectly plain, “it alone determines the document’s force and effect”). “Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions.” Blakeley v. Rabon, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976).

288 S.C. 347, 342 S.E.2d 610 (Cl.App. 1986)(when the language of a settlement or release is clear the Court is without authority to alter its terms). The benefit of that release is further highlighted by the Court's statement at the hearing that absent the release for the fraud type claims, the Court may have found the Moving Defendants liable for fraudulent conduct. The Court's statement on the record shows at least two things imperatively relevant to the current post-trial motions: (1) the Plaintiffs, in consideration for the second settlement amount, released a valid fraud/unfair trade practices act/attorneys' fees/punitive damages claim(s) and the Moving Defendants received the benefit of such a release; and (2) even if this Court were to go beyond the plain language of the release and apply equitable principles in addressing the motion for setoff, the fraudulent conduct of the Moving Defendants bars any claimed equitable relief as they have unclean hands and seek equity without doing equity. *See* Roger Young and Stephen Spitz, SUEM—SPITZ'S ULTIMATE EQUITABLE MAXIM: In Equity Good Guys Should Win and Bad Guys Should Lose, 55 S.C. L. Rev. 175 (SC Law Review Fall 2003).

In sum, the Moving Defendants have already received the bargained benefit from the first and second settlements. The Plaintiffs did not claim the damages sought in the first settlement in the trial of the case against the Moving Defendants. The Plaintiffs released Moving Defendants for certain causes of action and damages that they did not present at trial as a result of the second settlement. The Moving Defendants simply improperly seek a set-off for amounts they have already received the benefit of from the Plaintiffs. The Moving Defendants are not entitled to a set-off.

## **II. Moving Defendants are not entitled to an allocation.**

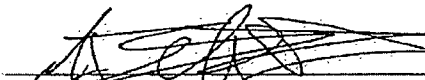
The Moving Defendants argue that they are "entitled to a special verdict allocating the damages suffered by the Plaintiffs" between other parties pursuant to S.C. Code Ann. Section 15-38-15. The Moving Defendants are not entitled to any allocation pursuant to the plain

terms of Section 15-38-15 (attached hereto as Exhibit A). Subsection (F) of 15-38-15 clearly states that "This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional." In this case, both of the Moving Defendants were determined by the Court to have been grossly negligent. See Paragraph 63 of the Order. For this reason alone, Section 15-38-15 does not apply. Moreover, there is no evidence that the Moving Defendants (which can be treated as one party pursuant to Section 15-38-15(C)(3)(a)) were less than 50% at fault as they were the developer and construction manager for the entire project. Therefore, no allocation is necessary under Section 15-38-15(A). Indeed, the Moving Defendants would have been responsible for putting in any evidence of degree or percentages of fault during the trial. See S.C. Code Ann. Section 15-38-15(C)(3)(B). There is no such evidence and no evidence can be submitted at the hearing on these post-trial motions. Id. The Moving Defendants are not entitled to any allocation.

Conclusion

For the reasons stated herein, the briefs previously submitted to the Court and for the reasons presented at oral argument, the post-trial motions should be denied.

SMITH, BUNDY, BYBEE & BARNETT, P.C.

  
\_\_\_\_\_  
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Joan D. Strandquist, Joseph E. Chiovaron, Jr., Peyton  
H. Cook, Jr., Brenda Cook, John W. Edelen, Karen A.  
Nelson, Robert J. Graham, Maureen S. Graham,  
Nancy K. Johnson as trustee for the Nancy K. Johnson  
Revocable Trust, William Jung, Charles Maraziti,  
Patricia Maraziti, George S. Pollard, Eleanor J.  
Pollard, Robert Reece, Gerard M. Ruvo and Sue S.  
Ruvo as trustees for the Ruvo 2006 Living Trust,*

*Carolyn M. Jennings, Thomas Edward Keane, Edward Wallace Barr, III, Richard B. Pekruhn, Pauline Pekrulin, Matthew J. Severance, and Elizabeth Ashley Phillips Severance*

Mt. Pleasant, South Carolina  
June 3, 2014

**CERTIFICATE OF SERVICE**

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANTS' POST TRIAL MOTIONS were served on all parties via Hand Delivery and Electronic Mail this 3rd day of June 2014, as follows:

**Via Hand Delivery and Electronic Mail:**

The Honorable J. C. Nicholson, Jr.  
Active/Retired Circuit Court Judge  
100 Broad Street, Ste. 106  
Charleston, SC 29401  
[JNicholsonLC@sccourts.org](mailto:JNicholsonLC@sccourts.org)

**Via Electronic Mail:**

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FILED  
2014 JUN -5 PM 1:24  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC  
FW

  
\_\_\_\_\_  
Sarah Foster Rock

# EXHIBIT A

CHAPTER 38

South Carolina Contribution Among Tortfeasors Act

Sec.

15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

§ 15-38-10. Short title.

Notes of Decisions

1. In general

G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

Andrade v. Johnson (S.C.App. 2001) 345 S.C. 216, 546 S.E.2d 665, [main volume] rehearing denied, certiorari granted, reversed 356 S.C. 258, 588 S.E.2d 588.

Because the Contribution Among Tortfeasors Act is in derogation of the common law, it must

be strictly construed. Cowden Enterprises, Inc. v. East Coast Millwork Distributors (S.C.App. 2005) 363 S.C. 640, 611 S.E.2d 259, rehearing denied, certiorari denied. Contribution  $\Rightarrow$  5(2)

2. Joint tortfeasors

G & P Trucking v. Parks Auto Sales Service & Salvage, Inc. (S.C.App. 2003) 357 S.C. 82, 591 S.E.2d 42, [main volume] rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 365 S.C. 23, 615 S.E.2d 454.

§ 15-38-15. Liability of defendant responsible for less than fifty per cent of total fault; apportionment of percentages; willful, wanton, or grossly negligent defendant and alcoholic beverage or drug exceptions.

(A) In an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than fifty percent of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault (comparative negligence), if any, of plaintiff. A defendant whose conduct is determined to be less than fifty percent of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact.

(B) Apportionment of percentages of fault among defendants is to be determined as specified in subsection (C).

(C) The jury, or the court if there is no jury, shall:

(1) specify the amount of damages;

(2) determine the percentage of fault, if any, of plaintiff and the amount of recoverable damages under applicable rules concerning "comparative negligence"; and

(3) upon a motion by at least one defendant, where there is a verdict under items (1) and (2) above for damages against two or more defendants for the same indivisible injury, death, or damage to property, specify in a separate verdict

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under the procedures described at subitem (b) below the percentage of liability that proximately caused the indivisible injury, death, damage to property, or economic loss from tortious conduct, as determined by item (1) above, that is attributable to each defendant whose actions are a proximate cause of the indivisible injury, death, or damage to property. In determining the percentage attributable to each defendant, any fault of the plaintiff, as determined by item (2) above, will be included so that the total of the percentages of fault attributed to the plaintiff and to the defendants must be one hundred percent. In calculating the percentage of fault attributable to each defendant, inclusion of any percentage of fault of the plaintiff (as determined in item (2) above) shall not reduce the amount of plaintiff's recoverable damages (as determined under item (2) above).

(a) For this purpose, the court may determine that two or more persons are to be treated as a single party. Such treatment must be used where two or more defendants acted in concert or where, by reason of agency, employment, or other legal relationship, a defendant is vicariously responsible for the conduct of another defendant.

(b) After the initial verdict awarding damages is entered and before the special verdict on percentages of liability is rendered, the parties shall be allowed oral argument, with the length of such argument subject to the discretion of the trial judge, on the determination of the percentage attributable to each defendant. However, no additional evidence shall be allowed.

(D) A defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

(E) Notwithstanding the application of this section, setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability as determined pursuant to subsection (C).

(F) This section does not apply to a defendant whose conduct is determined to be wilful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or the illegal or illicit use, sale, or possession of drugs.

HISTORY: 2005 Act No. 27, § 6, eff July 1, 2005; 2005 Act No. 32, § 16, eff July 1, 2005.

**Editor's Note**

2005 Act No. 27, § 11, provides as follows:

"If any provision of Section 6 [adding this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 6, and to this end, the provisions of Section 6 are not severable."

2005 Act No. 27, § 16(4), provides as follows:

"Section 6 [adding this section] takes effect July 1, 2005, and shall only apply to causes of action arising on or after that date except for causes of actions relating to construction torts which would take effect on July 1, 2005, and apply to improvements to real property that first obtain substantial completion on or after July 1, 2005. For purposes of this section, an improvement to real property obtains substantial completion when a municipality or county issues a certificate of occupancy in the case of new construction, or completes a final inspection in the case of improvements to existing improvements.[]"

2005 Act No. 32, § 17, provides as follows:

"If any provision of Section 16 [amending this section] or its application to any person is held invalid, unenforceable, or unconstitutional, this validity, unenforceability, or unconstitutionality shall negate the other provisions or applications of Section 16, and to this end, the provisions of Section 16 are not severable."

2005 Act No. 32, § 21(A), provides as follows:

# EXHIBIT 3

1 liquidated and sold at fire-sale prices?

2 A. Yes.

3 MR. MAYBANK: Thanks, Mr. Donato.

4 THE COURT: Any redirect?

5 MR. BUNDY: Just a little, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BUNDY:

8 Q. Mr. Donato, will the opportunity that was lost  
9 by my clients in 2008 be returned to them when these units  
10 are fixed, if they ever are?

11 A. No, sir.

12 Q. So that opportunity, the ability to not loose  
13 270,000, 330,000, whatever that number is, that train has  
14 pulled out of the station, correct?

15 A. Yes, sir.

16 When you and I were feeling the effects of the  
17 current real estate recession, we had the opportunity to  
18 get out.

19 Q. Now, this litigation was filed in 2009. You're  
20 aware of that; right?

21 A. Yes, sir. I am, sir.

22 Q. And do you have any experience with lawyers  
23 doing closings on behalf of buyers and sellers?

24 A. I do, sir.

25 Q. Do you think a decent lawyer would go look in

MIA PERRON, CVR-CM-M

-715-

1 STATE OF SOUTH CAROLINA )  
 ) Court of Common Pleas  
 2 COUNTY OF CHARLESTON ) Case No. 2009-CP-08-1068  
 )  
 3 \_\_\_\_\_ )  
 )  
 4 THE OAKS AT RIVERS EDGE PROPERTY )  
 OWNERS ASSOCIATION, et al, )  
 )  
 5 Plaintiff, )  
 )  
 6 vs. ) Transcript of Record  
 )  
 7 DANIEL ISLAND RIVERSIDE )  
 DEVELOPERS, LLC, et al, )  
 8 )  
 Defendant. )  
 9 \_\_\_\_\_ ) DATE: May 23, 2014

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B E F O R E:

The Honorable J.C. Nicholson

A P P E A R A N C E:

Walter Henry Bundy, Jr.  
For the Plaintiff, The Oaks at River's Edge Horizontal  
Property Regime

Roy P. Maybank, Charles P. Altman, and Michael Brent  
McDonald.  
For the Defendant, Daniel Island Riverside Developments  
and Carriage Hill Associates of Charleston

Karen V. Andersen, RMR, CRR  
Circuit Court Reporter

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## EXHIBITS

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1 THE COURT: Mr. Maybank, do you have any choice  
2 which one you want to hear first?

3 MR. MAYBANK: Your Honor, I really don't. I think  
4 it's going to amalgamate to one and the same.

5 We represent Daniel Island Riverside Developments  
6 and Carriage Hill Associates of Charleston.

7 Your Honor, what I handed you is actually in another  
8 case; however, it is a supplemental discovery response. The  
9 pertinent information is on the very last page.

10 THE COURT: Riverside Developers, Carriage Hill  
11 Associates?

12 MR. MAYBANK: Yes, sir. Why don't you take that  
13 last page? It just lays out the damages.

14 THE COURT: Mr. Bundy, I guess before we get started  
15 on the setoff issue, can I get a copy of what the settlement  
16 against the other parties amounted to? I understand it's  
17 confidential; I still need to know.

18 MR. MAYBANK: That page I gave you, Your Honor, when  
19 I said look at the last page, that sets out all the damages.

20 THE COURT: Okay. That sets it all out as to the  
21 other parties.

22 MR. BUNDY: If it please the Court, I think I have  
23 something that will make it easier still.

24 THE COURT: Have you seen this, Mr. Maybank?

25 MR. MAYBANK: No, Your Honor.

1 MR. BUNDY: There's two different settlements.

2 THE COURT: Okay. Whenever you are ready.

3 MR. BUNDY: Is that accurate?

4 MR. MAYBANK: I'm going to take your word for it.

5 MR. BUNDY: Before you start, could we mark these as  
6 exhibits? It might be easier as we walk through this. It  
7 would be easier to understand.

8 THE COURT: Which one do you want to mark first?

9 MR. BUNDY: Let's mark the --

10 MR. MAYBANK: We can mark them all A, B, and C,  
11 because I would like to then mark the one I handed up to you  
12 earlier.

13 THE COURT: I'm going to mark the one with the total  
14 2.8 as Number 1 and 3.7 as Number 2.

15 (Plaintiff's Exh. 1, Settlement Funds, was marked  
16 for identification.)

17 (Plaintiff's Exh. 2, Settlement Funds, was marked  
18 for identification.)

19 (Defendant's Exh. 1, List of Settlement Amounts,  
20 was marked for identification.)

21 MR. BUNDY: Your Honor, one more housekeeping  
22 matter. With regards to these memorandum of settlement which  
23 were confidential, the documents that underlie these exhibits  
24 with the numbers, I think those documents need to be in the  
25 record so that if it goes up, then we will have the entire

1 document in the record and marked confidential.

2 THE COURT: I don't care. It doesn't matter. I  
3 could seal these in envelopes, whatever you want to do.

4 MR. BUNDY: I've got copies here of the full  
5 documents themselves. And that outlines what parties  
6 settled, what parties didn't settle. And I believe the  
7 language in these documents could become important at some  
8 point.

9 MR. MAYBANK: I don't have a problem as long as they  
10 are under seal. I don't want to violate any confidential  
11 understanding with any other parties.

12 THE COURT: I don't either. That's why I'm saying,  
13 you want to put those in also? Because what I'm going to do  
14 is seal it all. And then for appeal, if they need to take a  
15 look at it -- Mr. Maybank, unless you've got a better  
16 suggestion.

17 MR. MAYBANK: No, they are going to be part of the  
18 record.

19 THE COURT: Mark that as Plaintiff's No. 3 then.  
20 And I'm just going to put Plaintiff's 1, 2, and 3, and  
21 Defendant's 1 on the seal prior to Appellate Court order or  
22 Circuit Court order.

23 MR. BUNDY: 3 and 4, it might be better to mark them  
24 separately since they are two separate agreements,  
25 Plaintiff's 3 and 4.

1 (Plaintiff's Exh. 3, Memorandum of Settlement, was  
2 marked for identification.)

3 (Plaintiff's Exh. 4, Mutual Settlement Agreement  
4 and Release, was marked for identification.)

5 THE COURT: 3 is the memorandum, and 4 is the mutual  
6 settlement agreement. Okay? Got them straight? Do you know  
7 which one is 1 on your sheet?

8 MR. BUNDY: Sir?

9 THE COURT: Do you know which one is 1 on your  
10 sheet?

11 MR. BUNDY: Yes, sir.

12 THE COURT: 12.8.

13 MR. BUNDY: The 4 goes with 1, and 2 and 3 go  
14 together.

15 THE COURT: All right. 2 and 3 go together and 4  
16 goes with 1. Okay?

17 MR. MAYBANK: This mutual --

18 MR. BUNDY: I'm sorry, Your Honor. 2 goes with 4;  
19 and 1 goes with 3. I apologize. So the odd ones and even  
20 ones go together.

21 THE COURT: 2 goes with 4.

22 Anything else we need to mark?

23 MR. BUNDY: Not from the plaintiff, Your Honor.

24 MR. MAYBANK: Not from the defendant at this time  
25 that's not already been marked as an exhibit.

1 THE COURT: Okay. Glad to hear you, Mr. Maybank,  
2 whenever you are ready.

3 MR. MAYBANK: Thank you, Your Honor.

4 Your Honor, there were numerous briefs that were  
5 filed on behalf of the defendants in this case by  
6 Mr. Altman's office. I think we can boil most of those down.  
7 I'm going to try to cover those all in one of the memorandums  
8 that was handed up. If you will give me a moment, Your  
9 Honor.

10 As you know, this case deals with condominium units  
11 that were built on Daniel Island back in the 2003, 2004,  
12 2005, 2006 time frame, that were built, contracted through  
13 the developer, Daniel Island Riverside Developer, overseen by  
14 the construction manager, Carriage Hill Associates of  
15 Charleston, to which different prime subs entered into  
16 contract with Daniel Island Riverside Developer to provide  
17 professional services at the development in order to build  
18 these six units. They were built over a period of time, with  
19 most of the certificates of occupancy being issued within the  
20 2006 time frame.

21 Some time subsequent to turning over the units,  
22 various complaints were being made by homeowners that they  
23 were seeing water infiltration within some of the units. At  
24 that time, my clients undertook an investigation to determine  
25 what the source of these water problems were. It was

1 determined at some point that the windows were failing.  
2 These were Weather Shield windows that were designed,  
3 manufactured, delivered by Weather Shield; installed by AC  
4 Construction and/or Muhler, at which time not only were they  
5 found to not be -- have been produced properly, they were  
6 also found to have been installed incorrectly.

7 Remedial measures were taken by my client to go in  
8 there to great expense to try to remediate these problems.  
9 During the course of this investigation as well, it was found  
10 and determined that the sound attenuation problem within  
11 these units were noted to be occurring. And we discovered  
12 that during the construction phase of the process. It was  
13 inadvertently not put into the design -- it was not put into  
14 the actual buildings themselves.

15 My clients, at great expense, moved all the unit  
16 owners out, retrofitted each one of the units per an  
17 investigation done by a gentleman by the name of Noral  
18 Stewart. Mr. Stewart is one of the preeminent acoustical  
19 engineers in the country. He came out there, retrofitted a  
20 design in conjunction with a gentleman named Jerry Rumplick.  
21 Mr. Rumplick is a South Carolina licensed architect who is  
22 employed by Daniel Island Riverside Developer.

23 And in conjunction, they went ahead and put this  
24 retrofit in, which was then inspected by the homeowners  
25 association's Quietly Making Noise, and found to be to code.

1           During the course of the investigation of the window  
2 problems, though, we also hired a gentleman by the name of  
3 Mike Parker. He's a professional water intrusion specialist,  
4 for lack of a better term, with Sutton-Kennerly out of  
5 Charlotte, North Carolina. Mr. Parker found numerous  
6 problems with the windows in conjunction with the plaintiff,  
7 who hired Mr. Theo Padget to also perform an inspection on  
8 behalf of the homeowners association. They worked in  
9 conjunction with one another to come up with what they  
10 thought would be appropriate fixes to the problems.

11           Unfortunately, the problems became so, I guess,  
12 invasive, for lack of a better term, that we turned to our  
13 subcontractors. We filed lawsuits against our  
14 subcontractors. We had a trial that was supposed to go  
15 forward last April. Prior to trial, all the subcontractors  
16 came forward, those with insurance, and settled the case on  
17 behalf of their various trades.

18           Weather Shield paid on behalf of the window  
19 manufacturer; AC Construction on behalf of their individuals;  
20 Muhler, who did the window sales and installation. Various  
21 subcontractors of the prime contractors paid a total of about  
22 \$7.7 million in total to fix and try to repair the  
23 construction defects out of this project.

24           THE COURT: Let's get the exact figure down. Okay?

25           MR. MAYBANK: Okay.

1 THE COURT: Instead of saying approximately. You  
2 are asking for offsets, so I've got to know what the exact  
3 amounts would be so far.

4 MR. MAYBANK: Sure. What we did -- and I say we,  
5 Mr. McDonald's office was good enough to supplement the  
6 discovery just recently in a case that we brought against our  
7 insurance companies. The total settlement amount of 7.702 --

8 THE COURT: 7 --

9 MR. MAYBANK: \$7,702,552.

10 THE COURT: Any cents to that?

11 MR. MAYBANK: No, sir, zero cents.

12 THE COURT: So that's the total amount you are  
13 asking to offset; is that correct?

14 MR. MAYBANK: Your Honor, before this hearing is  
15 out, I will confirm that. But that is about the number we  
16 are talking about, yes, sir.

17 THE COURT: Well, that's my problem. I don't want  
18 it to be about. If I add up what's been paid on Plaintiff's  
19 Exhibit 2 -- 1 and 2, it comes to \$6,568,144.36. So it's  
20 about \$1,100,000 difference. I guess that's what is showing  
21 on this as still owed; is that correct?

22 MR. MAYBANK: Yes.

23 MR. BUNDY: Yes, Your Honor.

24 MR. MAYBANK: We are making all payments in a timely  
25 manner, so that's not an issue. So it's that \$7,700,000

1 figure I gave you earlier.

2 THE COURT: Do you all agree with that figure?  
3 Plaintiff agrees with that?

4 MR. BUNDY: I agree it's all paid out. Whatever it  
5 is, two numbers totaled on those two sheets, Exhibits 1 and  
6 3, that's what I agree to.

7 THE COURT: Do you have a calculator?

8 MR. BUNDY: No. I don't bring my phone because it's  
9 too dangerous.

10 THE COURT: It's what you said figure-wise,  
11 Mr. McDonald?

12 MR. McDONALD: Yes. We added up on those two,  
13 Plaintiff 1 and 2.

14 THE COURT: We are talking about for setoff. Okay?  
15 Is that right?

16 MR. McDONALD: Sure. We disagree that they are  
17 entitled.

18 THE COURT: I understand that. I'm trying to get a  
19 figure out. That is all I want to know. I'm not saying I'm  
20 going to set it off. I just want to know what the figure is  
21 because he kept saying about, about, about, about. Well,  
22 it's not about. We have to come up with a figure.

23 MR. McDONALD: That's exactly right. And we've  
24 broken it down between the two settlements, 1 and 2.

25 MR. MAYBANK: Your Honor, right up to the trial,

1 which was going to be in Berkeley County, all the defendants  
2 came together over a period of many weeks and very hard  
3 discussions --

4 THE COURT: I don't want to cut you short, but I  
5 remember in detail what all transpired. I remember the  
6 trial. So let's get to the point.

7 MR. MAYBANK: Okay. Your Honor, we have moved under  
8 50, 59, and 60 under the South Carolina Rules of Civil  
9 Procedure for judgment notwithstanding the verdict, a new  
10 trial absolute, a new trial nisi remittitur, and/or to amend  
11 the judgment, specifically for the setoff provision.

12 Under Rule 50, it's a judgment not withstanding the  
13 verdict. Under Rule 59, it's a new trial absolute. If not a  
14 new trial, nisi remittitur, and/or to amend the judgment  
15 under 59E.

16 The first argument, Your Honor, really deals with  
17 the issue of the setoff. We believe that as a combined  
18 construction group which tendered \$7.7 million as a group,  
19 though it was negotiated separately, my clients, the  
20 construction manager and/or the developer, should get a full  
21 dollar for dollar against all construction costs related to  
22 this project.

23 What we have proposed, if you look at the damages  
24 that are up there as Exhibit A and B, those are the exhibits  
25 that were put into trial by the plaintiffs. There are two

1 subsections of damages. Under A, if you recall, there was a  
2 provision under which --

3 THE COURT: Where is that? Do I have A and B?

4 MR. MAYBANK: You do, Your Honor.

5 THE COURT: Where is it? Let me ask you this,  
6 Mr. Maybank, because I say I remember everything, I really  
7 don't. You probably don't need to be reminded.

8 MR. MAYBANK: No.

9 THE COURT: Am I correct in stating that during the  
10 nonjury trial, the window issue was not addressed as far as  
11 damages; is that correct? And the big issue was whether we  
12 have to take off all the brick and stucco, part of it, all of  
13 it or around the windows. The windows themselves were not  
14 addressed as far as damages in the nonjury portion; is that  
15 correct or not?

16 MR. MAYBANK: I think yes and no. I think to the  
17 extent that the damages estimate that was presented to the  
18 plaintiffs -- presented by the plaintiffs excluded the  
19 windows.

20 Now, my argument in opening, and I think through  
21 Mr. Parker, was that what they were trying to show is this  
22 should not be calculated as a setoff or any credit to what  
23 has been paid or were to be given to the developers and/or  
24 construction managers because that was paid, part and parcel,  
25 for the whole thing. We are strictly liable for those

1 windows as the construction manager and/or the developer.  
2 So, I mean, they can kind of cut it out, but we are still  
3 liable for it nonetheless.

4           And the global theory of our settlement  
5 understanding was that we should and would get credit for all  
6 moneys paid on behalf of the construction folks. And our  
7 position was that -- and even Mike Parker, if you read our  
8 brief, stated -- and you are right, it gets down now to if it  
9 is not windows, then what were you paying for? And there  
10 were these discussions about, well, they are only going to  
11 have to take off 18 percent of some stucco and 12 percent of  
12 some brick. And though your order says it's uncontested, it  
13 was contested. Mr. Parker and Mr. Padget both said more  
14 likely than not, all of it is going to have to come off.

15           And if you take the damages for what they are and  
16 you back out the sound attenuation, you look at the figures  
17 on the Exhibit A and Exhibit -- in Exhibit A, which is the  
18 pretrial damages, they got almost dollar for dollar what the  
19 entire cost of rebuilding all the general common elements on  
20 this project were, including elements that weren't even  
21 contested, garage slabs, French drains. I mean, we almost  
22 paid them the entire amount because of the sound attenuation  
23 itself, which the experts have testified to were up to code.  
24 Nothing more that could be done.

25           THE COURT: Didn't they have to lower the ceilings

1 to do that?

2 MR. MAYBANK: They did. They did lower the ceilings  
3 about six inches on each one; no doubt about that. And maybe  
4 there is some damage to that. Maybe there is some kind of  
5 compensation because my ceilings are not quite as high, but  
6 at the end of the day, if you look at what the common  
7 elements, exclusive of that sound attenuation, were, it's all  
8 covered. We have paid for everything if we get the set-off  
9 that we are asking for. Because what they did was, they  
10 backed out the windows and their damages at trial, but they  
11 put the windows in the damages pretrial.

12 And so that's where we are asking for this Court to  
13 give us the setoff of a total of \$7.705 million. We believe  
14 that we are entitled to it. All those folks were either  
15 prime subs of my developer -- they paid money on behalf of  
16 themselves and the developer, and we believe that -- I think  
17 that the Court should give us the full setoff amount for all  
18 moneys paid for construction defects, at least from that  
19 perspective. That's our first argument, Your Honor.

20 THE COURT: Okay.

21 MR. MAYBANK: Our second argument deals with the  
22 sound attenuation, Your Honor. Do you want me to quote to  
23 you any pages or lines consisting from Padget about the  
24 stucco needing to come off or come on?

25 THE COURT: No.

1 MR. MAYBANK: I didn't think you did, Your Honor.

2 THE COURT: You can if you want to, but I'm not  
3 trying to limit your argument. Okay? Tell me what you want  
4 to tell me.

5 MR. MAYBANK: You and I were here for five days.

6 THE COURT: That's right. And I'm not going to tell  
7 you I remember every gory detail, because I don't.

8 MR. MAYBANK: I understand, but Mr. Parker -- just  
9 so -- I want to put it in the record, that the problem exists  
10 for stucco. When -- Mr. Parker testified that when trying to  
11 tie old stucco into new, you have to worry about bonding  
12 materials, preventing splits, futures, different coats of  
13 materials to hide the cracks. It was all -- there was so  
14 many windows on these buildings. There was no way -- you  
15 would have nothing but Swiss cheese buildings left.

16 That's why even Mr. Padgett said, we will do it right  
17 this time. And that means to go all around, remove the  
18 windows, remove the doors, instead of trying to surgically  
19 chip away each brick, wipe it clean, and do it all over  
20 again. He said, yes, that's the best way. And that's what  
21 they've been compensated for already. That 7.7 million gets  
22 them there.

23 As for the award of damages for acoustic repairs,  
24 it's kind of a weird argument, Your Honor. Because of the  
25 way that they shifted the windows out right prior to trial,

1 kind of puts the acoustics back in. And so what we are  
2 saying is, there was nothing more that could be done. Once  
3 we discovered the problem, it's not that we walked off the  
4 job and said, boy, that's too bad for you. We told the  
5 homeowners what the problems were. We hired one of the world  
6 renowned acoustical experts, Mr. Nolan Stewart, to come in  
7 and give us a retrofit, which he did.

8           And according to Quietly Making Noise, who is the  
9 plaintiff's acoustical expert, their report was put in to  
10 trial Exhibit 229, Lines 2 through 10 state: Report that  
11 ASTC ratings exceed the minimum building code requirement for  
12 the original and modified floor/ceiling system design.

13           Simply put, Mr. Stewart testified that there's no  
14 way to redo the ceiling beyond what we have already done.  
15 There's just nothing more that they can do. And both the  
16 plaintiff's and the defendant's experts testified that the  
17 remediation meets code requirements, and little, if any,  
18 improvements would be achieved by additional work. We do not  
19 believe that there is any more compensationable moneys due to  
20 the plaintiff.

21           THE COURT: Because of the acoustics?

22           MR. MAYBANK: Correct, Your Honor, because there's  
23 nothing more that can be done unless you take into  
24 consideration that --

25           THE COURT: Ceiling is lower.

1 MR. MAYBANK: -- the ceiling, that's correct. We  
2 had to lower the ceiling.

3 THE COURT: Six inches? Do you remember?

4 MR. MAYBANK: I want to say six or nine inches.

5 THE COURT: But the edges in there absorb the sound,  
6 if I remember correctly. I call them edges because I can't  
7 remember what they are called.

8 MR. MAYBANK: They were J channels, Your Honor, to  
9 where you had to kind of have a free-flowing ceiling.

10 THE COURT: Hang them up in that channel.

11 MR. MAYBANK: That's correct, Your Honor.

12 So to the extent that they seek compensation for the  
13 acoustical problems, we would take the position that we went  
14 in there, we properly removed everyone out, went in there  
15 with a professional redesign of a problem. We admit that  
16 there was a problem and we paid hundreds of thousands, if not  
17 close to seven figures, for that remediation alone to try to  
18 fix the problem for the homeowners.

19 So it's our position that not only should we get  
20 dollar-for-dollar setoff for all the subcontractors that  
21 paid, as well as what my client paid, plus my client, Daniel  
22 Island Riverside Developer, employed Mr. Jerry Rumplick, who  
23 was the architect for part of the project. And to the extent  
24 that the deficiency of the acoustical rest in an architect or  
25 design -- and Mr. D'Orazio, who is the South Carolina

1 employed architect, to the extent that the liability falls on  
2 them, they've already paid as well \$1.2 million of that 7.7  
3 million. So we believe that should also be part and parcel  
4 of not only offset for all the construction costs, but then  
5 the acoustical has already been paid for and fixed by my  
6 client.

7           One man's noise is maybe not another man's. It may  
8 not be perfect for everybody throughout the building, but  
9 they were consistently redone throughout all six buildings  
10 over a long period of time to great expense to my client. We  
11 acknowledged the problem. We did not hide from it. We went  
12 in there to try to fix it.

13           The next argument, Your Honor, concerns this -- it's  
14 kind of an amalgamation. We are looking at a lot of  
15 different things, but what I call cost to repair versus  
16 market loss versus diminution in value. I think you can all  
17 kind of lump them into a diminution in value. Our argument  
18 is that of the \$15 million that has been awarded, backing out  
19 the construction costs, remainder balance is for this loss of  
20 market access, this loss of diminution in value, this cost of  
21 repair.

22           One of the key elements of the testimony I think  
23 that Mr. Donato gave -- Mr. Donato was the plaintiff's expert  
24 as it relates to market valuation, cost of these units -- is  
25 that if the units are repaired, the units return to market

1 value so that there would be no diminution. There would be  
2 no loss. Our argument is that the damages that you awarded  
3 for those injuries were speculative at best.

4 We did not see any evidence in the record, taking  
5 into account this was the worst recession since the Great  
6 Depression from '08 to 2011, the overall saturation of the  
7 real estate market during that time, the real estate bubble,  
8 the lack of contracts of sale, the purchase -- the lack of  
9 purchase offers, no bankers testified to any of the damages  
10 by the plaintiffs. No buyers who were scared off by the  
11 construction defects took the stand, no real estate agents,  
12 other than, of course, those agents that bought to flip and  
13 couldn't flip because the great bubble got them. Other than  
14 that, there is no testimony as to this loss of market access.

15 Now, I certainly think that there's probably some  
16 complaints by some of the renters that some of the homeowners  
17 had, but I do not believe I recall any homeowners having  
18 their tenants move out of any of the units. Rather, they  
19 gave some discounts in rent as to some of the problems that  
20 some of the renters had to deal with. Many of the homeowners  
21 that have been given this loss-of-market access didn't even  
22 live in these units. Therefore, we would say they were not  
23 entitled to any of those as well either, Your Honor.

24 We believe that any type of cost of repair that the  
25 plaintiffs are getting as a homeowners association for all of

1 the problems throughout the general common elements would  
2 constitute a double recovery, to the extent that the  
3 individual unit owners are also being paid moneys for any of  
4 their loss of access to market it; because in one hand, the  
5 homeowners association will make it whole. Therefore, if the  
6 homeowners association makes the common elements in the  
7 general areas whole, then that market value for those units  
8 will come up as well. I haven't seen any recent sales over  
9 there, so I don't know what the current market holds on  
10 those, Your Honor. But that's just a general market  
11 principle that Mr. Donato testified to.

12           The calculation of \$125 a day for this, I believe we  
13 call it loss of quiet enjoyment, we believe that that is also  
14 speculation and there's no actual suffered injury by any of  
15 the individual homeowners. No one is entitled to absolute  
16 quiet in the enjoyment of his property. He may only insist  
17 upon a degree of quietness consistent with the standard of  
18 comfort prevailing in the locality in which he dwells.  
19 That's Strong vs. Winn-Dixie Stores. And that quiet  
20 enjoyment is one of a bundle of sticks enjoyed by a property  
21 owner. For the plaintiffs to receive award for both loss of  
22 quiet enjoyment and loss of value, we believe by definition  
23 it is a double recovery.

24           In the alternative, possibly the plaintiffs may  
25 elect, but we don't believe the loss of use or the loss of

1 access to the market in any way is a recoverable element to  
2 these plaintiffs. The amount of awards are grossly  
3 excessive.

4 I apologize for sweating, Your Honor. Like I said,  
5 I've been battling this infection. So it's not spreadable;  
6 I'm on antibiotics. But to the extent that there are awards  
7 for what we call upgrades, which include --

8 THE COURT: What now?

9 MR. MAYBANK: Upgrades.

10 THE COURT: Go ahead.

11 MR. MAYBANK: -- French drains, HVAC repairs within  
12 the general areas, garage slab maintenance, repainting of  
13 porch ceilings, we believe that additional scaffolding,  
14 construction, photography in the tens of thousands of  
15 dollars, the overhead amounts grossly exceed the market  
16 value. We hold that the hotel and storage costs for the  
17 buildings is grossly excessive.

18 Most of the plaintiffs testified, who were awarded  
19 these damages, that they did not live in their respective  
20 units. So no hotel would be necessary. Furthermore,  
21 plaintiff's testimony provided that the buildings would have  
22 had to be remedied consecutively, not concurrently.

23 THE COURT: Do you remember which ones testified  
24 they didn't live there?

25 MR. MAYBANK: I believe, Your Honor, the Johnson

1 defendants have not lived in the unit. The Ruvo defendants  
2 never spent one day in the unit.

3 THE COURT: Rubio?

4 MR. MAYBANK: R-u-v-o, never spent one day in the  
5 unit. They lived in San Francisco.

6 The Johnson defendants have not lived in the unit.

7 The Annett's -- the testimony from Ruvo is to -- the  
8 record on appeal 268, Lines 12 through 13 --

9 THE COURT: Are Johnson and Ruvo are the only two  
10 that didn't live there?

11 MR. MAYBANK: I haven't gotten to the others yet.

12 THE COURT: I don't need to go --

13 MR. MAYBANK: On Page 21 of my brief I have those  
14 listed.

15 THE COURT: Page 21 of the brief you've got them  
16 listed?

17 MR. MAYBANK: Yes, sir.

18 THE COURT: Okay. Go ahead.

19 MR. MAYBANK: Atkinson and Strandquist defendants  
20 live in Pennsylvania, come down about three weeks a year.  
21 The Young defendants have never lived in their unit. The  
22 Marazitis owned and resided in another house on Daniel  
23 Island. The Cook defendant did not provide any evidence that  
24 she ever resided in the subject unit. The Nelson and Edelsen  
25 defendants were only in the unit on occasion. The Graham

1 defendants did not reside in the unit. The Pekruhn defendant  
2 testified he resides on Sullivan's Island. The Severance  
3 defendants stayed for about one year. And the Jennings  
4 defendants lived on Ashley Avenue in Charleston.

5 THE COURT: Okay.

6 MR. MAYBANK: So to the extent that any of them  
7 received any of these damages, we say they are excessive and  
8 not proper.

9 THE COURT: As far as the hotel and storage you are  
10 talking about?

11 MR. MAYBANK: Well, any market access, we believe.  
12 We believe hotel -- the \$125 a day I believe for about 1,200  
13 days is what you gave them each. We believe that all those  
14 are excessive and not calculatable, or speculative at best.  
15 So I think, Your Honor, that kind of wraps up our argument in  
16 general.

17 We can more fully brief it if you would like us to  
18 resubmit briefs to you, but I think that in terms of the  
19 setoff, we are looking for full setoff. In terms of the  
20 acoustical, we have done everything that we can. There  
21 should be no more further damages for the acoustical.

22 For the individual unit owners to which damages have  
23 been awarded, we believe that it is duplicative and not  
24 supported by the evidence. It's speculative, at best, as to  
25 the market access and/or diminution in value.

1           Now, there's some other arguments that we have that  
2 we did not -- the evidence does not support the finding which  
3 you have in your order that the defendants failed to inform  
4 the plaintiffs of the alleged construction defects.

5           As I think I reiterated earlier, Your Honor --

6           THE COURT:   JNOV?

7           MR. MAYBANK:  It does, Your Honor.

8           THE COURT:  Go ahead.

9           MR. MAYBANK:  But it also, I think, goes to -- I  
10 think it goes to the damages themselves.  Because I think --  
11 I certainly can't put the black robe of what you put on, Your  
12 Honor, but I think when you heard the evidence, it sounded  
13 worse than it actually was.  I think that what our clients  
14 tried to do when they were out there was to do the right  
15 thing.

16           THE COURT:  Well, let me tell you -- never mind.  Go  
17 ahead.  I'm listening to you.

18           MR. MAYBANK:  Well, I think, Your Honor, in terms of  
19 when they were having problems with the windows, they  
20 believed that these were window warranty problems.

21           THE COURT:  Let me put this on the record.  Okay?  
22 And I don't think this language is in the order, but I may  
23 modify the order.  Let me state my assessment of the whole  
24 situation.  Okay?

25           MR. MAYBANK:  Thank you, Your Honor.

1           THE COURT: We've got somebody that comes in, puts  
2 up this property, does a shoddy job, doesn't even comply with  
3 the building codes on building this building, period. Didn't  
4 even attach the brick to the --

5           MR. MAYBANK: There's evidence -- we put the  
6 photographs in that show --

7           THE COURT: I understand. But don't comply, and  
8 then they come in and then glorify and glamorize it inside.  
9 So when you walk in and you look at your nice floors, you  
10 look at your granite countertops, so it looks like a  
11 fantastic place, but the bones of the construction were  
12 shoddy. That's what got my attention, to be perfectly honest  
13 with you. And it was almost to the point of committing a  
14 fraud on the public coming in and marketing it that way.

15           In other words, you come in, you glamorize the  
16 internal part of a condo, and somebody walks in and says,  
17 man, this is really a nice place. But you can't see  
18 internally where all the -- I don't want to say rot, but the  
19 inadequate construction was done. It was almost, in the  
20 Court's opinion, fraudulent. I just want to put that on the  
21 record. That's not in my order. I may put it in there.

22           MR. MAYBANK: I understand that, Your Honor. I  
23 think, though, what the problem that we have was with the  
24 manufactured windows that we received from Weather Shield  
25 with their assurances that they would meet code, that they

1 would be installed properly by Muhler. When water was being  
2 let in through the windows, through the faulty design of  
3 those windows, there was a brick mould around that window  
4 that we threw hundreds of thousands of dollars into tests to  
5 determine what's letting water in through that. Once the  
6 water was getting in through something beyond our control, we  
7 took immediate action to figure out what could we do to fix  
8 this problem.

9 We had water coming in through the roof-to-stucco  
10 intersection, wall intersection, that the roofer did not  
11 properly turn back and not have that water in.  
12 Unfortunately, we did not know that until they also knew  
13 that.

14 THE COURT: You had an architect on staff that was  
15 supposed to be monitoring this. He was in New York.

16 MR. MAYBANK: Well, he would come down on occasion,  
17 Your Honor.

18 THE COURT: I know.

19 MR. MAYBANK: He did come down.

20 THE COURT: But what did he look at? I'm talking  
21 about the totality of the whole case. I mean, your architect  
22 in New York was supposed to be supervising. And if he  
23 supervised at all, he could have seen some of these things  
24 while it was going on.

25 MR. MAYBANK: Not necessarily, Your Honor, because

1 it was behind the facades that nobody really knew. Yes,  
2 hindsight being 50/50, when we look back, it looks a lot  
3 worse as when you are building it. And as it goes, it  
4 doesn't look so bad right then and there. It happens over a  
5 period of years, and that's what happened.

6 THE COURT: Okay.

7 MR. MAYBANK: That's how -- and then we were able to  
8 hindsight -- it looks bad now looking back, but as you are  
9 building in '05, '06, and '07, there may be some small water  
10 stains, but there's not the invasive problems as you are  
11 describing that we ever knew about during that construction.  
12 I assure this Court, my clients who build all over the  
13 country would have come in and said -- they would not have  
14 agreed to go forward with those buildings had they known the  
15 extent of the damages. It wasn't until after the units had  
16 sold, homeowners had moved in.

17 THE COURT: I'm not necessarily talking about the  
18 damages from water as much as the shoddy construction.

19 MR. MAYBANK: Your Honor, we hired Muhler, who is  
20 right here locally -- the Hay family owns them -- to sell us  
21 these windows that are as good as ever. We've got Weather  
22 Shield, national brand coming in; we've got people who hold  
23 themselves out in the community as being able to do the work  
24 that we contracted.

25 THE COURT: Go ahead with your argument. I just

1 wanted to tell you -- I wanted to let you know where I was  
2 coming from. Okay?

3 MR. MAYBANK: Your Honor, I read your order. I had  
4 a feeling.

5 THE COURT: All right.

6 MR. MAYBANK: I guess going back to -- the evidence  
7 does not support -- I know that you and I have talked about  
8 this -- the finding that the defendants failed to inform the  
9 plaintiff of the alleged construction defects. When we found  
10 that the windows were problematic, we let people know. We  
11 asked them to fill out warranty forms. They brought them to  
12 us. We took them to Weather Shield. At some point, Weather  
13 Shield quit responding to us.

14 We tried to go in and fix the windows, and then we  
15 became aware of other problems, at which time we informed the  
16 homeowners. They knew. They had hired Mr. Padget. This is  
17 as far back as 2008. And we tried to work with them to come  
18 to resolutions; we attended board meetings. My client  
19 specifically went there, presented methodologies by which he  
20 thought could fix the problems. They were rejected by the  
21 board. That is within the board's prerogative to do, but  
22 eventually, unfortunately, the longer you let these problems  
23 last, the worst they become.

24 And so from that perspective, I don't believe that  
25 my clients ever did not tell the homeowners about the various

1 problems. We let them know about the acoustical. That's why  
2 we are moving you out, shipping you on vacation, wherever you  
3 want to go, we need to fix these problems and we are here to  
4 fix them.

5 THE COURT: Talk to me a little bit about the  
6 election of remedies. You filed a motion to elect remedies.  
7 I'm not sure I know where you're coming from on that.

8 MR. MAYBANK: Your Honor, under that election of  
9 remedies -- I believe in your order, you started to parse out  
10 between whether or not somebody was able to -- that there may  
11 be some double recoveries going on.

12 THE COURT: As to the rents, the rents and the  
13 reduction in value, diminution of value, whatever you want to  
14 call it, I believe that's correct. If I remember correctly,  
15 someplace that was referred to. And I think they can't have  
16 both. Is that what you're referring to in your election of  
17 remedies?

18 MR. MAYBANK: I believe that that was put into the  
19 motion, Your Honor. Yes, sir.

20 THE COURT: All right. I just wasn't sure what you  
21 were referring to when you said election of remedies, who  
22 gets elected what; is that what you are referring to?

23 MR. MAYBANK: I believe it was the lost rent, the  
24 loss of market access, which we believe also --

25 THE COURT: And lost rent. You can't have both.

1 MR. MAYBANK: You can't have both.

2 THE COURT: I agree with you. The order says that.

3 MR. MAYBANK: Well, at the same time, the loss of  
4 market access, we believe those damages are wholly  
5 speculative.

6 THE COURT: I understand. You already told me that.

7 MR. MAYBANK: And that that should not be really  
8 something that they should be able to elect from, because  
9 it's too speculative.

10 THE COURT: Okay.

11 MR. MAYBANK: The evidence does not support the  
12 evidence of --

13 THE COURT: As much as allocation of damages, what  
14 are you referring to when you filed the motion for allocation  
15 of damages?

16 MR. MAYBANK: Your Honor, I have to go look at  
17 the -- there are two different sets of motions. There are  
18 about three or four little motions. The motion that I'm into  
19 is the main motion right now.

20 THE COURT: I understand. Allocation was one of  
21 your little motions. I was just wondering what you were  
22 referring to. If you want to call it a little motion, okay.

23 MR. MAYBANK: I mean little in size, number of  
24 pages.

25 THE COURT: Probably little in size of paperwork.

1 Are you talking about the joint/several issue, or what are  
2 you talking about?

3 MR. MAYBANK: I believe that is what we were talking  
4 about under the -- well, that's going to be the proportional  
5 argument, Your Honor. I think that says that at the final --  
6 once you had a nonjury under -- I believe it's Statute 15;  
7 once you have a finding nonjury, then the damages should be  
8 proportioned to the different defendants proportionally to  
9 their culpability, so long as no defendant is greater than  
10 50.1 percent, I believe, in excess, then proportionality of  
11 the damages --

12 THE COURT: Was that statute even in existence when  
13 this cause of action arose?

14 MR. MAYBANK: Yes, it was, Your Honor.

15 THE COURT: It was a fairly recent statute.

16 MR. MAYBANK: July of 2005, I believe, under the new  
17 tort reform act, if I'm not mistaken.

18 THE COURT: Do you agree with that?

19 MR. MAYBANK: It's 15-38-15.

20 MR. BUNDY: Says effective July 1, 2005.

21 THE COURT: Okay. Further back than I thought.  
22 Time flies.

23 MR. MAYBANK: It does fly, Your Honor. That is what  
24 it is. It's 15-38-15, as well 15-38-15C, where the Court,  
25 where there is no jury, should specify the amount of damages

1 and determine the percentage of fault, if any, of plaintiff  
2 in the amount recoverable under the applicable rules.  
3 Concerning comparative negligence, upon a motion by at least  
4 one defendant, which we may -- where there is a verdict for  
5 damages against two or more defendants, which we have in this  
6 case, for the same individual injury, death, damage to the  
7 property, percentage of liability that proximately caused the  
8 individual injury, economic loss, tortious conduct  
9 attributable to each defendant whose actions are the  
10 proximate cause.

11 It would be our position that prior to the trial,  
12 there were numerous defendants on the caption. Now, the case  
13 was only tried against two of us, Daniel Island Riverside  
14 Developers and Carriage Hill Associates of Charleston.  
15 However, it would be our position that because these  
16 defendants were still named on the caption, to the extent  
17 that there is the ability to prorate the damages as to each  
18 one of them, that this Court should do so. And we would ask  
19 that.

20 THE COURT: Apportion among all of the defendants?

21 MR. MAYBANK: That, I believe, is the rule that says  
22 that if you are a named defendant --

23 THE COURT: But they technically were out of the  
24 case. That's not going to happen. Okay? I will listen to  
25 you about allocating between the two defendants I tried it

1 against, but I'll just say up front, I'm not allocating them  
2 through defendants that already settled out. I am not even  
3 going to consider that.

4 MR. MAYBANK: Well, I think that this Court can --

5 THE COURT: There's no way I can do that because I  
6 heard no testimony from them. And they weren't even parties  
7 at the time we tried the case; they were out by settlement.  
8 Now, whether there's been a stipulation of dismissal filed or  
9 not, I don't know. I don't have the file.

10 MR. MAYBANK: To the extent that damages can be  
11 allocated, I believe that they can be allocated against the  
12 plaintiffs as well, from a comparative nature --

13 THE COURT: What do you mean by comparative nature?  
14 Did you raise that defense?

15 MR. MAYBANK: Yes, we did, Your Honor. So we would  
16 ask that that be considered by the Court, duty to mitigate  
17 damages, failure to mitigate damages.

18 THE COURT: Okay. Anything else?

19 MR. MAYBANK: Your Honor, as to the finding of  
20 negligent representation, breach of fiduciary duty, implied  
21 warranty of habitability and workman-like service and gross  
22 negligence, you found that the defendants falsely represented  
23 to the plaintiffs that the condominiums would be constructed  
24 in a luxurious standard. That is not supported by any of the  
25 evidence.

1           There is some testimony that some of the marketing  
2 material may have said luxury on it, but that is such a  
3 subjective analysis that any man's luxury may be another  
4 man's dump. You know, so --

5           THE COURT: Okay.

6           MR. MAYBANK: So to the extent that because the  
7 Court did not find, or through the findings of fact --

8           THE COURT: Acting on a social level, huh?

9           MR. MAYBANK: Well, Your Honor, the testimony from  
10 the homeowners taking the stand, they didn't seem --

11          THE COURT: Never went under the bridge find  
12 homeless, huh?

13          MR. MAYBANK: I couldn't find any homeless in  
14 Berkeley County that were willing to rent, other than those  
15 on Daniel Island.

16          THE COURT: Okay.

17          MR. MAYBANK: When Mr. Donato was asked regarding  
18 the 2011 sales listing for a unit, describing the property as  
19 luxurious brick and stucco, he testified that is typical  
20 fluff real estate listing. You won't expect him to say  
21 inexpensive.

22          THE COURT: Just puffing, right?

23          MR. MAYBANK: He was puffing. If you recall, Your  
24 Honor, I cross-examined numerous homeowners who actually had  
25 their units for sale. And boy, oh, boy, that word luxury

1 popped up on their post-move-out condo problem --

2 THE COURT: They were luxurious, except for lowering  
3 the ceiling six inches.

4 MR. MAYBANK: On the outside, Your Honor, I --  
5 granted there were problems.

6 THE COURT: There were floor problems in a few of  
7 them.

8 MR. MAYBANK: There was some separation issues.

9 THE COURT: Separation issues on the floor.

10 MR. MAYBANK: Normal heating and cooling expanding.

11 THE COURT: Do you know a way of solving that, the  
12 heating and cooling expansion, in your experience?

13 MR. MAYBANK: I would put the floors in during the  
14 summertime and let them sit untreated.

15 THE COURT: And you don't think they will blow up  
16 when the humidity hits?

17 MR. MAYBANK: I think you are supposed to kind of  
18 let them get to a certain level. I don't know if it's air  
19 conditioner or outside air conditioning. I don't know. I  
20 will defer to those in the construction industry.

21 THE COURT: You will what?

22 MR. MAYBANK: I will defer to those in the  
23 construction industry.

24 THE COURT: That doesn't have anything to do with  
25 this case, I guess. Just got my stairs blowing up, trying to

1 figure that out. They billowed up by a quarter, half inch.  
2 This winter they went back down. Now I'm trying to figure  
3 out how I keep them from blowing back up again.

4 MR. MAYBANK: Do you have a crawlspace?

5 THE COURT: Yeah. There's stairs going upstairs.  
6 What's happened is underneath, it's outside. It's coming up  
7 through the sheetrock. Maybe they take the sheetrock out and  
8 dehumidify and blow in some insulation and hope to come back  
9 down next winter.

10 MR. MAYBANK: That's what we did in our house, Your  
11 Honor. It will work.

12 THE COURT: Who knows? Who knows? I thought you  
13 might know. Mr. Bundy, do you know?

14 MR. BUNDY: Yes, sir, I do.

15 THE COURT: Okay. Well, I will ask you the same  
16 question.

17 MR. MAYBANK: We had it in our first floor, but we  
18 had a crawlspace. We sealed the crawlspace, put a  
19 dehumidifier in there, and put insulation all throughout  
20 there and we have no problems.

21 THE COURT: That's what he's talking about, taking  
22 the sheetrock on the stairs, going down to the stairs,  
23 upstairs, and putting in a dehumidifier, lining the boards up  
24 real good, and then spraying it and putting the sheetrock  
25 back.

1 MR. MAYBANK: That's worked for us, Your Honor.

2 THE COURT: Screwing it now, it's going to pop the  
3 boards when it comes back up.

4 MR. MAYBANK: You can sue them.

5 THE COURT: Huh?

6 MR. MAYBANK: You can sue them.

7 THE COURT: I don't want to sue them. I want him to  
8 fix it. Quite frankly, the blowing up doesn't bother me, but  
9 drives my wife crazy.

10 MR. MAYBANK: Your Honor, as to the gross negligence  
11 claims that you found in favor of the plaintiffs, gross  
12 negligence is the intentional conscious failure to do  
13 something. You have to look at -- the plaintiff must show  
14 the defendant owed the plaintiff a duty.

15 THE COURT: You want me to dismiss that cause of  
16 action?

17 MR. MAYBANK: We do, Your Honor. There were several  
18 meetings, letters, phone calls, communication. It's replete  
19 throughout the file to the different homeowners to the  
20 different problems they were having. There were meetings  
21 at -- the board member meetings with Mr. -- I want to say  
22 Chiovarou, but there was another gentlemen who was the head  
23 of it. Bobby Reece, I believe, was head of the HOA during  
24 many of the years these construction problems were going on.  
25 Mr. Reece met numerous times out at the development with my

1 client trying to come up and formulate solutions to the  
2 numerous problems we found. And, unfortunately, we just  
3 weren't able to come up with a solution acceptable to the  
4 HOA.

5 Your Honor, I think the main thrust of these  
6 post-trial motions is we would request that this Court set  
7 aside the current damages of \$15 million. We would ask that  
8 if we do not get a new trial, we get a new trial nisi  
9 remittitur that the damages --

10 THE COURT: That would be nice, but I'm not inclined  
11 to give a new trial. Okay? I am inclined to modify the  
12 order where it should be modified. Okay?

13 MR. MAYBANK: We would ask that we get in the full  
14 setoff amount as to all construction money paid for the  
15 damages by all subcontractors against the total amount of  
16 damages for the construction bill-back dollar for dollar. We  
17 would ask that there's no further damages as to the sound  
18 attenuation, because that was remediated by my client during  
19 the course of construction and while moving people in and out  
20 at great expense.

21 We would ask that much of this loss of market  
22 opportunity is too speculative. It's just not reasonably  
23 calculated. There were not enough witnesses to testify as to  
24 what specifically those damages were.

25 We would ask that this Court find that there was no

1 gross negligence, no breach of fiduciary duty, and for all  
2 the reasons that I previously stated, Your Honor.

3 THE COURT: Okay.

4 MR. MAYBANK: It's all supported by the memorandum  
5 that we have filed, the trial court record. And we will be  
6 more than happy, Your Honor, to not simply just rebrief, but  
7 if you want anything to be looked at from a setoff  
8 perspective or reanalyzed, we would be more than happy to  
9 provide that to the Court.

10 THE COURT: Thank you, Mr. Maybank.

11 Do you have anything, Mr. Altman?

12 MR. ALTMAN: I think Mr. Maybank may have one more  
13 thing.

14 THE COURT: I will be glad to hear from you.

15 MR. MAYBANK: Your Honor, just so the record -- I  
16 think the record is pretty complete on this. This is  
17 Plaintiff's Exhibit 3 that we have put into the record as  
18 being marked confidential. It is the memorandum of  
19 settlement. Contained within that memorandum of settlement  
20 on Page 5, Your Honor --

21 THE COURT: Yes, sir.

22 MR. MAYBANK: -- the first paragraph says: As to  
23 the HOA's and unit owners' claims against DRD and CHAC, one  
24 of the HOA individual unit owners will dismiss with prejudice  
25 claims against DRD and CHAC only for -- and then we have --

1 piercing fraud, individual liability, amalgamation, aiding  
2 and abetting, aid and abetting breach of fiduciary duty, and  
3 breach of contract accompanied by a fraudulent act. The HOA  
4 and the individual unit owners agree not to seek punitive  
5 damage or attorney's fees arising out of any cause of action  
6 against DRD and CHAC, only if all claims and causes of action  
7 remain as to all remaining defendants.

8           The remaining defendants -- the remaining claims  
9 against DRD and CHAC only are breach of fiduciary duty, which  
10 we disagree -- which we believe should be modified and  
11 overturned, negligent misrepresentation, which we don't  
12 believe occurred either, negligence, which is left open for  
13 debate, breach of expressed and implied warranties, including  
14 but not limited to habitability, fitness for a particular  
15 purpose, and workman-like service, and breach of contract.  
16 All claims and causes of action remain as to all remaining  
17 defendants.

18           Your Honor, one issue that I didn't bring up with  
19 the Court, I think, is this breach of habitability. I  
20 believe that there are many unit owners that had sold their  
21 units. I believe habitability means you just can't live in  
22 there. These unit owners, many of them lived in there,  
23 continue to live in there, never moved out, they had renters  
24 in there. So we believe that any type of breach of  
25 habitability or any type of breach of workman-like manner

1 should also not be considered by this Court as it relates to  
2 any damages. But we just wanted to make sure that we  
3 understood which causes of action that the plaintiffs were  
4 actually going under so that this Court doesn't put into any  
5 order or into any findings those which were not contemplated  
6 to be heard or dealt with at trial.

7 THE COURT: All right. Is it correct on your  
8 Plaintiff's Exhibit -- Defendant's Exhibit 1, Daniel Island  
9 Riverside Developers, LLC, Carriage Hill Associates of  
10 Charleston paid \$1,365,907.69; is that correct? What y'all  
11 have paid previously; is that correct?

12 MR. ALTMAN: That is the amount that's been paid to  
13 date.

14 THE COURT: That's the amount you paid to date  
15 pursuant to the agreement previously, right?

16 MR. MAYBANK: Correct, Your Honor. There is a  
17 payment schedule that we are abiding by.

18 THE COURT: What's the total amount of the payment  
19 schedule?

20 MR. ALTMAN: Additional \$900,000 that's to be paid.

21 THE COURT: About 2.2 million when it's over, right?

22 MR. MAYBANK: Yes, sir.

23 THE COURT: Approximately. All right. Okay.

24 Mr. Bundy, or whoever is going to make the argument?

25 MR. BUNDY: May it please the Court, Your Honor.

1 Your Honor, you have before you --

2 THE COURT: Let me just ask you one question before  
3 I forget about it. Talking about setoff, tell me why we  
4 shouldn't at least set off the approximately 2.2 million  
5 that's going to be paid by these two defendants.

6 MR. BUNDY: I would be happy to.

7 THE COURT: Address that issue.

8 MR. BUNDY: I will be happy to explain it to you,  
9 Your Honor. Let's start with --

10 THE COURT: Irrespective of all the other requests  
11 for settlement, but that's made by these defendants.

12 MR. BUNDY: In order to get to that, I have to go  
13 through some steps.

14 THE COURT: That's fine.

15 MR. BUNDY: First, I would like to start with this  
16 document entitled, Summary Chart of Oaks at Rivers Edge  
17 Property Association, Inc. Damages. It has two pages in the  
18 front -- I mean, two exhibits in the back, A and B, and two  
19 exhibits in the front. Do you have it in front of you?

20 THE COURT: All right.

21 MR. BUNDY: Exhibits B and A are just merely the  
22 backup for the summary in the front, but I wanted you to have  
23 the backup.

24 If you turn to the third page, it says: Exhibit A  
25 is the originally claimed damages in this case. This is

1 before -- it will be originally claimed damages as it relates  
2 to the HOA's claim. When we were going to trial in Berkeley  
3 County that day, the number we were going to put up on the  
4 board for all the damages that we claimed at that point was  
5 \$12,988,670.40. That's exclusive of the individual owner's  
6 claims. This is just cost to repair and cost to replace the  
7 windows and everything that -- thereafter that was involved  
8 in that case.

9 As Your Honor is aware, we settled with certain  
10 defendants, and then we came to trial. And the number we  
11 asked for at trial was \$8,728,174.47. We reduced our damage  
12 claim by \$4,260,497.93. Those damages were what was not put  
13 in your case. Now, the reason we did not put those damages  
14 in -- if Your Honor will turn to Exhibit 4 and Exhibit 2.  
15 Exhibit 4 is one of the ones -- that's the mutual settlement  
16 agreement. Exhibit 4 and 2 now.

17 THE COURT: Okay.

18 MR. BUNDY: 4 is the written agreement itself. And  
19 if you look at 4, attached to it is Exhibit 2. If you add up  
20 the total settlement by Coastal Caulking, Muhler, Caoba, AC  
21 Construction, Weather Shield, Castle Siding, Coastal Roofing,  
22 total paid, and add the 10 percent that would go to the -- if  
23 you want to compare that to the number that we reduced our  
24 claim by, those defendants paid approximately 93 or 94  
25 percent of the total claims against them based upon the

1 damages they were paying to get out of this case -- to get  
2 out of that case.

3           These two remaining defendants got the benefit of  
4 that. We could have come in and asked Your Honor to award  
5 the total number that we went for in Berkeley County of  
6 \$12,988,672.40. And we would be in front of you today  
7 admitting that they were entitled to a setoff of that 4  
8 million some odd dollars. It's a zero sum game. But for  
9 ease of trial and for strategic reasons, the lawyers decided  
10 on the plaintiffs' side that it made more sense for a lot of  
11 reasons, strategically in a lot of ways, not to prove up --  
12 or win the case and prove up all those damages only to have  
13 you reduce them by that settlement amount.

14           For a lot of reasons: One, it would have been a  
15 complete waste of time, but, two, and more importantly, it  
16 would have given these defendants the opportunity to put into  
17 evidence all the things they didn't put into evidence. It's  
18 my understanding where we are right now in this case, while  
19 my esteemed opposition counsel may believe a lot of things  
20 happened and may hope that a lot of things happened, and some  
21 of those things may have actually happened, but none of them  
22 are in the record in this case. Not any of that is in this  
23 record.

24           The case I tried in front of Your Honor did not  
25 include any of that stuff about they were such good guys and

1 all of this sort of stuff and they were trying to do the  
2 right thing and all that. There was no evidence of any of  
3 that. They didn't even put up any witnesses really. Most of  
4 the witnesses were ours. All that is very interesting. It's  
5 the case they should have tried, but it's not the case they  
6 did try. So they are not entitled to anything for the 4  
7 million because I've already given it to them and saved Your  
8 Honor a bunch of time not listening to it.

9 Let's look at the next one. It's very interesting.  
10 Let's look at Exhibits 1 and 3. Now, they say, and Your  
11 Honor I think at least right now believes, and hopefully I  
12 can sway your thinking, that they are entitled to a setoff  
13 for what they paid in the settlement of this part of the  
14 case. Okay? They were parties. These defendants were  
15 parties to the settlement, of this settlement.

16 It's not like I have four people to sue. Okay? And  
17 I've settled one and bring in the two that didn't settle.  
18 These defendants settled with us. And what did they get for  
19 their settlement? And because of what they got for their  
20 settlement, they are not entitled to any setoff. They've  
21 already got a bunch of benefit from the settlement they made.

22 In fact, I commend both of these gentlemen for  
23 settling this case or those portions of this case under the  
24 terms they did. I take the position they saved their client  
25 somewhere between \$30 and \$45 million in damages, based upon

1 your Court's order. And your comment today I think goes to  
2 the point that Your Honor believes these people committed  
3 fraud. You found them to be grossly negligent.

4 Now, while I'm on that point, we might as well go  
5 ahead and take care of this notion of contribution. One  
6 thing my opposing counsel failed to point out in section  
7 15-38-15 is Section F. This section does not apply to a  
8 defendant whose conduct is determined to be willful, wanton,  
9 reckless, grossly negligent, or intentional conduct involving  
10 the use of possession or sale of alcohol. I don't have any  
11 proof of that, but I've got gross negligence.

12 THE COURT: Don't sell alcohol, huh?

13 MR. BUNDY: Not yet. They could probably prove that  
14 a lot easier on me than I can prove it on them.

15 Contribution is out. Let's see what it is they got  
16 for their money. Now, they got 1,365,000 and they owe  
17 another \$900,000. Your Honor heard testimony; and we are in  
18 a good position here, unlike if we had a jury. Because if we  
19 had a verdict here, we wouldn't know what that jury did or  
20 how they got to their conclusion. So unless Your Honor is  
21 willing to go back and say, you know what, I was wrong about  
22 all of it, there was no evidence --

23 THE COURT: I'm not saying I'm wrong about all of  
24 it, but I might be wrong about some of it.

25 MR. BUNDY: You are not wrong about any of it. It

1 is a perfect order. You were right in every way.

2 Your Honor, let's look at this a minute. If we look  
3 at Page 5 that you were looking at before --

4 THE COURT: Page 5?

5 MR. BUNDY: Page 5, Plaintiff's Exhibit 3.

6 These are the terms of the settlement by and between  
7 the plaintiffs and these two defendants sitting here today.

8 THE COURT: Tell me where you are referring to.

9 MR. BUNDY: At the top little bar, top bullet at the  
10 top.

11 THE COURT: Okay.

12 MR. BUNDY: And what they got for their \$2 million,  
13 which they haven't paid all of yet, which I assume they are.

14 THE COURT: Unfair trade practices, fraud,  
15 individual liability, is that what you are referring to?  
16 Aiding and abetting?

17 MR. BUNDY: Attorney's fees and punitive damage.

18 THE COURT: Punitive damage and attorney's fees.

19 MR. BUNDY: Now, Your Honor, if I had come and tried  
20 that case in front of you, had that UPTA, breach of contract  
21 accompanied by a fraudulent act, fraud, and all these other  
22 things, I'm satisfied that Your Honor would have found fraud  
23 because you found gross negligence. I'm satisfied that  
24 subsumed in that is an UTPA claim. The statute would have  
25 required, if you found such a claim, to award attorney's

1 fees. So right then and there, they saved their client 2  
2 million bucks. That's where the \$2 million is.

3 They are asking for a setoff against a setoff. Talk  
4 about double dip. They got 2 million bucks. They saved  
5 their client I don't know how much money. Because if Your  
6 Honor had awarded treble damages under UPTA, which I think  
7 Your Honor could have legitimately done, that's a \$45 million  
8 treble. Okay? Your Honor could have awarded punitive  
9 damages in just one time the amount of actual damages, and  
10 that would have been \$15 million. So for their \$200,000,  
11 just like the window people --

12 THE COURT: Wasn't only 200, was it?

13 MR. BUNDY: Little bit more, whatever it was.

14 THE COURT: It was 3 or 4 million. Let me see.

15 MR. BUNDY: 1,365,000 plus the 900, which is 1.2.

16 THE COURT: 1,365,907. How did you come up with .69  
17 cents?

18 MR. BUNDY: I don't know how they got -- we told  
19 them we wanted this much money, they divided it up any way  
20 they wanted.

21 MR. MAYBANK: Hard negotiations, Your Honor.

22 THE COURT: Okay.

23 MR. BUNDY: My point is, Your Honor, quite simply,  
24 there is no difference between leaving the windows out and  
25 not trying that case, and leaving out major causes of action

1 for which they paid for relief. They paid \$2 million not to  
2 be sued for punitive damage. And they were a part of that  
3 settlement. They've gotten all those settlements.

4 Now, if you go to the law on equitable indemnity, I  
5 guess which is what this is, or settlement --

6 THE COURT: I don't think they are -- I think they  
7 are talking about setoff.

8 MR. BUNDY: If you look at the law on setoff, setoff  
9 is an equitable remedy, Your Honor. Here's a little short  
10 brief. I will read you this for the record. I sent you the  
11 law on this. What it says is that a nonsettling defendant is  
12 entitled to credit for the amount paid by another defendant  
13 who settles.

14 These are not nonsettling defendants. These are  
15 settled defendants. And that makes perfect sense, because  
16 they had the ability to negotiate the settlement terms, as  
17 did we. And what we did --

18 THE COURT: Hold on just a second. That's Powers  
19 vs. Temple you are referring to, 1967 case; is that right,  
20 Mr. McDonald?

21 MR. McDONALD: Yes, sir, cited within Welch v.  
22 Epstein.

23 THE COURT: I figured you would know off the top of  
24 your head; is that right?

25 MR. McDONALD: That's exactly right, Your Honor.

1 THE COURT: Thank you very much.

2 MR. BUNDY: I take the position they are not in a  
3 position to get a settlement because they are -- because they  
4 are nonsettling. They are a nonsettling defendant.

5 THE COURT: Not a nonsettling -- go ahead.

6 MR. BUNDY: To allow them to get a double recovery  
7 in the sense they paid \$2 million not to get sued for  
8 punitive damage, \$2 million not to have to pay attorney's  
9 fees, \$2 million not to be subject to an UPTA claim. They  
10 bought that peace, but they don't get to take that same money  
11 that they bought their peace for over there and come back  
12 over here and say, I'm going to apply that money to more  
13 causes of action.

14 As an example, suppose a lawyer got sued for slander  
15 and malpractice. If you settle the slander claim for a  
16 million bucks and went to court and tried the malpractice  
17 claim, he wouldn't be entitled to a million-dollar setoff  
18 under the slander claim. They are different causes of  
19 action. That's what was given up. That's what they bought.  
20 They bought their peace. So I take the position they are not  
21 entitled to any setoff at all.

22 THE COURT: Okay.

23 MR. BUNDY: In addition to that, Your Honor, they  
24 haven't put in any evidence. There's no evidence in the  
25 record of how you would go about doing such a thing. I

1 haven't seen any evidence in any of this other than what they  
2 said here today. And it is clear they can't bring in  
3 evidence now. They paid for a release -- a partial release  
4 to get out of punitive damages and all these other bad claims  
5 that they would have gotten tagged for. And Your Honor knows  
6 they had value. That's the thing. It's not like we are  
7 speculating what would have happened if a jury was doing  
8 this. You know what you would have done if those claims were  
9 there, and you know they had value.

10 Now whether or not we negotiated with them --  
11 whether or not I got out-negotiated by these gentlemen, which  
12 I submit to you I did, to the tune of about 30 million bucks,  
13 so they made a bunch of money for their client in settling  
14 with me on those bad claims. So that's the reason they are  
15 not entitled to any of that.

16 As it relates to the notion that there's loss in  
17 market opportunity is somehow a double dip, that's like  
18 saying actual damages for medical recovery and pain and  
19 suffering are not entitled to both of them. Of course you  
20 are. They are two different types of damages.

21 The only testimony in the record was from Donato,  
22 and it's attached to our brief, was that rebuilding these  
23 units, assuming it's done, is not going to mitigate or  
24 eliminate the loss these people had during the period of time  
25 that they could not sell the unit. He quantified that

1 number. I mean, I never heard the defense argument I didn't  
2 put up enough witnesses on some issue. I put up all that  
3 needed to be put up. They didn't put up a witness to the  
4 contrary. Now, then it becomes purely a matter of law.

5 THE COURT: Tell me this -- about the speculation on  
6 the \$125 a day where somebody didn't live there.

7 MR. BUNDY: They had tenants that lived there, and  
8 whether --

9 THE COURT: I'm not talking about ones that had  
10 tenants. I'm talking about those that were sitting vacant.

11 MR. BUNDY: Where is the evidence of that? That's a  
12 mitigation of damage argument. He didn't put any evidence  
13 in.

14 THE COURT: I don't know. I would have to go back  
15 and look at the transcript, because I frankly don't remember.

16 MR. BUNDY: Well, that shouldn't be your job.

17 THE COURT: How many owners actually testified?  
18 There weren't but a couple, were there?

19 MR. BUNDY: We put some of them up and then we all  
20 agreed they would testify to the same thing, so in order to  
21 save time --

22 THE COURT: It was several.

23 MR. BUNDY: And that was their choice.

24 THE COURT: Did that issue come up, Mr. Maybank,  
25 during the trial? Apparently, you looked at the transcript.

1           MR. MAYBANK: I mean, to prove the damages. I  
2 didn't have an expert go there and sit at the unit.

3           THE COURT: Did they testify at trial that they did  
4 not occupy the premises?

5           MR. MAYBANK: Yes, sir, I quoted from some of the  
6 transcript pages.

7           THE COURT: Tell me about that, Mr. Bundy. I  
8 understand the argument he's trying to tie in the setoff, but  
9 if it's speculative and wrong, I'm going to correct it,  
10 regardless of what you say.

11          MR. BUNDY: I understand, but these people had  
12 tenants as well.

13          THE COURT: I'm not talking about the ones who had  
14 tenants. The ones did not have the same thing and were not  
15 in there, how can we charge them \$125 a day? I know that's  
16 not a whole lot of money from the total package here, but  
17 that's my question to you.

18          MR. BUNDY: My position is that that's their burden  
19 to prove, to cite the record to you. Judge, it's not your  
20 job to go back and comb the record and find that out. That's  
21 one. Two, I think they've got to quantify. I think they've  
22 got to give you transcripts and page and line.

23          THE COURT: You said it refers to the transcript --

24          MR. BUNDY: I just saw it today.

25          THE COURT: I haven't read the memo.

1 MR. BUNDY: Your Honor, I don't know.

2 The sound thing, I don't know how to quite respond  
3 to that, other than to say -- that to now take the position  
4 Padget wasn't qualified, but no objection was made at the  
5 time that he was testifying as related to that testimony,  
6 makes it pretty difficult on you. If they are going to tell  
7 you you are doing something wrong, it's hard to fix it. One,  
8 he's an engineer. He was qualified. Okay?

9 The issue on the amount of the money to fix the  
10 sound is based upon an estimate in the record from general --  
11 a licensed general contractor, with a design from a  
12 professional engineer that says this is the amount of money  
13 it's going to take to fix it and make it right. And that's  
14 the basis upon which you made your award. They didn't put up  
15 any --

16 THE COURT: They said it wasn't done properly.

17 MR. BUNDY: Sir?

18 THE COURT: Your people said it wasn't done  
19 properly, had to be redone.

20 MR. BUNDY: Right, exactly. And all --

21 THE COURT: I don't remember all the details, just  
22 remember them saying it wasn't done properly.

23 MR. BUNDY: My point is, to come in today and say,  
24 well, my client was a good guy and they tried to fix it, none  
25 of that is in the record here. There's no number in the

1 record. There's no note. There's no way for you to pick a  
2 number. I don't know how you would do it, other than the  
3 number you had, because that's the only number you had before  
4 you at trial. There's still no number for you. Once again,  
5 you are going to have to go back, I guess, and comb the  
6 record and figure it out, but there's no testimony to that  
7 effect to help you.

8           Your Honor, I believe -- anything else? That's all  
9 I have other than I'm not going to argue there's no evidence.  
10 I don't think I need to spend too much time. We didn't make  
11 a case for all these causes of action. I think as the trial  
12 judge, you heard what you heard, unless you are going to  
13 change your mind as to everything.

14           Thank you.

15           THE COURT: Mr. Maybank, anything in rebuttal or  
16 reply?

17           MR. MAYBANK: Yes, Judge, just a couple of things.  
18 Let's talk about the acoustical issue. In our brief, we  
19 cited -- to the extent the Court relied on Ted Padget, he's  
20 an engineer. I've got a cousin in Clemson; he's an engineer,  
21 but he's not an acoustical engineer.

22           Mr. Padget testified regarding the noise  
23 remediation. We believe that any kind of reliance on  
24 Mr. Padget's engineering background as it relates to noise  
25 attenuation or remediation should be improper. We briefed

1 that on Line 13 in a footnote.

2 THE COURT: Was it raised at the time? Because he  
3 testified about the acoustics if I remember.

4 MR. MAYBANK: But what we raised to the Court was  
5 his qualifications to give that testimony.

6 THE COURT: I think I allowed it.

7 MR. MAYBANK: I don't recall.

8 THE COURT: Well, if you made the objection, I'm  
9 sure I ruled one way or the other. I haven't read the  
10 transcript. I don't know if you made an objection.

11 MR. MAYBANK: It's on Page 799, Your Honor. And I  
12 will have to go back and look, and I'll double-check.

13 THE COURT: If you made an objection, I ruled. If  
14 you didn't make the objection, it's moot.

15 MR. MAYBANK: Well, what our position was at trial  
16 was that Mr. Padget was never retained as a design acoustical  
17 and never submitted a design.

18 THE COURT: Doesn't matter whether he was retained  
19 that way. The question is, is he qualified to testify what  
20 he's going to testify to?

21 MR. MAYBANK: Your Honor, I do not recall.

22 THE COURT: Look and see if you made the objection  
23 at the trial. Okay?

24 MR. MAYBANK: I will, Your Honor.

25 THE COURT: And if you did, then I will let you send

1 me something real short on why I should reverse the whole  
2 thing because I was wrong admitting him as an expert.

3 MR. MAYBANK: Thank you, Your Honor.

4 THE COURT: I don't know if you did or not.

5 MR. MAYBANK: I know I objected. We've voir dired  
6 him and I believe that we attached his credentials as being  
7 able to give --

8 THE COURT: Obviously, I ruled that he was qualified  
9 to testify about the acoustics if you made the objection.

10 MR. MAYBANK: I will double-check, Your Honor.

11 THE COURT: Otherwise, he wouldn't have testified.

12 MR. MAYBANK: Well, our position would be that  
13 regardless of what he said, if they are saying our burden is  
14 put in that there was another figure that would have been  
15 good, our figure is zero, because Mr. Stewart testified as  
16 well his own expert --

17 THE COURT: You are saying what was done was proper.  
18 I understand.

19 MR. MAYBANK: What was done was proper.

20 THE COURT: I understand that that's the difference  
21 in the testimony. I understand.

22 MR. MAYBANK: As far as the issue of setoff, Your  
23 Honor, there was an equity -- I believe Mr. Bundy's analysis  
24 is more in line with the wrongful death, survival-type  
25 action, where they tried to shift the burden of money to the

1 different causes of action that is clearly distinct. This  
2 is, in general, a construction defect case. I mean, that's  
3 what it boils down to, all the moneys paid by all the  
4 defendants.

5 THE COURT: Apparently, there was a whole line of  
6 cases. I don't know the facts in the cases, but there's a  
7 whole line. It also says it's equitable in nature.

8 MR. MAYBANK: It is, Your Honor.

9 THE COURT: So I will just have to take a look at  
10 it.

11 MR. MAYBANK: Thank you, Your Honor.

12 THE COURT: I haven't looked at the cases, but I  
13 will take a look at them.

14 MR. MAYBANK: Yes, sir.

15 THE COURT: Anything else?

16 MR. MAYBANK: One moment, Your Honor. Thank you,  
17 Your Honor. May we supplement these arguments with some  
18 briefs?

19 THE COURT: What do you want to brief? Only thing I  
20 want you to do, if you want to brief it, it's this  
21 nonsettling defendants issue.

22 MR. MAYBANK: Oh, with Mr. Padget?

23 THE COURT: Powers vs. Temples case. Okay?

24 MR. MAYBANK: Your Honor, we would certainly agree  
25 with you it is within this trial judge's equitable discretion

1 to be able to take --

2 THE COURT: Well, just brief it. You said you want  
3 to brief it. Brief it.

4 MR. MAYBANK: Yes, Your Honor. I will do that.

5 THE COURT: Anything else?

6 MR. MAYBANK: Nothing further.

7 THE COURT: You can look at the transcript if you  
8 think I was in error in allowing him to testify. I will be  
9 glad for you to submit that to me.

10 MR. MAYBANK: Okay. Thank you, Your Honor.

11 THE COURT: Because I don't -- quite frankly, I  
12 don't remember him testifying. And if you asked about his  
13 qualifications and objected, I would have ruled, because he  
14 wouldn't have testified otherwise. I don't remember if you  
15 did or not. So if you did, and you want to point that out to  
16 me by memo, that's fine. I will be happy for you to do that.

17 MR. MAYBANK: Okay. Thank you, Your Honor.

18 THE COURT: Or you can give me the transcript and I  
19 will look. I don't have a transcript.

20 MR. MAYBANK: Actually, I brought one with me.

21 THE COURT: You've got advantage over me.

22 MR. MAYBANK: I brought one with me. I can look,  
23 Your Honor.

24 MR. BUNDY: Here's a whole transcript just for you.

25 THE COURT: I guess I've got one now.

1           MR. McDONALD: Judge, that's broken down so you can  
2 click on the various witnesses as well, so you don't have to  
3 thumb through. You can just go straight.

4           MR. BUNDY: There's a whole a lot of stuff you won't  
5 find in there.

6           THE COURT: Anything else?

7           MR. BUNDY: Nothing else from the plaintiff, Your  
8 Honor.

9           THE COURT: Okay. Have a good weekend.

10           (Proceedings are concluded.)

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**Carolina  
Builders &  
Reconstruction**

**ADDITIONS • RENOVATIONS • NEW CONSTRUCTION**

April 5, 2013

Attn: Theodore Padgett, PE, PC

Re: The Oaks, Bldg. 118, Charleston, SC  
**Elevator Pit Cleaning Proposal**

Following is our cost estimate to clean elevator pit at  
**The Oaks, Bldg. 118, Charleston, SC.**

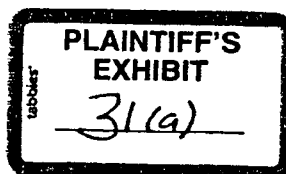
**Scope of work:**

- Extract and dispose of standing water mixed with hydraulic fluid at elevator pit
- Thoroughly clean elevator pit slab and affected walls.

**Price for the above scope of work is \$1,850.00**

Wendell Vincent

Email Sent 04/05/2013



143-E Long Point Rd. • Mt. Pleasant, SC 29464  
843.849.3643 office • 843.849.3690 fax  
cbr@homesc.com



Reply To:

- ☐ P.O. Box 388 - Ravenel, S.C. 29470-0388 - (843) 889-2227
- ☐ P.O. Box 532 - Sheffield, AL 35660-0532 - (256) 767-0476

# PROPOSAL

February 5, 2013

Attn: Mr. Ted Padgett

Subject: 118 Fairbanks Oak Alley, Building #1

Gentlemen:

We are pleased to submit our proposal for the installation of urethane grout at the referenced location including the furnishing of all material, equipment, labor and supervision, as required to accomplish the work, as follows:

Scope of Work:

We will install urethane grout around the perimeter walls of the elevator pit in an effort to reduce or stop water seepage into the pit area.

Payment:

Payment shall be in full upon completion in the amount of **\$7,500.00**

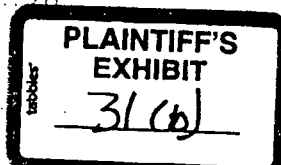
Basis of Proposal:

- 1) We shall be provided the following goods/services at no cost to us:
  - a. Free ingress/egress to the elevator pit area through the parking area gate.
  - b. The elevator car shall be secured and positioned in place to allow safe access for our crew to the elevator pit area for the performance of our work.
  - c. Any local or state permits or licenses that may be required for the performance of this work.
- 2) All urethane material shall be as manufactured by Prime Resins, Inc. and shall be installed in strict accordance with the manufacturer's printed installation instructions.

Unless otherwise in part provided for in the above, this proposal is also subject to the conditions noted on the reverse side.

Accepted .....

By .....



PALMETTO GUNITE CONSTRUCTION CO., INC.

By .....

Approved: .....



Reply To:

- P.O. Box 388 - Ravenel, S.C. 29470-0388 - (843) 889-2227
- P.O. Box 532 - Sheffield, AL 35660-0532 - (256) 767-0476

## PROPOSAL

- 3) Every effort will be made to stop the infiltration of water into the elevator pit, however, we make no guarantee that the installation of this material will completely stop water seepage into the elevator pit area. Any subsequent treatment of this area shall be performed at an additional cost to be mutually agreed to by both parties to this proposal, before said work is performed.
- 4) Payment shall be made within 10 days of date of invoice. If payment is not received as stipulated and cost is incurred in relation to the collection of said funds, the recipient of this proposal agrees to pay all collection costs, including attorney's fees and interest at current rates. No retainage will be held.
- 5) If you have any questions concerning this proposal, please contact Bill Snow or Tommy Hendricks at 843-889-2227.

Insurance:

It is understood and agreed that we will furnish workman's compensation, public liability, and property damage insurance and pay social security on all employees on our payroll to comply with Federal and State laws.

Respectfully Submitted

Unless otherwise in part provided for in the above, this proposal is also subject to the conditions noted on the reverse side.

Accepted ..... 20.....  
 .....  
 By.....

**PALMETTO GUNITE CONSTRUCTION CO., INC.**  
 By.....  
 Approved:.....

*Theodore Padgett, PE, PC*  
*Consulting Engineer*  
*4865 Highlander Lane*  
*Hollywood, SC 29449*  
*843 860 1307*  
*843 769 7710 fax*  
*theodorepadgett@aol.com*

May 14, 2008

Mr. Daniel Tollens  
Ravenel Associates. Inc.  
P.O. Box 406  
Isle of Palms, SC 29451

Re: The Oaks, Daniel Island

Mr. Tollens:

As requested, I have performed a preliminary inspection of water intrusion problems at the above property. This investigation was prompted by the appearance of damaged interior sheetrock in Building 140.

An initial site visit was conducted on April 30, 2008 with representatives of Carolina Building and Restoration. The sheetrock had been removed in Units 3A and 4A. The oriented strand board (OSB) exterior wall sheathing was observed to be in advanced stage of deterioration. Destructive investigations were conducted on May 8<sup>th</sup> and 13<sup>th</sup>. Test cut openings were taken into the stucco in order to determine the source of intrusion. The table found in Appendix A describes the test cut locations and lists the file photographs applicable to each.

#### **Project Description**

The project consists of 6 condominium buildings constructed on Daniel Island. The structures are 4 stories with parking afforded at the ground level. The elevated 3 floors are the residential units. The exteriors are finished with stucco and brick veneer. The roofs are single ply membranes. The dates of construction were not available to me at this time but it is thought that the units are 2 to 3 years old.

#### **Investigation- Sources of Water Intrusion**

In order to determine the source of the intrusion associated with the observed damages in Building 140, the stucco was removed above and below the roof intersection at Unit 4A. This first opening was designated TC#1. Owing to the appearance of water stains at the soffit above the rear porch at Unit 2, TC# 7 was taken. This opening showed the presence of extensive water intrusion damage. In order to determine that source, TC#8, TC#9 and TC#10 were taken.

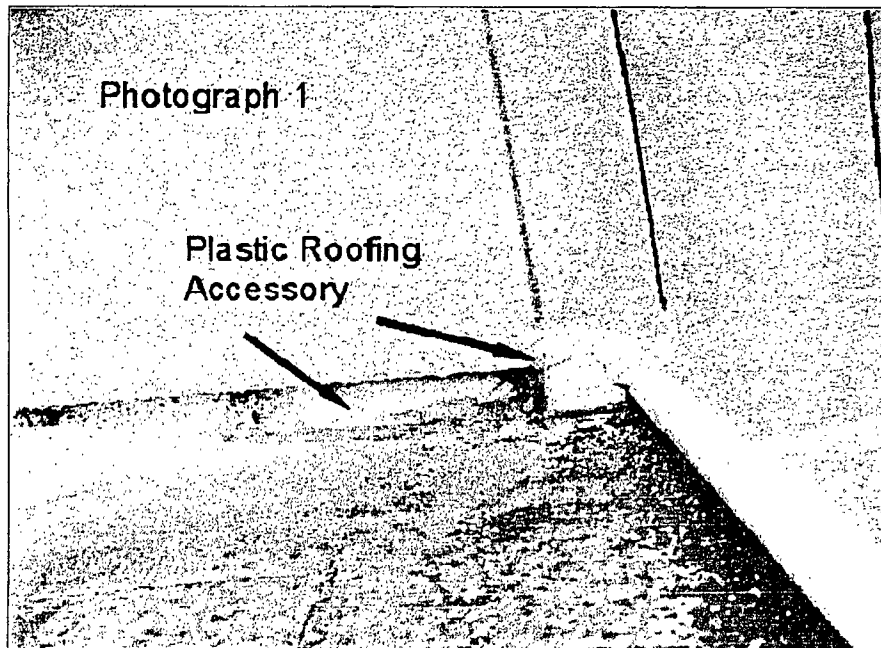
Mr. Tollens  
The Oaks  
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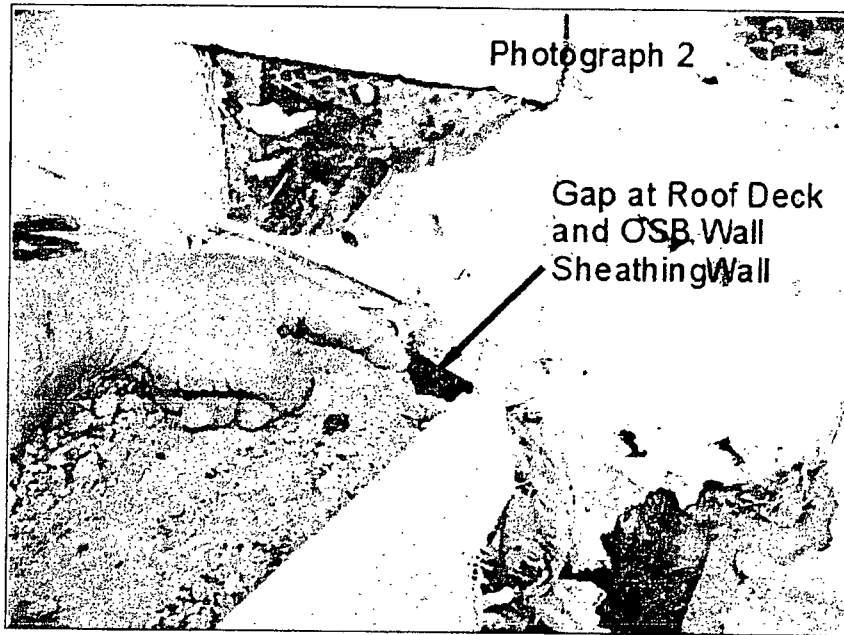


In order to confirm the presence of excessive moisture in the exterior walls of other buildings, TC#4, TC#5, TC#6, TC#11, TC#12, and TC#13 were taken. With the exception of TC#6, all cuts showed evidence of significant water intrusion. Openings TC#2 and TC#3 were taken to investigate cracks within the stucco.

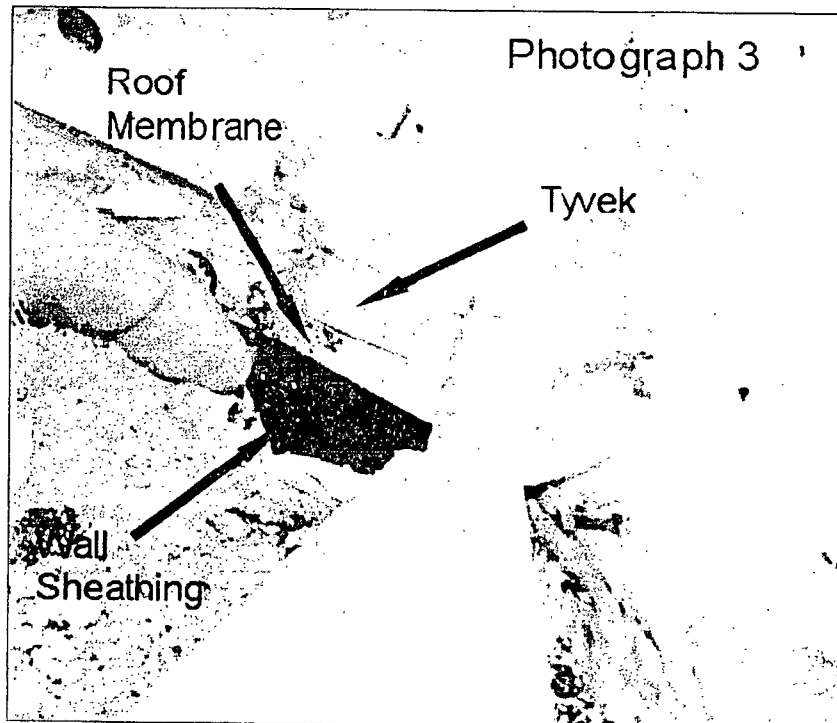
### Primary Source of Intrusion

The principal avenue of water intrusion behind the weather protection system was identified to be the intersection of the single ply roof membrane with the roof eave and sidewall. The roof membrane was found to be lapped up the parapet wall (behind the Tyvek) and down the face of the eave (over the Tyvek). The Tyvek moisture barrier was cut at this intersection to allow passage of the membrane. Without the existence of other measures (such as self-adhering membrane flashing) a hole exists in the weather protection barrier. Additionally, a physical gap was present in the roof deck to wall juncture at TC#1. This gap was originally plugged with sealant and was overlain by a plastic roofing accessory that was also set in sealant on top of the membrane. The following photographs demonstrate the conditions.

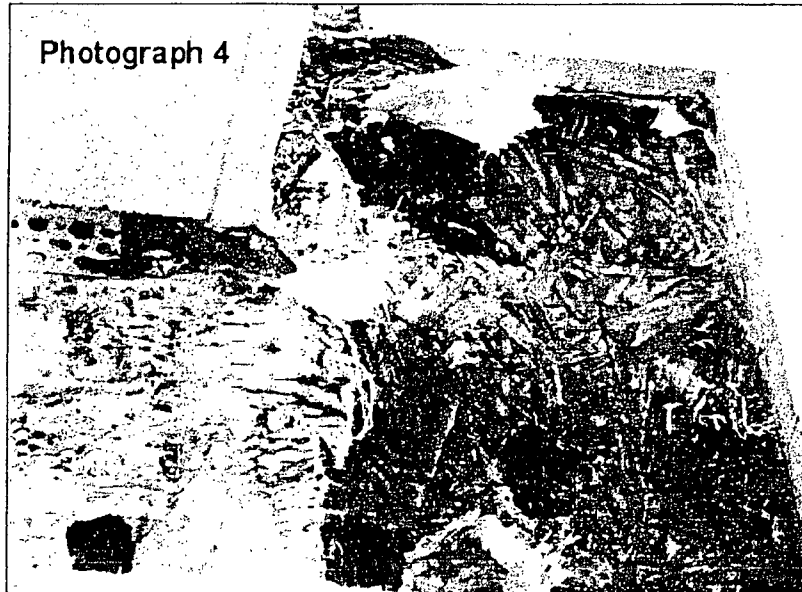




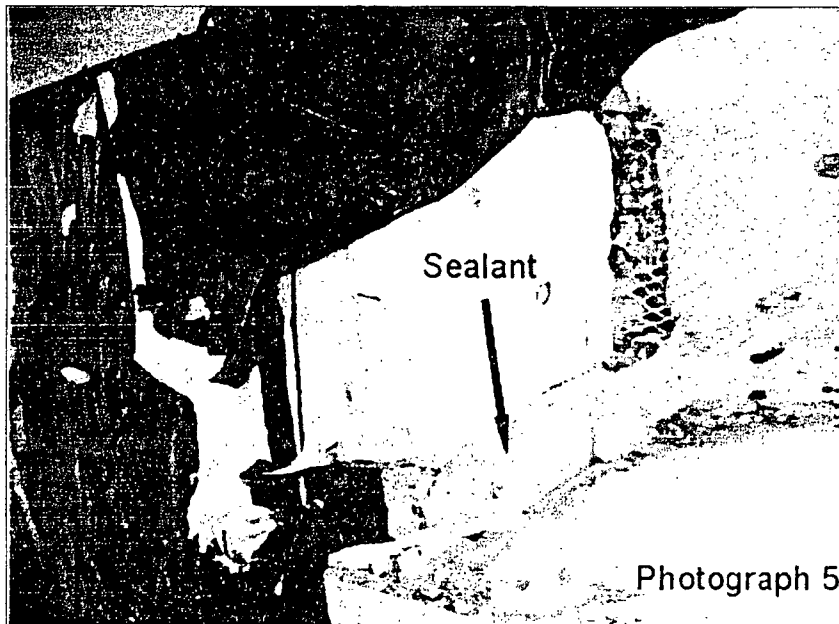
The following is a blowup of Photograph 2.



Photograph 4 demonstrates the level of damage to the exterior wall sheathing exhibited in TC#1.

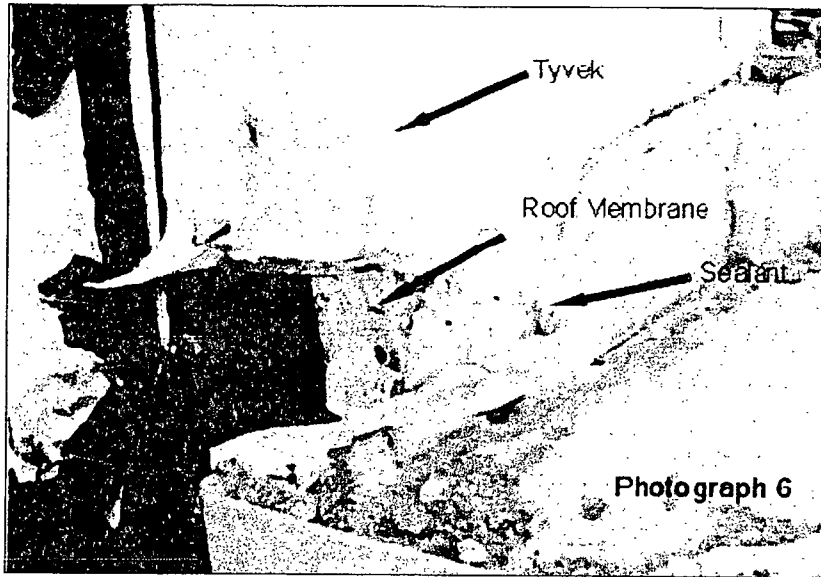


Similar conditions were identified in TC#10. The roof intersection with the parapet wall was finished with a plastic roofing accessory set in sealant. Photograph 5 shows the conditions after this accessory was removed.

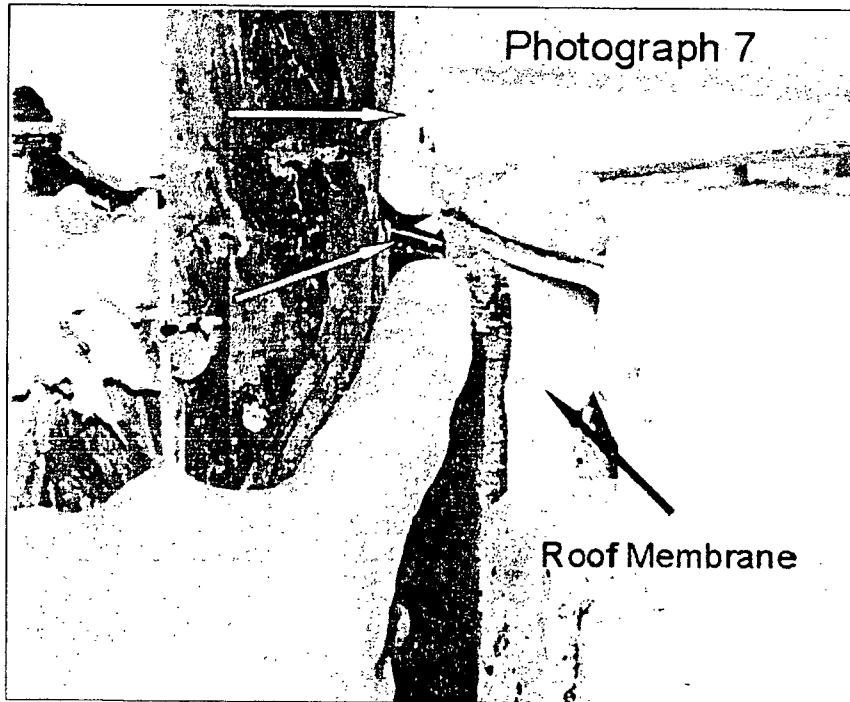


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Photograph 6 is a blowup of the roof edge.

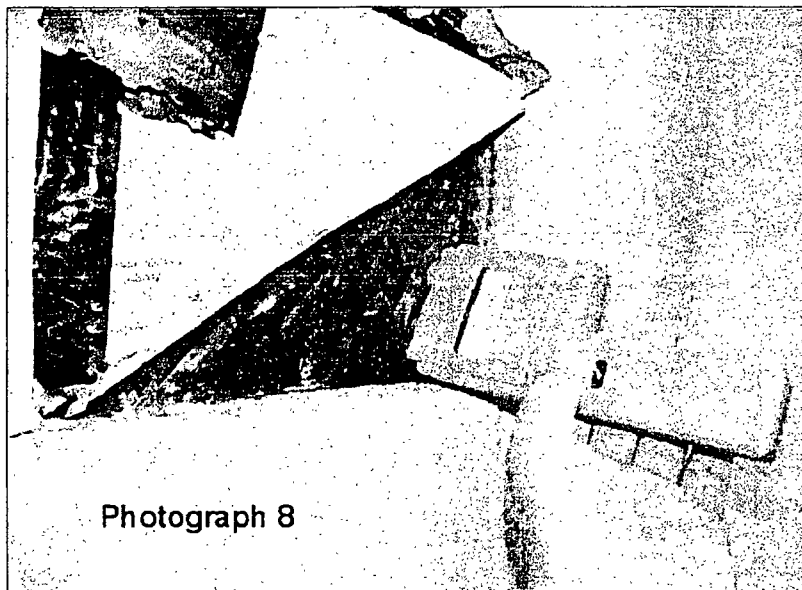


Photograph 7 is a picture of the same area but more from the left.

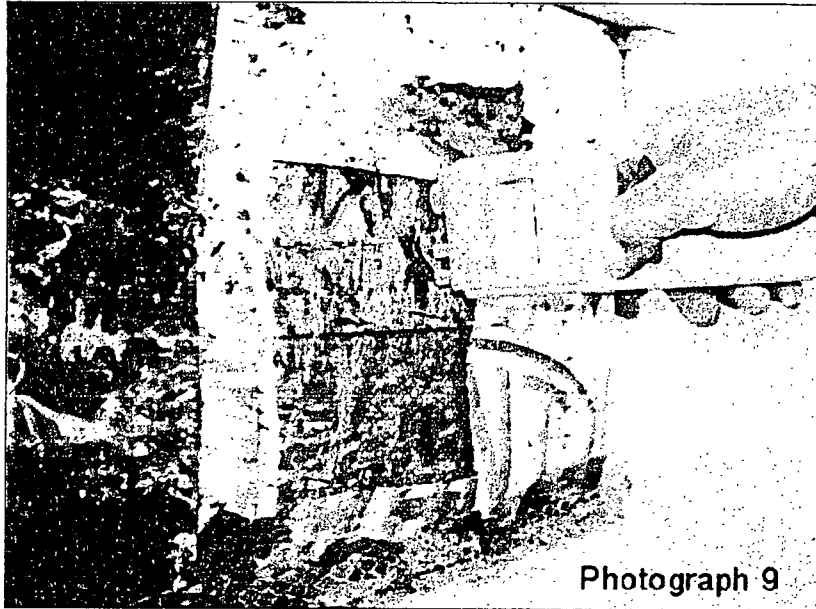


All of the arrows in Photograph 7 point to the roofing membrane. It is joined with what appeared to be a field splice at the roof edges. Water is able to penetrate these splices, defeat the large amount of sealant and find its way to the wall cavity.

What both installations lack is a competent means to waterproof this 3 way intersection. While the Tyvek was wrapped with a vertical strip of black polyethylene at the corners, it falls short of preventing the observed intrusion. The level of damage observed was extensive and especially so in light of the relatively young age of the buildings. This is due to defects in the stucco system which will be discussed below. Photograph 8 demonstrates the conditions encountered at TC#4. Please note the moisture content reading of >30%.

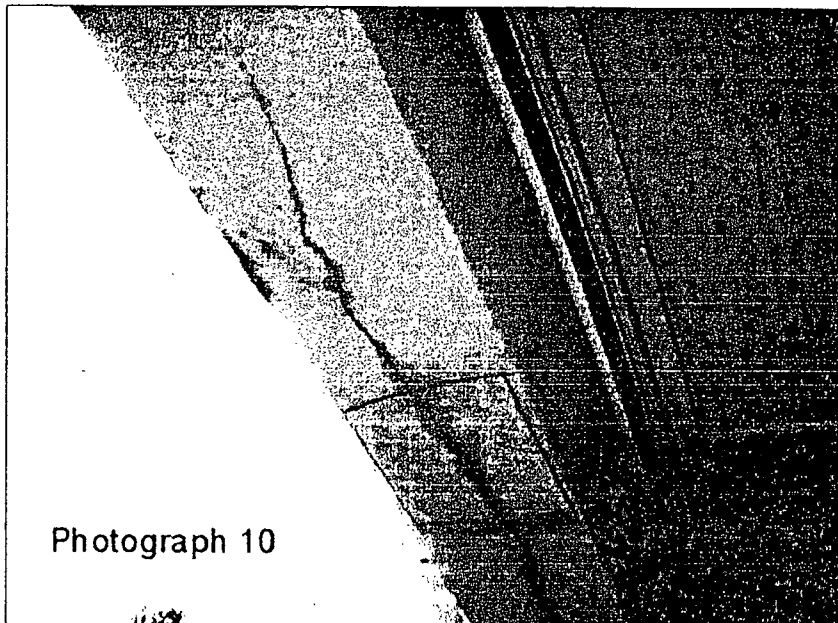


A similar condition was found at TC#5. This can be seen in Photograph 9. Again, the moisture content is >30%.

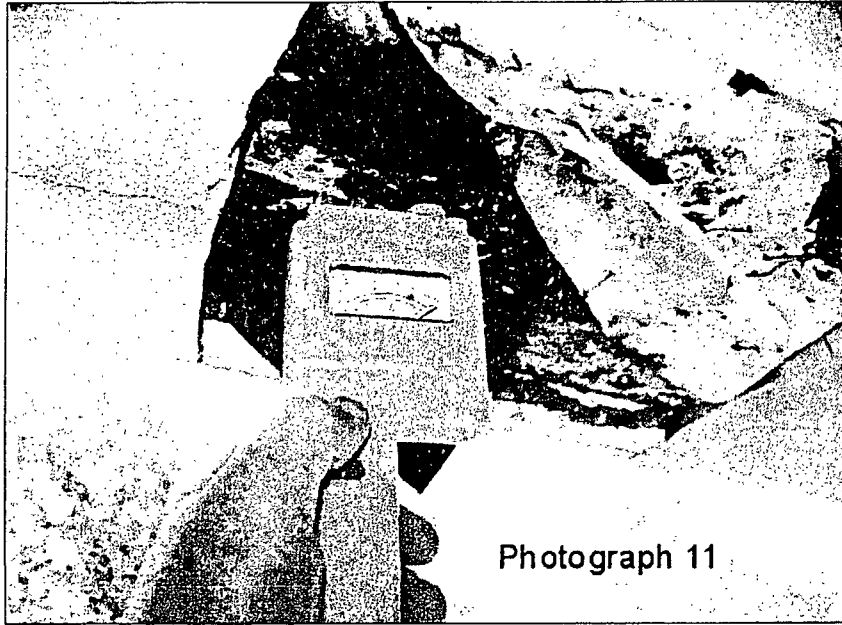


Photograph 9

As mentioned above, cracks in the stucco soffit on the porch of Unit 2A, Building 140 lead me to investigate that area further. Test cut #7 was taken at the horizontal return of the exterior stucco wall. This is shown in Photographs 10 and 11. Please note that the moisture content reading in Photograph 11 is  $>30\%$ .



Photograph 10



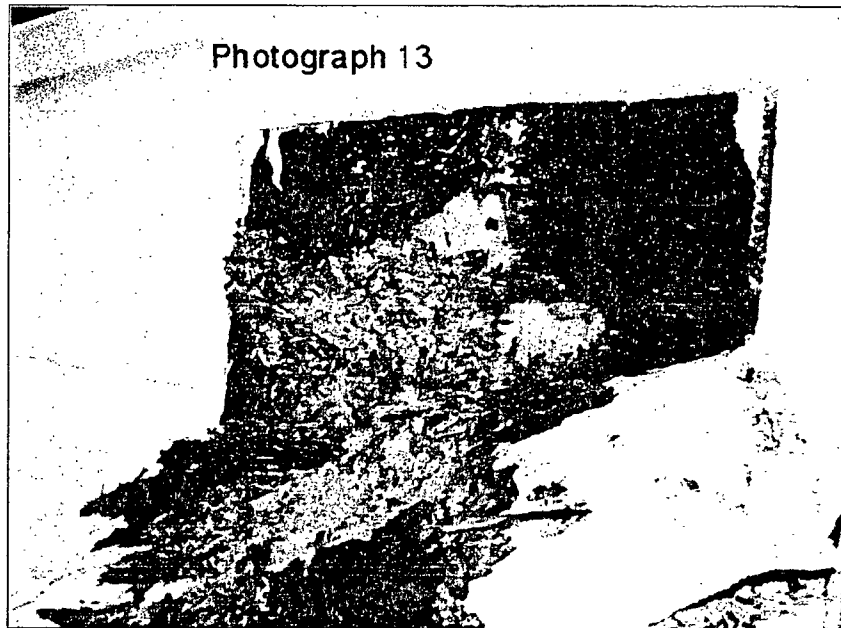
Photograph 11

The opening of TC#7 was extended up the exterior wall face and designated TC#8. The exposed conditions are shown in Photograph 12.

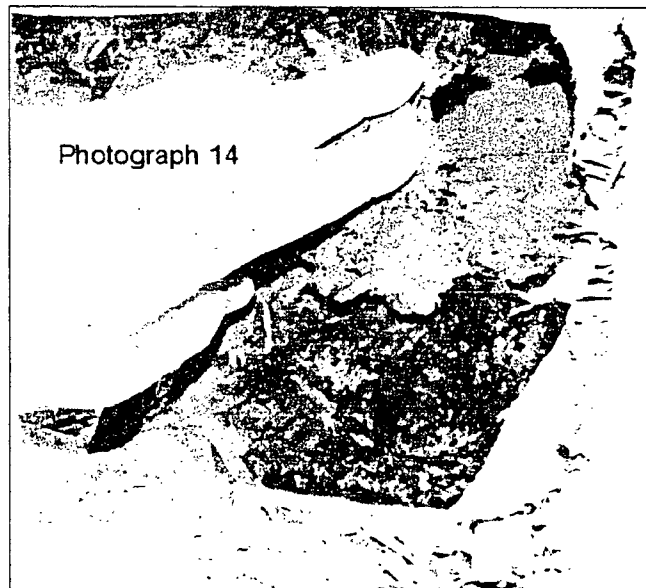


Photograph 12

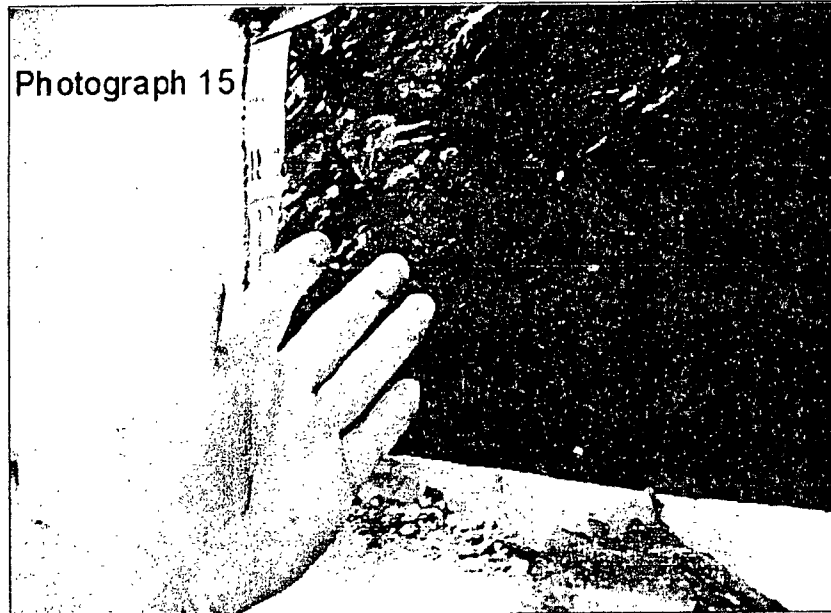
Test cut #9 was taken adjacent to the 4<sup>th</sup> floor deck above the previous cut. The exposed conditions are indicated in Photograph 13.



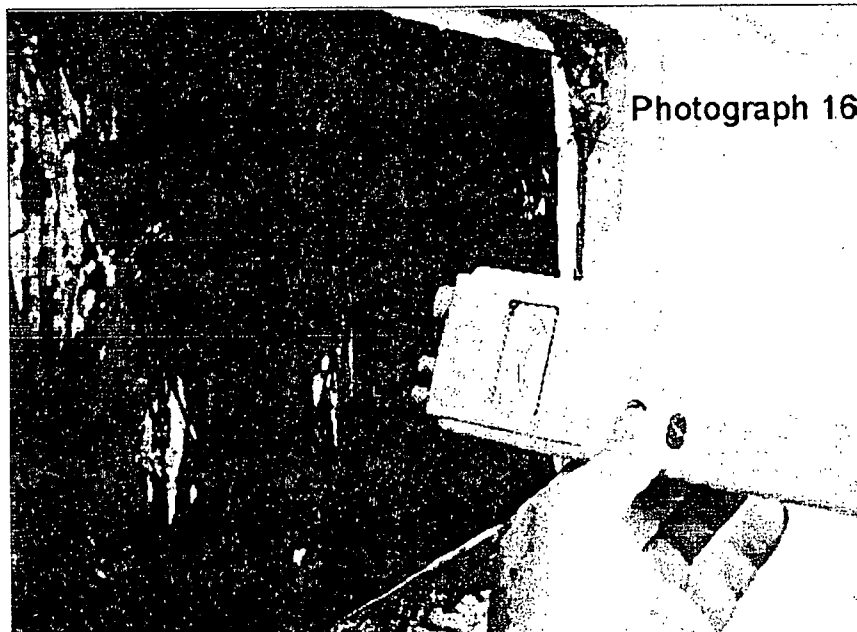
Test cut #11 was taken on the rear elevation of Building 144. This is the stucco wall adjacent to the 2<sup>nd</sup> floor porch and its location is similar to that of TC#7 through TC#10. The exposed conditions are shown in Photograph 14.



Test cuts #12 and 13 were taken at the rear of Building 136 in a similar fashion to those above. The exposed conditions can be seen in Photographs 15 and 16. Please note the water present on my hand in 15.



Please note the moisture content reading of >30% in 16.



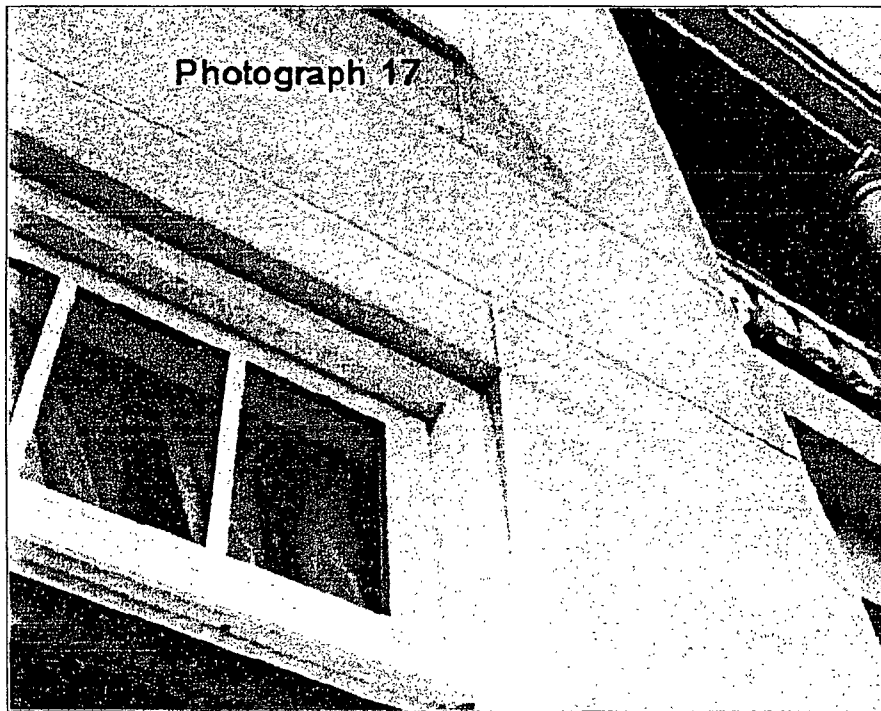
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## **Stucco Defects**

As stated above, the principal source of water intrusion was observed to be the intersection of the roof membrane with the exterior walls. The excessive level of wall damage is attributable to the lack of drainage features within the stucco system. Flashing or weep screeds would be normally utilized to direct intruding water out of the wall assembly. These devices were not observed.

### Window Head Flashing

No flashing or weep screed was observed at any window head within the stucco system. This is a violation of building code (discussed below) and should be part of every stucco installation. A typical window head is shown in Photograph 17.

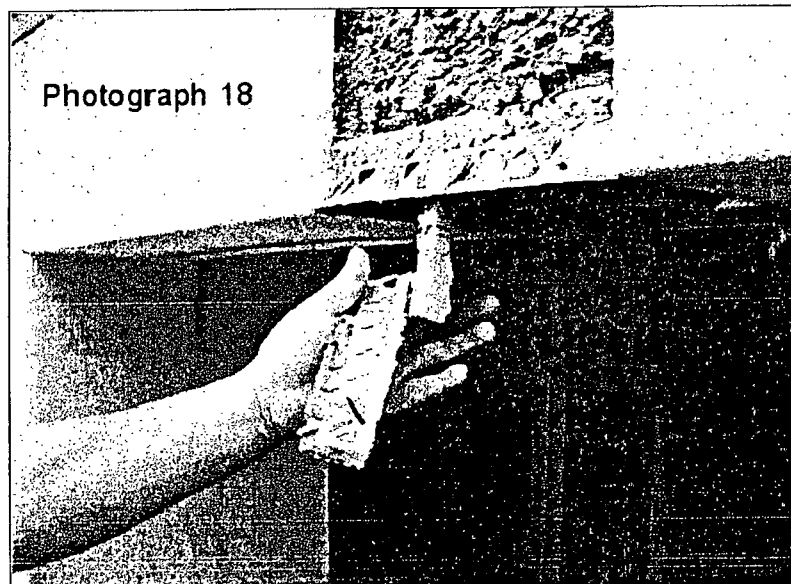


### Weep Screeds

Weep screeds are stucco accessories with holes to allow the passage of water. They are required by code to be installed at the base of all walls. The stucco walls that terminate in soffits such as those reported upon above the porches contain corner beads at the intersection of the vertical and horizontal planes. ASTM 1063 specifies the exact method

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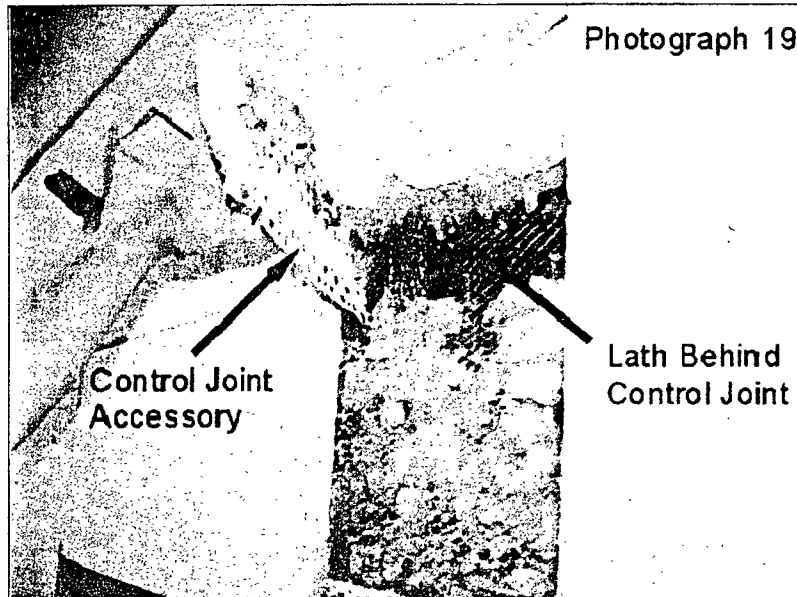
for creating this intersection. Casing beads are installed at the wall bases elsewhere. Photograph 18 demonstrates this condition that was found at TC#8.



#### Control Joints

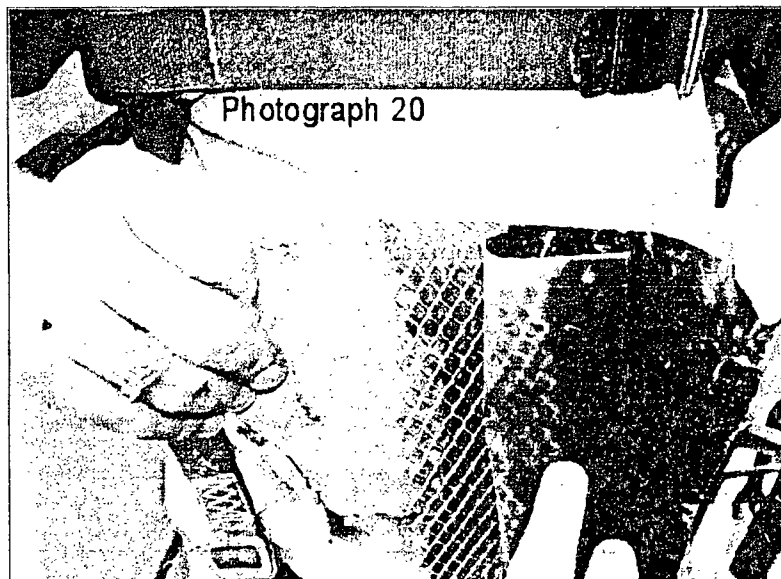
The spacing and installation of control joints was observed to be inadequate. The area allowed between control joints is 144 square feet and the maximum linear dimension is limited to 18 feet per ASTM C1063. These requirements are not met in many locations.

The installation of control joint accessories violates ASTM 1063. In each location I opened, the control joint accessory was installed over the metal lath. In effect this method defeats the function of the joint since the stresses due shrinkage are carried through the joint. This can be seen in Photograph 19 also from TC#8.



#### Paper Back Lath

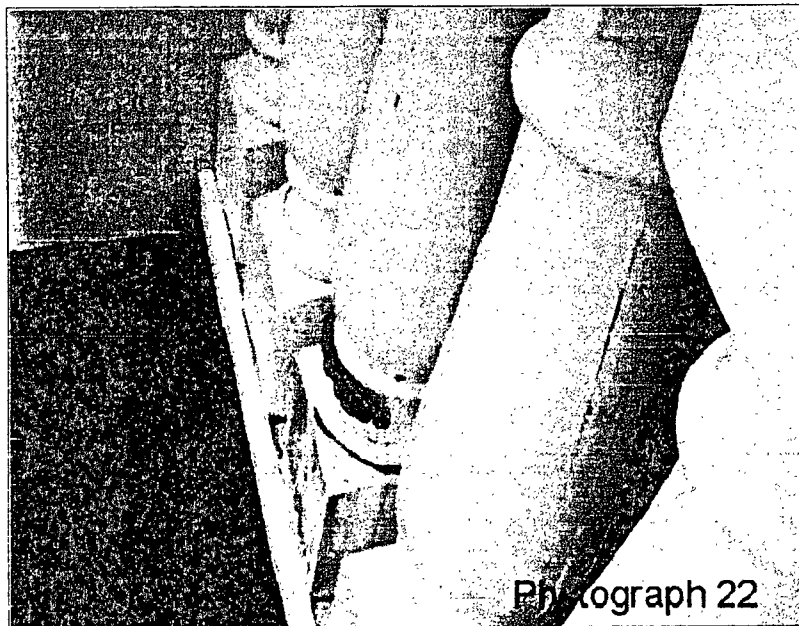
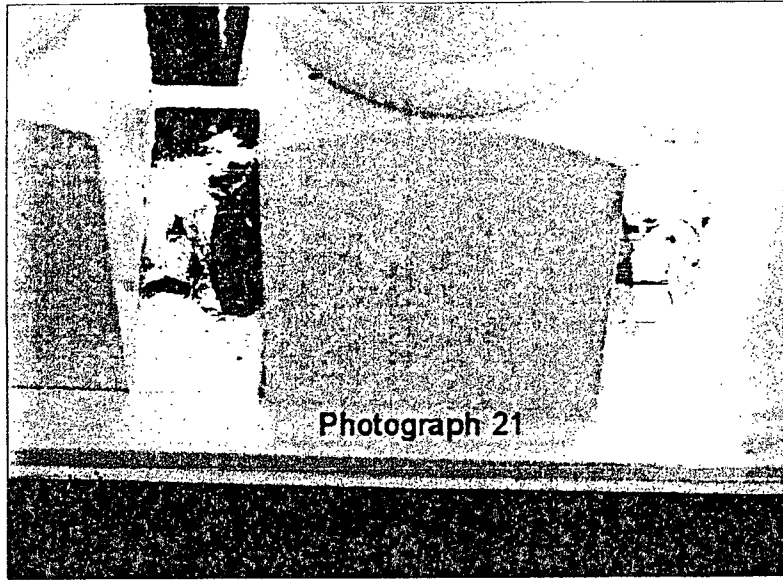
The project is constructed using paper back lath as a plaster base. This material is installed on top of the Tyvek moisture barrier. In many locations, the paper back lath is incorrectly jointed. ASTM 1063 requires that the jointing be paper-to-paper and lath-to-lath. I observed paper-to-lath, paper-to-lath jointing in numerous locations. One such location is shown in Photograph 20 from TC#4.



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### Guardrails, Handrails and Balusters

The guardrails, handrails and balusters are showing early signs of deterioration. Based on the information received from you, the material is cedar. This material is not considered to be decay or termite resistant. Numerous members are cracked which will serve to exasperate the deterioration. Typical conditions are shown in Photographs 21 and 22.



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## Code Violations

I have assumed that the 2003 IBC is the applicable building code. Should information to the contrary arise, I would like the opportunity to alter the cited sections and opinions accordingly.

The code requires that the exterior wall assemblies provide a weather-resistant envelope. Any water penetration to vulnerable elements constitutes a violation. The specific language from the 2003 IBC is contained below.

### 1403.2 Weather protection.

Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing, as described in Section 1405.3. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistive barrier behind the exterior veneer, as described in Section 1404.2 and a means for draining water that enters the assembly to the exterior of the veneer...

The need for flashing to prevent water from intruding the building envelope such as I found at The Oaks is contained in Section 1405.3 which appears below.

### 1405.3 Flashing.

Flashing shall be installed in such a manner so as to prevent moisture from entering the wall or to redirect it to the exterior. Flashing shall be installed at the perimeters of exterior door and window assemblies, penetrations and terminations of exterior wall assemblies, exterior wall intersections with roofs, chimneys, porches, decks, balconies and similar projections and at built-in gutters and similar locations where moisture could enter the wall.

The installation of exterior plaster (stucco) is governed by Chapter 25. The following is directly excerpted from 2003 IBC.

### 2510.3 Installation.

Installation of these materials shall be in compliance with ASTM C 926 and ASTM C 1063.

Flashing requirements are also given in ASTM C 926 which is quoted below.

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A2.1.2 ... Flashing shall be specified at openings, perimeters, and terminations to prevent water from getting behind plaster.

The need for weep screeds at stucco wall bases is quoted from ASTM C 926 and C 1063 below.

ASTM C926:

A2.2.2 At the bottom of exterior walls where the wall is supported by a floor or foundation, a drip screed and through-wall flashing or weep holes or other effective means to drain away any water that may get behind the plaster shall be provided.

ASTM C1063:

7.11.5 *Foundation Weep Screed*—Foundation weep screed shall be installed at the bottom of all steel or wood framed exterior walls to receive lath and plaster.

The specific method of installation of joint accessories for the intersection of horizontal and vertical stucco surfaces is given in ASTM C 926 which appears below.

A2.2.3 Where vertical and horizontal exterior plaster surfaces meet, both surfaces shall be terminated with casing beads with the vertical surface extending at least 1/4 in. (6 mm) below the intersecting horizontal plastered surface, thus providing a drip edge. The casing bead for the horizontal surface shall be terminated not less than 1/4 in. from the back of the vertical surface to provide drainage.

Control joint specifications are given in ASTM C 1063 cited below.

7.11.4.1 *Control Joints*—Control (expansion and contraction) joints shall be installed in walls to delineate areas not more than 144 ft<sup>2</sup> (13.4 m<sup>2</sup>) and to delineate areas not more than 100 ft<sup>2</sup> (9.30 m<sup>2</sup>) for all horizontal applications, that is, ceilings, curves, or angle type structures.

7.11.4.2 The distance between control joints shall not exceed 18 ft (5.5 m) in either direction or a length-to-width ratio of 2½ to 1

Requirements for the proper installation of paper back lath joints is delineated in ASTM C 1063 as follows.

7.8.3 Where metal plaster base with backing is used, the vertical and horizontal lap joints shall be backing on backing and metal on metal.

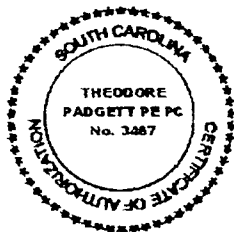
### The Need for Additional Investigations

Based on my experience with similar projects, a complete evaluation of the original design and the as-built constructed elements is warranted.

I appreciate the opportunity to be of service and if I may assist further, please let me know.

Sincerely,

Theodore Padgett, PE, PC



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### Appendix A

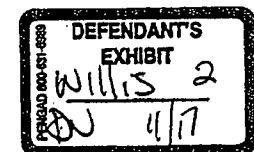
TC1	Bldg. 140, left elevation at roof line	100_2983 thru 100_3031
TC2	Bldg. 140, left elevation at building corner adjacent to 4 <sup>th</sup> floor deck, Unit 4A	100_3032 thru 100_3052
TC3	Bldg. 140, left elevation wall of 4 <sup>th</sup> floor deck, Unit 4A	100_3080 thru 100_3084
TC4	Bldg. 144, right elevation adjacent to building corner 4 <sup>th</sup> floor	100_3093 thru 100_3098
TC5	Bldg. 136, left elevation 4 <sup>th</sup> floor	100_3102 thru 100_3115
TC6	Bldg. 130, left elevation building corner	100_3123 thru 100_3133
TC7	Bldg. 140, rear elevation soffit above porch of Unit 2A	100_3138 thru 100_3144
TC8	Bldg. 140, rear elevation above the soffit cut of TC7	100_3223 thru 100_3225
TC9	Bldg. 140, rear elevation above TC9 adjacent to 4 <sup>th</sup> floor deck	100_3326 thru 100_3335
TC10	Bldg. 140, rear elevation above TC9 adjacent to roof intersection	100_3336 thru 100_3369
TC11	Bldg. 144, rear elevation near the 3 <sup>rd</sup> floor	100_3374 thru 100_3383
TC12	Bldg. 136, rear elevation under 3 <sup>rd</sup> floor window	100_3384 thru 100_3399
TC13	Bldg. 136, rear elevation above the soffit 2 <sup>nd</sup> floor deck	100_3400 thru 100_3412

Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>DIV 1: Item Description</b>						
Project Manager / Office	12	weeks		\$1,000.00	\$12,000.00	\$12,000
General Laborers (1 person)	480	hr		\$35.00	\$16,800.00	\$16,800
General Laborers (1 person)	480	hr		\$35.00	\$16,800.00	\$16,800
General Laborers (1 person)	480	hr		\$35.00	\$16,800.00	\$16,800
Sub-Total Labor					\$16,800.00	\$16,800
Insurance on Labor (Included)						
Project General Labor (other)					\$10,000.00	\$10,000
Equipment Rental			\$6,000.00			\$6,000
Construction Power	3	mo	\$150.00			\$450
Silt Fencing	1	ls	\$50.00	\$70.00	\$70.00	\$120
Cell Phones	3	mo	\$200.00			\$600
Small Tools	1	ls	\$5,000.00			\$5,000
Dumpster Rental	3	mo	\$600.00			\$1,800
Fuel	3	mo	\$500.00			\$1,500
Scaffolding (Safeway)	350	lf x 42'				\$55,159
Office management - assistant	240	hr		\$25.00		\$6,000
Edge Protection:	576	lf	0.50	\$288.00	12 mh	420 \$708
Sub-Total Miscellaneous:						\$149,737

TOTAL THIS PAGE:

\$149,737

131.001  
 Padgett0202



1877

The Oaks at Rivers Edge - COST ESTIMATE by BUILDING  
 prepared by Southeastern Construction Co. date: February 15, 2010

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
REPAIR ESTIMATE PER ITEMIZATION							
AS STIPULATED IN THEODORE							
PADGETT, P.E., REPORT DATED							
APRIL 20, 2010							
ITEM 1: WALL REPAIR AT REAR							
STUCCO FACADE							
100% Replacement of sheathing and							
50% replacement of studs at rear							
elevations not under roof.							
1.1. Remove existing stucco:	1,200	sf			48 mh	\$1,680.00	\$1,680
1.2. Remove stucco at lev 2 columns:	288	sf			8 mh	\$280.00	\$280
1.3. Remove stucco at lev 2 beams:	91	sf			4 mh	\$140.00	\$140
1.4. Remove house wrap.	1,582	sf			4 mh	\$140.00	\$140
1.5. Remove existing sheathing:	1,582	sf			16 mh	\$560.00	\$560
1.6. Remove 50% of studs (2x6x10):	92	ea			32 mh	\$1,120.00	\$1,120
1.7. Remove framing straps:	45	ea			2 mh	\$70.00	\$70
Note: No top or bottom plate removal.							
Note: No rim board removal.							
1.8. Install new 2x6 wall studs:	45	ea	\$6.03	\$271.35	22.5 mh	\$787.50	\$1,059
1.9. Install new 1/2" OSB sheathing:	1,582	sf	\$8.46/sht	\$423.00	16 mh	\$560.00	\$983
1.10. Install 2 layers 15 lf wall felts:	1,582	sf	5 r - \$19.30/r	\$96.50	8 mh	\$280.00	\$377
1.11. Install stucco lath:	notes 1,2						
1.12. Install stucco corner beads:	notes 1,2						
1.13. Install 3 coat stucco:	notes 1,2						
1.14. Landfill fee for stucco:							\$1,200
Note 1: Window replacement in other							

131.001  
 Padgett0203

The Oaks at Rivers Edge - COST ESTIMATE by BUILDING  
 prepared by Southeastern Construction Co. date: February 15, 2011

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labo. Total Cost	Total Cost
section.							
Note 2: Stucco in other section.							
ITEM 1 SUB-TOTAL:							\$7,608
<b>ITEM 2: REPLACE ALL WINDOWS &amp; EXTERIOR DOORS</b>							
2.1. Remove ext windows not on decks:	56	ea			2 mh	\$3,920.00	\$3,920
2.2. Remove ext windows on decks:	26	ea			1 mh	\$910.00	\$910
2.3. Remove front entry door (not included)	1	ea					
2.4. Remove french door units:	26	ea			2 mh	\$910.00	\$910
2.5. Remove window at front stair:	2	ea			1 mh	\$70.00	\$70
2.6. Prep window opening:	82	ea	\$24.00	\$1,968.00	2 mh	\$5,740.00	\$7,708
2.7. Prep door opening:	26	ea	\$28.00	\$728.00	2 mh	\$1,820.00	\$2,548
2.8. Raise door sills:	26	ea	\$12.00	\$312.00	1 mh	\$910.00	\$1,222
2.9. Install new sill pans at windows:	275	lf	\$10.00	\$2,750.00	64 units	\$2,240.00	\$4,990
2.10. Install new sill pans at doors:	152	lf	\$10.00	\$1,520.00	32 units	\$1,120.00	\$2,640
2.11. New windows:							
Window type NMN level 2:	4	ea	\$1,391.54	\$5,566.16	8 mh	\$1,120.00	\$6,686
Window type P level 2:	2	ea	\$930.90	\$1,861.80	4 mh	\$280.00	\$2,142
Window type S level 2:	2	ea	\$807.32	\$1,614.64	4 mh	\$280.00	\$1,895
Window type U level 2:	8	ea	\$1,047.17	\$8,377.36	4 mh	\$1,120.00	\$9,497
Window type W level 2:	2	ea	\$1,318.78	\$2,637.56	4 mh	\$280.00	\$2,918
Window type NMN level 3:	4	ea	\$1,391.54	\$5,566.16	8 mh	\$1,120.00	\$6,686
Window type P level 3:	2	ea	\$930.90	\$1,861.80	4 mh	\$280.00	\$2,142
Window type R level 3:	1	ea	\$966.75	\$966.75	4 mh	\$140.00	\$1,107
Window type S level 3:	2	ea	\$807.32	\$1,614.64	4 mh	\$280.00	\$1,895

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The Oaks at Rivers Edge - COST ESTIMATE by BUILDING  
 prepared by Southeastern Construction Co. date: February 15, 2011

	Quantity	Unit	Material Unit Cost	Material Cost	Installation	Subtotal	Cost Code
Window type U level 3:	8	ea	\$1,047.17	\$8,377.36	4 mh	\$1,120.00	\$9,497
Window type W level 3:	2	ea	\$1,318.78	\$2,637.56	4 mh	\$280.00	\$2,918
Window type V level 3:	4	ea	\$1,068.47	\$4,273.88	4 mh	\$560.00	\$4,834
Window type BAB level 4:	2	ea	\$1,711.11	\$3,422.22	8 mh	\$560.00	\$3,982
Window type BCB level 4:	2	ea	\$1,784.59	\$3,569.18	8 mh	\$560.00	\$4,129.18
Window type D level 4:	2	ea	\$1,057.70	\$2,115.40	4 mh	\$280.00	\$2,395
Window type F level 4:	1	ea	\$1,109.32	\$1,109.32	4 mh	\$140.00	\$1,249
Window type G level 4:	2	ea	892.65	1,785.30	4 mh	\$280.00	\$2,065
Window type H level 4:	8	ea	\$1,081.77	\$8,654.16	4 mh	\$1,120.00	\$9,774
Window type J level 4:	2	ea	\$1,553.11	\$3,106.22	4 mh	\$280.00	\$3,386
Window type K level 4:	4	ea	\$1,185.10	\$4,740.40	4 mh	\$560.00	\$5,300
Total # windows:	64			\$73,857.87			
Sealant at windows (average):	64	ea	\$9.00	\$576.00	.5 mh	\$1,120	\$1,696
2.12. New french doors.							
French door type T (pair) level 2:	10	ea	\$2,805.25	\$28,052.50	8 mh	\$2,800	\$30,853
French door type Q (single) level 2:	2	ea	\$1,729.66	\$3,459.32	8 mh	\$560	\$4,019
French door type T (pair) level 3:	6	ea	\$2,805.25	\$16,831.50	8 mh	\$1,680	\$18,512
French door type O (pair) level 3:	2	ea	\$3,056.99	\$6,113.98	8 mh	\$560	\$6,674
French door type Q (single) level 3:	2	ea	\$1,729.66	\$3,459.32	8 mh	\$560	\$4,019
French door type E (single) level 4:	2	ea	\$1,935.10	\$3,870.20	8 mh	\$560	\$4,430
French door type I (pair) level 4:	6	ea	\$3,358.20	\$20,149.20	8 mh	\$1,680	\$21,829
French door type L (pair) level 4:	2	ea	\$3,504.25	\$7,008.50	8 mh	\$560	\$7,569
Total # door units:	32			\$88,944.52			

131.001  
 Padgett0205

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
2.13 Sealant at french doors:	32	ea	\$12.00	\$384.00	.5 mh	\$560	\$944
2.14 Water test window units:	64	ea		\$500	2 mh	\$7,040	\$7,540
2.15 Water test french door units:	32	ea			4 mh	\$7,104	\$7,104
2.16. Raise base at fixed units:	12	ea	\$36.00	\$432	2 mh	\$840	\$1,272
2.17. Raise base at operable units:	28	ea	\$36.00	\$1,008	2 mh	\$1,960	\$2,968
2.18 Re-install window casing							
Window type NMN level 2:	112	lf	\$3.00	\$336	12 mh	\$420	\$756
Window type P level 2:	54	lf	\$3.00	\$162	4 mh	\$140	\$302
Window type S level 2:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
Window type U level 2:	176	lf	\$3.00	\$528	16 mh	\$560	\$1,088
Window type W level 2:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
Window type NMN level 3:	112	lf	\$3.00	\$336	12 mh	\$420	\$756
Window type P level 3:	54	lf	\$3.00	\$162	4 mh	\$140	\$302
Window type R level 3:	27	lf	\$3.00	\$81	2 mh	\$70	\$151
Window type S level 3:	46	lf	\$3.00	\$138	4 mh	\$140	\$278
Window type U level 3:	176	lf	\$3.00	\$528	16 mh	\$560	\$1,088
Window type W level 3:	52	lf	\$3.00	\$156	4 mh	\$140	\$296
Window type V level 3:	112	lf	\$3.00	\$336	8 mh	\$280	\$616
Window type BAB level 4:	64	lf	\$3.00	\$192	6 mh	\$210	\$402
Window type BCB level 4 (curve top):	66	lf	\$3.50	\$231	10 mh	\$350	\$581
Window type D level 4:	56	lf	\$3.00	\$168	4 mh	\$140	\$308
Window type F level 4:	56	lf	\$3.00	\$168	2 mh	\$70	\$238
Window type G level 4:	54	lf	\$3.00	\$162	4 mh	\$140	\$302

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Window type H level 4:	192	If	\$3.00	\$576	16 mh	\$560	\$1,136
Window type J level 4:	60	If	\$3.00	\$180	4 mh	\$140	\$320
Window type K level 4:	136	If	\$3.00	\$408	8 mh	\$280	\$688
2.19 Re-install french door casing							
French door type T (pair) level 2:	240	If	\$3.00	\$720	20 mh	\$700	\$1,420
French door type Q (single) level 2:	46	If	\$3.00	\$138	4 mh	\$140	\$278
French door type T (pair) level 3:	144	If	\$3.00	\$432	12 mh	\$420	\$852
French door type O (pair) level 3:	52	If	\$3.00	\$156	4 mh	\$140	\$296
French door type Q (single) level 3:	46	If	\$3.00	\$138	4 mh	\$140	\$278
French door type E (single) level 4:	52	If	\$3.00	\$156	4 mh	\$140	\$296
French door type I (pair) level 4:	174	If	\$3.00	\$522	12 mh	\$420	\$942
French door type L (pair) level 4:	60	If	\$3.00	\$180	4 mh	\$140	\$320
ITEM 2 SUB-TOTAL:							\$243,708
3. REMOVE & REPLACE ALL STUCCO							
3.1. Remove exist stucco (except item 3.2)	5,469	sf			\$1.75	sub L&M	\$9,571
3.2. Dispose of stucco materials	1	ls					\$1,800
3.3. Install new water barrier:	6,669	sf		\$779	16 mh	\$560.00	\$1,339
3.4. New galv. lath	6,669	sf	In item 3.7				
3.5. Stucco foam bd trim:	880	If	\$1.00	\$880	\$1.00	\$880.00	\$1,760
3.6. Stucco zinc corner trim:	2,600	If	In item 3.7.				
3.7. Stucco zinc "J" trim:	160	If	In item 3.7				
3.8. New 7/8" 3 coat stucco system	6,669	sf			\$12.00	sub L&M	\$80,028
3.9. Zinc "U" reveal joint:	140	If	In item 3.7				

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
3.10. Zinc control joints:	72	lf	in item 3.7				
3.11. Copper sill at brick:	160	lf	\$10.00	\$1,600	\$4.00	\$640.00	\$2,240
3.12. Stucco color coat / paint:	6,669	sf	in item 3.7				
3.13. Sealant joints at stucco:	160	lf	\$1.30	\$208	\$1.38	\$220.80	\$429
ITEM 3 SUB-TOTAL:							\$97,167
<b>4. REMOVE &amp; REPLACE BRICK</b>							
4.1. Remove existing brick:	6,180	sf			\$2.25	\$13,905.00	\$13,905
4.2. Haul off brick / mortar waste:		ls					\$2,000
4.3. Remove existing house wrap:	4,000	sf			32 mh	\$1,120.00	\$1,120
4.4. Install new brick ties:	2800	ea	\$21/100	\$588.00	\$33/100	\$924.00	\$1,512
4.5. Install new brick:	48,000	ea	\$336/1000	\$16,128.00	\$450/1000	\$21,600.00	\$37,728
4.6. Weep holes:	130	ea	\$0.50	\$65.00	0.03 mh	\$175.50	\$241
4.7. Cavity screen:	111	lf	\$1.25	\$138.75	0.03 mh	\$149.85	\$289
4.8. Rework / install flashing:	350	lf	\$10.00	\$3,500.00	40 mh	\$1,400.00	\$4,900
4.9. Clean brickwork:	6,180	sf	\$0.05	\$309.00	\$0.32	\$1,977.60	\$2,287
4.10. New thru wall flashing (top saulsack):	294	lf	\$10.00	\$2,940.00	32 mh	\$1,120.00	\$4,060
4.11. Sand:	80	cy	\$3,600.00				\$3,600
4.12. Mortar:	336	bags	\$8.00	\$2,688.00			\$2,688
4.13. Remove / replant landscape work:		ls		\$700.00	280 mh	\$9,800.00	\$10,500
ITEM 4 SUB-TOTAL:							\$84,829
<b>5. REPLACE EXTERIOR TRIM</b>							
5.1. Remove 1x8 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$1,120

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
5.2. Remove 1x10 trim allowance:	1,000	lf			32 mh	\$1,120.00	\$1,120
5.3. Allowance 1x8 cement board:	1,000	lf	\$2.14	\$2,140	100 mh	\$3,500.00	\$5,640
5.4. Allowance 1x10 cement board:	1,000	lf	\$2.75	\$2,750	100 mh	\$3,500.00	\$6,250
ITEM 5 SUB-TOTAL:							\$14,130
<b>6. PAINT TRIM</b>							
6.1. Paint wood trim allowance:	4,000	lf		\$400	120 mh	\$5,400.00	\$5,800
ITEM 6 SUB-TOTAL:							\$5,800
<b>7. PAINT PORCH CEILINGS</b>							
7.1. Clean and sand lev 2 porch	563	sf			40 mh	\$1,400.00	\$1,400
7.2. Clean and sand lev 3 porch	357	sf			32 mh	\$1,120.00	\$1,120
7.3. Clean and sand lev 4 porch	357	sf			32 mh	\$1,120.00	\$1,120
7.4. Paint lev 2 porch ceilings:	563	sf		\$300	40 mh	\$1,400.00	\$1,700
7.5. Paint lev 3 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$1,320
7.6. Paint lev 4 porch ceilings:	357	sf		\$200	32 mh	\$1,120.00	\$1,320
ITEM 7 SUB-TOTAL:							\$7,980
<b>8. REPLACE GUARDRAILS</b>							
8.1. Remove existing guardrails:	618	lf			48 mh	\$1,680.00	\$1,680
(72 railing sections)	72	ea	\$40.00	\$2,880			\$2,880
8.2 Disposal of handrails:	1	ls					\$1,000

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
8.2. Install new Fypon bottom rail:	618	lf	\$29.83	\$18,435	60 mh	\$2,100.00	\$20,535
8.3. Install regular Fypon balusters:	612	ea	\$77.83	\$47,632	.5 mh	\$10,710.00	\$58,342
8.4. Install special cut Fypon balusters:	64	ea	\$90.00	\$5,760	1 mh	\$2,240.00	\$8,000
8.5. Install new Fypon top rail:	618	lf	\$29.32	\$18,120	60 mh	\$2,100.00	\$20,220
8.5. Install railing kit:	288	ea	\$36.24	\$10,437	12 mh	\$420.00	\$10,857
8.6. Remove & reinstall iron railings:	12	ea	\$4.00	\$48	4 mh ea	\$1,680.00	\$1,728
8.7. Newel posts:	6	ea	\$250.00	\$1,500.00	8 mh / ea	\$1,680.00	\$3,180
ITEM 8 SUB-TOTAL:							\$128,422
<b>ITEM 9: WALL INSULATION</b>							
9.1. Remove 16" wide GB at ceiling:	1,467	sf			96 mh	\$3,360.00	\$3,360
9.2. Install R15 Batt at wall perimeter:	1,410	sf	\$0.36	\$507.60	60 mh	\$2,100.00	\$2,608
9.3. Re-install 1/2" GB ceiling:	1,467	sf	\$0.35	\$513.45	\$2.50	\$3,667.50	\$4,181
9.4. Protection sheeting:	6	du's	\$100.00	\$600.00	16 mh/du	\$3,360.00	\$3,960
9.4. Paint perimeter room ceilings:	11,100	sf	\$0.14	\$1,554.00	\$0.40	\$4,440.00	\$5,994
Note: Removal or replacement of any crown molding not included.							
ITEM 9 SUB-TOTAL:							\$20,103
<b>ITEM 10: BRICK ENTRY STEPS</b>							
10.1. Remove existing brick:	415	sf			32 mh	\$1,120.00	\$1,120
10.2. Shore front columns & porch:	1	ls		\$60.00	4 mh	\$140.00	\$200
10.3 Disposal:	1	ls					\$250
10.3. New bituthene membrane:	360	sf		\$339.00	32 mh	\$1,760.00	\$2,099

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
10.4. Install new brick steps & porch:	1,000	brk	\$336/1000	\$336.00	72 mh	\$3,960.00	\$4,296
10.5. Wood formwork for arch:	1	ea		\$80.00	4 mh	\$140.00	\$220
10.6. Rowlock arch and open brickwork:	1	ls		\$160.00	32 mh	\$1,760.00	\$1,920
ITEM 10 SUB-TOTAL:							\$10,105
<b>ITEM 11: GARAGE SLAB REPAIR</b>							
11.1. Remove bumper stops:	12	ea			8 mh	\$280.00	\$280
11.2. Grind out rough pits / spalls:	quote	ls				\$5,700.00	\$5,700
11.3. New top coat system:	1,892	sf		\$3,784.00	32 mh	\$1,120.00	\$4,904
11.4. Reinstall bumper stops:	12	ea	\$4.00	\$48.00	8 mh	\$280.00	\$328
11.5. Repaint parking lines:	17	ea		\$20.00	2 mh	\$70.00	\$90
ITEM 11 SUB-TOTAL							\$11,302
Note: Item 11 occurs at Bldg 2 only.							
<b>ITEM 12: PARAPET WALL RETURNS</b>							
12.1. Install new angle braces 4x6TS:	5	ea	\$180.00	\$900.00	12 mh ea	\$2,100.00	\$3,000
12.2. Repair roof membrane:	5	ea	\$80.00	\$400.00	\$400.00	\$2,000.00	\$2,400
ITEM 12 SUB-TOTAL:							\$5,400
<b>ITEM 13: FRENCH DRAIN SYSTEM</b>							
13.1. New catch basin and drain:	1	ls					\$3,000
ITEM 13 SUB-TOTAL:							\$3,000

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>ITEM 14: ACOUSTIC MODIFICATIONS</b>							
<b>FLOORS:</b>							
14.1. Remove existing refrigerator:	4	ea			2 mh	\$280.00	\$280
14.2. Remove existing range:	4	ea			2 mh + .5e	\$400.00	\$400
14.3. Remove existing oven:	4	ea			2 mh + .5e	\$400.00	\$400
14.4. Remove exist dishwasher:	4	ea			2 mh + .5e + .5p	\$400.00	\$400
14.5. Remove exist washer:	4	ea			2 mh	\$280.00	\$280
14.6. Remove exist dryer:	4	ea			1 mh	\$140.00	\$140
14.6. Remove exist kitchen sink:	4	ea			1 mh + 5(p)	\$260.00	\$260
14.7. Remove exist lavs:	20	ea			1 mh + 5(p)	\$1,300.00	\$1,300
14.8. Remove exist toilets:	12	ea			1 mh	\$420.00	\$420
14.9. Remove countertops:	220	lf			8 mh / du	\$1,680.00	\$1,680
14.10. Remove exist back-splashes:	224	lf			4mh / du	\$840.00	\$840
14.11. Remove shower units:	12	ea			2 mh + 1p	\$1,140.00	\$1,140
14.12. Remove tub units:	8	ea			2 mh + 1p	\$1,040.00	\$1,040.00
14.13. Remove base cabinets:	213	lf			.5 mh	\$3,727.50	\$3,728
14.14. Raise hot water heater:	4	ea			1 mh p	\$240.00	\$240
14.15. Raise HVAC unit:	4	ea			2 mh m	\$480.00	\$480
14.16. Remove exist wd base & shoe:	2,422	lf			100 lf / mh	\$847.70	\$848
14.17. Remove exist marble base:	488	lf			60 lf / mh	\$284.67	\$285
14.18. Remove exist wood flooring:	4,881	sf			100 sf / 2mh	\$3,416.70	\$3,417
14.19. Remove exist marble flooring:	1,368	sf			60 sf / 2 mh	\$1,596.00	\$1,596
14.20. Undercut exist interior doors:	84	ea			2 mh / dr	\$5,880.00	\$5,880
14.21. Re-mortise bottom door bolt:	4	ea			2 mh/dr	\$280.00	\$280
14.22. Prep sub-floor:	6249	sf			16 mh/du	\$3,360.00	\$3,360

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
14.23. Install QuietZone Acoustic Mat:	6,249	sf	\$0.68	\$4,249	8 mh/du	\$1,680.00	\$5,929
14.24. Install 1.5" gypcrete:	1,718	cf		quote			\$18,900
14.25. Install new tile flooring:	1,500	sf	\$6.50	\$9,750	\$2.50	\$3,750.00	\$13,500
14.26. Install new wood flooring:	5125	sf	\$5.00	\$25,625.00	\$2.00	\$10,250.00	\$35,875
14.27. Install new wood base (50%):	2,543	lf	\$2.96	\$3,763.64	\$1.50	\$3,814.50	\$7,578
14.28. Install new tile base:	512	lf	\$3.20	\$1,638.40	\$5.80	\$2,969.60	\$4,608
14.29. Urethane floors:	4,881	sf			\$2.50 M&L	\$12,202.50	\$12,203
14.30. Stain & urethane wood base:	2,543	lf		\$2,500.00		\$5,000.00	\$7,000
14.31. Reinstall base cabinets (50%)	213	lf			\$100.00	\$10,650.00	\$10,650
14.32. New base cabinets (50%)	107	lf			\$250 M&L	\$26,750.00	\$26,750
14.33. Reinstall countertops:	330	sf			\$30.00	\$9,900.00	\$9,900
14.34. Reinstall back-splashes (incl in 14.33):	224	lf					
14.35. Reinstall refrigerators:	4	ea			1 mh	\$140.00	\$140
14.36. Reinstall ovens:	4	ea			4 mh +1e	\$820.00	\$820
14.37. Reinstall ranges:	4	ea			4 mh +1e	\$820.00	\$820.00
14.38. Reinstall washers:	4	ea			2 mh	\$280.00	\$280
14.39. Reinstall dryers:	4	ea			2 mh	\$280.00	\$280
14.40. Reinstall kitchen sinks:	4	ea			quote	\$600.00	\$600
14.41. Reinstall lavatories:	20	ea			quote	\$3,000.00	\$3,000
14.42. Reinstall toilets:	12	ea			quote	\$3,000.00	\$3,000
14.43. Reinstall tub units	12	ea			quote	\$4,200.00	\$4,200

Note: Shower rework included in other sections.

ITEM 14 SUB-TOTAL:

\$194,726

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>15. ACOUSTIC CEILING REPAIRS</b>							
15.1 Remove crown molding:	2,910	lf			\$1.00	\$2,910.00	\$2,910
15.2 Remove exist dbl layer gyp bd:	6,050	sf			120 mh	\$4,200.00	\$4,200
15.3 Install new acoustic batt insulation:	6,050	sf			M&L	\$6,050.00	\$6,050
15.4 Kinectics ICW hangers level 2:	500	ea	\$31.96	\$15,980.00	.25 mh	\$4,375.00	\$20,355
15.5 Kinectics ICW hangers level 3:	548	ea	\$31.96	\$17,514.08	.25 mh	\$4,795.00	\$22,309
15.6 2x6 blkq for hanger support @ TJI:	1,048	ea	\$0.79	\$829.00	80 mh	\$2,800.00	\$3,629
15.7 2x8 cross blkq at hangers (50%)	524	ea	\$1.00	\$524.00	40 mh	\$1,400.00	\$1,924
15.8 1.5" x 1.5" stl. channel frame:	3,625	lf	\$0.43/sf	\$2,860.79	\$1.12/sf	\$7,451.36	\$10,312
15.9 Hat furring channels:	7,250	lf		(incl ln 15.8)			
15.10 Lower sprinkler heads:	100	ea	\$20.00	\$2,000.00	2 mh	\$11,000.00	\$13,000
15.11 Lower light fixtures, etc.:	quote						\$11,380
15.12 Lower HVAC grills & exhaust	1	ls		\$3,200.00	64 mh	\$3,520.00	\$6,720
15.10 Install new 5/8" gyp bd:	6,653	sf	\$0.37	\$2,461.61	\$1.12	\$7,451.36	\$9,913
15.11 Install ceiling edge "L" trim:	3,360	lf	\$0.28	\$940.80	\$1.17	\$3,931.20	\$4,872
15.12 Kinectics SRP ceiling edge:	3,360	lf	\$0.15	\$504.00	48 mh	\$1,680.00	\$2,184
15.13 Caulk ceiling perimeter:	3,360	lf	\$0.15	\$504.00	32 mh	\$1,120.00	\$1,624
15.14 Install crown molding:	3,360	lf			\$2.00 M&L		\$6,720
15.15 Prime & 2 coats latex paint	6653	sf			\$0.70 M&L		\$4,657
15.12 Paint crown molding:	3,360	lf			\$0.40 M&L		\$1,344
ITEM 15 SUB-TOTAL:							\$134,103
<b>ITEM 16 - SHOWER WATERPROOFING</b>							
16.1 Remove shower glass:	6	ea			4 mh	\$1,080.00	\$1,080

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
16.2 Remove existing tile:	852	sf			\$1.50/sf	\$1,278.00	\$1,278
16.3 Remove exist tile backup:	852	sf			\$0.75/sf	\$639.00	\$639
16.4 Material disposal:	1	ls					\$500
16.4 Install 1/2" cem bd backup:	852	sf	\$1.00	\$852.00	\$1.35	\$1,150.20	\$2,002
16.5 Install new waterproof membrane:	122	sf	\$2.60	\$317.20	\$2.35	\$286.70	\$604
16.6 Install tile:	852	sf	\$6.50	\$5,538.00	\$3.00	\$2,556.00	\$8,094
16.7 Reinstall shower glass & caulk:	6	ea	\$10.00	\$60.00	4 mh	\$1,320.00	\$1,380
ITEM 16 SUB-TOTAL:							\$15,577
<b>ITEM 17 - TRIM &amp; PAINT</b>							
17.1 Paint 6 units:	9,200	sf		\$5/sf (M&L)			\$46,000
17.2 "Faux" paint allowance:	3	ls					\$6,000
ITEM 17 SUB-TOTAL:							\$52,000
<b>ITEM 18 - GYP BD REMEDIATION</b>							
18.1 Conduct mold investigation: (at gyp bd at ext walls)		quote				Trident Envir.	\$4,440
18.2 Remove ext gyp bd walls level 2:	3,230	sf			\$1.00		\$3,230
18.3 Remove ext gyp bd wall level 3:	3,730	sf			\$1.00		\$3,730
18.4 Remove ext gyp bd wall level 4:	3,730	sf			\$1.00		\$3,730
18.5 Dispose of hazardous materials:	10,690	sf					\$6,000
Note: Replacement of wall insulation is not included.							
18.6 Install new gyp bd wallboard:	10690	sf	\$0.37	\$3,955.30	\$1.12	\$11,972.80	\$15,928

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
18.7 Primer and 2 coats latex paint:	9,490	sf	\$0.26	\$2,467.40	\$1.05	\$9,964.50	\$12,432
18.8 Allow faux paint at ext walls:	1,200	sf					\$24,000
ITEM 18 SUB-TOTAL:							\$73,490
<b>ITEM 19 - WINDOW TREATMENT</b>							
19.1 Remove & reinstall window treatment:	96	units	\$5.00	\$480	2 mh	\$6,720	\$7,200
19.2 Container rental:	3	months	3 units	\$1,350.00			\$1,350
19.3 Remove exist shutters (est. 50%):	48	units			2 mh	\$3,360	\$3,360
19.4 New custom shutters (est. 50%):	2130	sf			\$28 M&L		\$59,640
ITEM 19 SUB-TOTAL:							\$71,550
<b>ITEM 20: HVAC AT LOBBY</b>							
20.1 Hire P.E. for engineering design:	1	ls				\$2,200.00	\$2,200
20.2 Packaged HVAC unit at lobby:	2	ea			\$5000 ea		\$10,000
20.3 Exhaust vent elev lobbies:	1	ea			\$2000 ea		\$2,000
ITEM 20 SUB-TOTAL:							\$14,200
<b>ITEM 21 - CARPET OF STAIRS TO GARAGE</b>							
21.1 Install carpet on stairs to garage:	23	sy	\$12.00	\$276	\$5.00	\$115.00	\$391
21.2 Install resilient safety nosing:	9	ea	\$3.92	\$35.28	4.5 mh	\$157.50	\$193
21.3 Carpet edge at lower level:	6	lf	\$4.00	\$24.00	1 mh	\$35.00	\$59
ITEM 21 SUB-TOTAL:							\$643

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
<b>ITEM 22 - UPPER LANDING REPAIRS:</b>							
22.1 Paint access stair to roof:	1	ea		\$40	4 mh	\$160	\$200
22.2 Clean carpet at lev 4 landing:	12	sy	\$12.00	\$144	2 mh	\$80	\$224
ITEM 22 SUB-TOTAL:							\$424
<b>ITEM 23 - PROJECT PHOTOGRAPHS</b>							
23.1 Prior condition photographs:					90 mh	\$4,950.00	\$4,950
23.2 Post construction photographs:					90 mh	\$4,950	\$4,950
23.3 In office production & labeling:				\$10.00	12 mh	\$420.00	\$430
ITEM 23 SUB-TOTAL:							\$5,380
<b>SUMMARY (Building 2):</b>							
DIV 1: GENERAL							
1. WALL REPAIR AT REAR							\$149,757
STUCCO FACADE:							\$7,608
2. REPLACE ALL WINDOWS & EXTERIOR DOORS:							\$243,708
3. REMOVE & REPLACE ALL STUCCO:							\$97,167
4. REMOVE & REPLACE BRICK:							\$84,829
5. REPLACE EXTERIOR TRIM:							\$14,130
6. PAINT TRIM:							\$5,800.00
7. PAINT PORCH CEILINGS:							\$7,980

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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
8. REPLACE GUARDRAILS:							\$128,422
9. WALL INSULATION:							\$28,103
10. BRICK ENTRY STEPS:							\$10,105
11. GARAGE SLAB REPAIR:							\$11,302
12. PARAPET WALL RETURNS:							\$5,400
13. FRENCH DRAIN SYSTEM:							\$3,000
14. ACOUSTIC MODIFICATIONS AT FLOORS:							\$194,726
15. ACOUSTIC CEILING REPAIRS:							\$134,103
16. SHOWER WATERPROOFING:							\$15,577
17. TRIM & PAINT:							\$52,000
18. GYP BD REMEDIATION:							\$73,490
19. WINDOW TREATMENT:							\$71,550
20. HVAC AT LOBBY:							\$14,200
21. CARPET OF STAIRS TO GARAGE:							\$643
22. UPPER LANDING REPAIRS:							\$424
23. PROJECT PHOTOGRAPHS:							\$5,380
Work Item Sub-Total:							\$1,359,404
Project Overhead:		15%					\$203,911
Sub-total:							\$1,563,315
Project Profit:		10%					\$156,331
Sub-total:							\$1,719,646

131.001  
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	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Permit Fee:							\$3,490
Sub-total:							\$1,723,136
Performance & Payment Bond:		2%					\$34,463
MAJOR ESTIMATE SUB-TOTAL:							\$1,757,599
Contingency Allowance:		10%					\$175,760
COST ESTIMATE BUILDING 2:							\$1,933,359

Note: This estimate is applicable for Building 2 only. See Summary below for other buildings.

SUMMARY (Building 1, 3, 4, 5, & 6):

DIV 1: GENERAL							\$149,757
1. WALL REPAIR AT REAR STUCCO FACADE:							\$7,608
2. REPLACE ALL WINDOWS & EXTERIOR DOORS:							\$243,708
3. REMOVE & REPLACE ALL STUCCO:							\$97,167
4. REMOVE & REPLACE BRICK:							\$84,829
5. REPLACE EXTERIOR TRIM:							\$14,130
6. PAINT TRIM:							\$5,800.00
7. PAINT PORCH CEILINGS:							\$7,980
8. REPLACE GUARDRAILS:							\$128,422

1894

131.001  
 Pager0219

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
9. WALL INSULATION:							\$28,103
10. BRICK ENTRY STEPS:							\$10,105
11. GARAGE SLAB REPAIR:							\$5,400
12. PARAPET WALL RETURNS:							\$3,000
13. FRENCH DRAIN SYSTEM:							\$194,726
14. ACOUSTIC MODIFICATIONS AT FLOORS:							\$134,103
15. ACOUSTIC CEILING REPAIRS:							\$15,577
16. SHOWER WATERPROOFING:							\$52,000
17. TRIM & PAINT:							\$73,490
18. GYP BD REMEDIATION:							\$71,550
19. WINDOW TREATMENT:							\$14,200
20. HVAC AT LOBBY:							\$643
21. CARPET OF STAIRS TO GARAGE:							\$424
22. UPPER LANDING REPAIRS:							\$5,380
23. PROJECT PHOTOGRAPHS:							
Work Item Sub-Total:							\$1,348,102
Project Overhead:		15%					\$202,215
Sub-total:							\$1,550,317
Project Profit:		10%					\$155,032
Sub-total:							\$1,705,349
Permit Fee:							\$3,490

131.001  
 Page: 0220

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Sub-total:							\$1,708,839
Performance & Payment Bond:		2%					\$34,177
MAJOR ESTIMATE SUB-TOTAL:							\$1,743,016
Contingency Allowance:		10%					\$174,302
COST ESTIMATE PER BUILDING:							\$1,917,317
<b>CONSTRUCTION SEQUENCING:</b>							
Option 1: All building repairs accomplished at same time frame.							
Building 1 Cost Estimate:							\$1,917,317
Building 2 Cost Estimate:							\$1,933,359
Building 3 Cost Estimate:							\$1,917,317
Building 4 Cost Estimate:							\$1,917,317
Building 5 Cost Estimate:							\$1,917,317
Building 6 Cost Estimate:							\$1,917,317
OPTION 1 TOTAL COST ESTIMATE:							\$11,519,944

1896

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 Page 10/21

	Quantity	Units	Material Unit Cost	Material Total Cost	Labor Unit Cost	Labor Total Cost	Total Cost
Option 2: Building repairs accomplished in sequential time frame.							
Building 1 Cost Estimate:		months 1-3					\$1,917,317
Building 2 Cost Estimate:		months 4-6					\$1,952,874
Building 3 Cost Estimate:		months 7-9					\$1,955,663
Building 4 Cost Estimate:		months 10-11					\$1,974,837
Building 5 Cost Estimate:		months 12-13					\$1,994,010
Building 6 Cost Estimate:		months 14-16					\$2,013,183
OPTION 1 TOTAL COST ESTIMATE:							\$11,807,884

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131.001  
 Page#10322

CITY OF CHARLESTON PERMIT APPLICATION

Contractor/Owner Carriage Hill Associates of Charleston Telephone # (843) 375-2200  
City of Charleston License No. 25208 Type of State License General Contracting Number 107574  
Name & Address of Owner of the Real Estate Daniel Island Riverside Developers, LLC  
Address of Work 118 Fairbanks Oak Allee Lot 1 Unit \_\_\_\_\_

BUILDING PERMIT:

Existing Use of Building \_\_\_\_\_  
Proposed Use of Building Multi-family Residential  
Existing No. of Units 0 Proposed No. of Units 6 No. of Active Electrical Meters 7  
Square Footage of Existing Building \_\_\_\_\_ Square Footage of Any Additions \_\_\_\_\_  
Description of Work Concrete and wood framed structure  
Will there be a change in the existing layout/floor plan? no  
Does the proposed construction have the following approvals?  
Zoning \_\_\_\_\_ B.A.R. \_\_\_\_\_ C.C.D.R.B. \_\_\_\_\_ T.R.C. \_\_\_\_\_ Engineering \_\_\_\_\_  
Proposed Cost of Construction (to include entire scope of work) \$1,200,000

MECHANICAL PERMIT:

Use of Building \_\_\_\_\_ No. of Units \_\_\_\_\_  
Class of Work: New \_\_\_\_\_ Alteration \_\_\_\_\_ Addition \_\_\_\_\_ Repair \_\_\_\_\_  
Type of Fuel \_\_\_\_\_ Cost of Work \_\_\_\_\_  
Location of Mechanical Unit Approved by: B.A.R. \_\_\_\_\_ C.C.D.R.B. \_\_\_\_\_  
Building Permit Number \_\_\_\_\_

ELECTRICAL PERMIT: # of Amperes?

Description of Work: New Service  
Swimming Pool \_\_\_\_\_  
Existing Use of Building \_\_\_\_\_  
Existing Number of Tr \_\_\_\_\_

Existing Number \_\_\_\_\_  
Zoning App \_\_\_\_\_  
Build' \_\_\_\_\_  
As the O \_\_\_\_\_  
Signed \_\_\_\_\_



**AN APPRAISAL AND RESTRICTED REPORT  
OF 136 FAIRBANKS OAK ALLEE #3-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-030**

**AS OF**

**MARCH 28, 2008**

**AND**

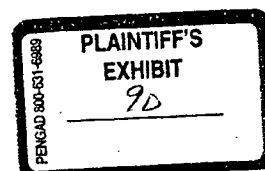
**DECEMBER 31, 2011**

**PREPARED FOR**

**SMITH, BUNDY, BYBEE & BARNETT  
W. H. BUNDY, JR. ESQUIRE  
1037 CHUCK DAWLEY BOULEVARD  
MT. PLEASANT, SOUTH CAROLINA 29464**

**BY**

**MICHAEL C. TAWES, SRA  
CHRISTOPHER D. DONATO, MAI, CCIM  
ATLANTIC APPRAISALS, LLC**



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Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, S.C. 29464

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# Atlantic Appraisals, LLC

REAL ESTATE APPRAISERS AND CONSULTANTS

PO Box 834  
Mt. Pleasant, South Carolina 29465  
Phone: (843) 884-1266  
Fax: (843) 881-7532

PO Box 424  
Beaufort, South Carolina 29901  
Phone: (843) 379-6220  
Fax: (843) 379-6222

March 5, 2012

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**Re: An Appraisal and Restricted Report of 136 Fairbanks Oak Allee #3-B,  
Charleston SC – TMS NO. 276-05-01-030**

Dear Mr. Bundy:

As you requested, we have made an appraisal of the above referenced residential condominium unit. The unit is part of The Oaks at Rivers Edge Condominium Complex located in the Daniel Island area of the City of Charleston.

The subject unit is part of an ongoing law suit between the property owners and the developers of the complex for defects in construction. The purpose of the appraisal is to estimate fee simple market value of the unit within 3 separate scenarios.

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2nd scenario is to estimate the market value of the date of our last inspection, December 31, 2011, also assuming no construction defects. The final scenario is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

The intended use is for the client's use in an ongoing lawsuit involving the subject unit. The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, John Atkinson & Joan D. Strandquist. Anyone else relying on the report is an unintended and uninformed user.

Mr. Bundy  
March 5, 2012  
Page Two(2)

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

136 Fairbanks Oak Allee #3-B	
John Atkinson & Joan D. Strandquist	
Date	Value
March 28, 2008 - No Defects	\$865,000
December 31, 2011 - No Defects	\$620,000
December 31, 2011 - With Defects	\$350,000

This is a restricted report, which does not present discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation for my opinions is retained in the file. The report is prepared for your eyes only and is not suitable for a third party.

We hereby certify that to the best of our knowledge and belief, the statements and opinions contained in this appraisal are full, true and correct, and that this appraisal is subject to the Certification of the Appraiser, General Underlying Assumptions, and General Limiting Conditions contained herein.

Your attention is invited to the following summary report, which is intended to comply with the standards promulgated by the Appraisal Foundation, USPAP, FIRREA, and the Standards of Professional Practice, Ethical Rules and Regulations of the Appraisal Institute.

We hereby certify that we have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation therefore, is contingent on the value of the property and this appraisal was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount which would result in an approval of a loan.

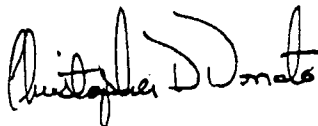
Mr. Bundy  
March 5, 2012  
Page Three (3)

Thank you for the opportunity to provide this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us.

Respectfully submitted,



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

**RESTRICTED APPRAISAL REPORT**

*This is a Restricted Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop my opinion of value. Supporting documentation concerning data, reasoning, and analyses is retained in our file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. We are not responsible for unauthorized use of this report.*

**CLIENT:**

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**APPRAISERS:**

Mr. Michael C. Tawes, SRA  
SC Cert General #2243  
Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, SC 29465

Mr. Christopher D. Donato, MAI CCIM  
SC Cert. General #292  
Atlantic Appraisals, LLC  
P. O. Box 834  
Mt. Pleasant, SC 29465

**SUBJECT:**

Residential Condominium  
136 Fairbanks Oaks Allee #3-B  
The Oaks at Rivers Edge  
Charleston, SC 29482  
TMS # 276-05-01-030  
Owner – John Atkinson & Joan D. Strandquist

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Tel. # 843-379-6220 x 111  
Fax. # 843-379-6222

**PURPOSE OF THE APPRAISAL:**

To estimate fee simple market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**INTENDED USE:**

Litigation Purposes

**INTENDED USERS:**

The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, John Atkinson & Joan D. Strandquist. Anyone else relying on the report is an unintended and uninformed user.

**INTEREST VALUED:**

Fee Simple

**EFFECTIVE DATE OF VALUE:**

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2<sup>nd</sup> scenario is to estimate the market value of the date of our final inspection, December 31, 2012, also, assuming no construction defects. The final scenario, is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

**DATE OF REPORT:**

March 5, 2012

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal we,

- (1) inspected the interior and exterior of the subject property;
- (2) gathered and confirmed information concerning comparable residential condominiums sales.
- (3) used a sales comparison approach to value.
- (4) This Restricted Appraisal Report sets forth only the appraiser's conclusion. Supporting documentation is retained in my file.

**REAL ESTATE APPRAISED:**

136 Fairbanks Oak Allee Unit 3-B – The Oaks at Rivers Edge

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**HIGHEST AND BEST USE:**

Residential

**SALES COMPARISON APPROACH:**

We have used the sales comparison approach to value the unit within three different scenarios. Comparables were selected from competing developments on Daniel Island as well as other similar type projects located in nearby Mt. Pleasant. These comparables were analyzed and adjustments for differences in physical characteristic were made as warranted.

**CONCLUSION OF VALUE:**

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart.

136 Fairbanks Oak Allee #3-B	
John Atkinson & Joan D. Strandquist	
Date	Value
March 28, 2008 - No Defects	\$865,000
December 31, 2011 - No Defects	\$620,000
December 31, 2011 - With Defects	\$350,000

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The appraiser hereby certifies that Atlantic Appraisals was engaged to appraise the market value of the leasehold interest in the following real property.

**136 FAIRBANKS OAK ALLE #3-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-030**

Neither Atlantic Appraisals nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Michael C. Tawes, SRA and Christopher D. Donato, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.

We certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

We certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based

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on a requested minimum valuation, a specific valuation, or the approval of a loan.

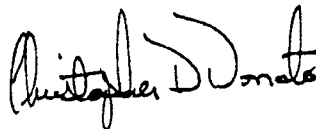
Employment of the appraiser(s) was not conditional upon the appraiser producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

136 Fairbanks Oak Allee #3-B John Atkinson & Joan D. Strandquist	
Date	Value
March 28, 2008 - No Defects	\$865,000
December 31, 2011 - No Defects	\$620,000
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S.C. Certified General Real Estate Appraiser  
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S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**GENERAL UNDERLYING ASSUMPTIONS**

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This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.
- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.
- The property is considered to be free of all liens and encumbrances.
- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.
- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property, which would render them more or less valuable.
- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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**GENERAL LIMITING CONDITIONS**

---

This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.
- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.
- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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**QUALIFICATIONS OF THE APPRAISER****MICHAEL C. TAWES**

Atlantic Appraisals, LLC  
1250 Fairmont Avenue  
P.O. Box 834  
Mt. Pleasant, S.C. 29464  
(843) 884-1266

**EDUCATION**

Bishop England High School, 1988  
B.S. Degree in Business Administration  
Major - Finance  
University of South Carolina, 1992

**PROFESSIONAL STUDIES**

The Citadel Evening College, 1993  
Introduction & Basic Principles, 1993  
The Valuation Process and Collection of Data  
Valuation Methods: Sales Comparison, Cost, and Income  
Partial Interest, Unique Properties, Reconciling Data & The Regulations, Standards, Ethics  
& Law of Appraisals  
FHA Guidelines to Appraisals  
Basic Income Property Appraisal

**Appraisal Institute Courses**

Appraisal Institute Course 300 – RE Finance Stats/Valuation Modeling – March 2009  
Appraisal Institute Course 310 – Basic Income Capitalization- January 2001  
Appraisal Institute Course 410 – Standards & Professional Practice – Part A – April 2002  
Appraisal Institute Course 420 – Standards & Professional Practice – Part B – July 2002  
Appraisal Institute Course 510 - Advanced Income Capitalization – July 2002  
Appraisal Institute Course 520 – Highest and Best Use – August 2003  
Appraisal Institute Course 530 – Advance Sales Comparison/Cost Approach – April 2004  
Appraisal Institute Course 540 – Advance Commercial Report Writing – March 2003  
Appraisal Institute Course 550 - Advanced Applications – July 2004  
Appraisal Institute Course – Advance Residential Report Writing Part 1 – April 2010  
Appraisal Institute Course - Advance Residential Report Writing Part 2 – April 2010

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**Appraisal Institute Seminars**

Appraisal Institute Seminar – Litigator Skills for the Appraiser – June 2006  
 Appraisal Institute Seminar – The Valuation of Wetlands – July 2007  
 Appraisal Institute Seminar – Appraising Historic SC Homes – April 2008  
 Appraisal Institute Seminar – Dealing with Client Pressures – June 2008  
 Appraisal Institute Seminar – The New Market Conditions Form – April 2009  
 Appraisal Institute Seminar - Residential Appraisal Update 2010- January 2011  
 Appraisal Institute Seminar - Residential Appraisal Update 2011- March 2012

**PROFESSIONAL AFFILIATIONS**

State Certified General Appraiser - License # CG 2243  
 State Licensed Realtor  
 Associate Member of Appraisal Institute, 2000  
 Awarded SRA Designation from The Appraisal Institute, May 2010  
 Member of the Charleston Trident Board of Realtors  
 Member of National Association of Realtors

**EMPLOYMENT**

Atlantic Appraisals, LLC	1993 – Present
Residential Manager	1998 – Present
Partner- Atlantic Appraisals, LLC	2005 - Present

**PARTIAL LIST OF CLIENTS**

BB & T	First Federal of Charleston
Wells Fargo Bank	TD Bank
Southern Trust Mortgage	Tidelands Bank
Synovus Bank	Mortgage Research Corp.
The Bank of South Carolina	South Atlantic Bank
Carolina Federal Savings Banks	Community First Bank
Southcoast Community Bank	SunTrust Mortgage
Bradford Mortgage	SunTrust Bank
Fannie Mae	Lucey Mortgage
Bank of America	Regions Bank
South Carolina Bank and Trust	LSI
FDIC	

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**QUALIFICATIONS OF THE APPRAISER**

Christopher D. Donato, MAI, CCIM  
 Atlantic Appraisals  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, South Carolina 29464

**EDUCATION:**

B.S. Degree 1973  
 College of Charleston  
 Charleston, South Carolina

24 Hours towards M.B.A. Degree  
 The Citadel  
 Charleston, South Carolina

**PROFESSIONAL DESIGNATIONS**

Awarded MAI Designation	1984
Awarded CCIM Designation	1997
Approved Instructor for the Appraisal Institute	2003 – Present
Approved USPAP Instructor	2008 - Present

**PROFESSIONAL STUDIES (Courses Attended)**

International Association of Assessing Officers	
Course I - Introduction	1975
Appraisal Institute	
Course I-A - Real Estate Appraisal Principles	1975
Course I-B - Capitalization Theory & Techniques	1975
Course VIII - Residential Valuation	1977
Course II - Case Studies in Real Estate Valuation	1978
Course VI - Real Estate Investment Analysis	1979
Demonstration Appraisal - Business Reports	1983
Demonstration Appraisal - Office Building	1983
Comprehensive Examination	1984
Market Analysis - Course X	1990
Standards of Professional Practice	1991
Standards of Professional Practice	1996
Standards of Professional Practice (Part C)	2001

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Instructor Leadership & Development Conference	2002
Seminar Blitz	2004
Commercial Investment Real Estate Institute	
CI 101 - Financial Analysis for Commercial Real Estate	1995
CI 201 - Market Analysis for Commercial Real Estate	1996
CI 301 - Decision Analysis for Commercial Investment Real Estate	1996
Comprehensive Examination	1997

**PROFESSIONAL STUDIES (Seminars Attended)**

R41-b and the Appraisers	1985
Computer-Assisted Income Capitalization Approach	1986
Income Capitalization Overview	1986
Standards of Professional Practice	1986
Valuing Income Properties	1986
Rates, Ratios & Reasonableness	1989
Extracting Market Adjustments	1989
Appraising After Hurricane Hugo	1989
Discounted Cash Flow Analysis	1989
Standards of Professional Practice Update	1990
Real Estate Risk Analysis	1990
Litigation Valuation	1993
FIRREA Overview & Practical Application	1993
Discounted Cash Flow Analysis	1993
Appraisal Regulations of the Federal Banking Agencies from the Lender's Perspective	1994
Understanding Limited Appraisals & Reporting Options	1994
Appraisal Institute Symposium: The Changing Role of the Real Estate Analyst	1994
Standards of Professional Practice - Part A	1996
Standards of Professional Practice - Part B	1996
Residential Consulting	1999
Litigation Skills for Appraisers	1999
Valuation of Detrimental Conditions	2000
Highest and Best Use Applications	2000
Data Confirmation and Verification Methods	2000
Appraisal Review, General	2000
Introduction to Appraising for Conservation Easements	2000
Eminent Domain and Condemnation Appraising	2001
Standards of Professional Practice - Part C	2001

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National USPAP Update – Course 400	2004
Eminent Domain Conference	2005
What Clients Would Like Their Appraisers to Know	2006
Feasibility Analysis, Market Value, and Investment Timing	2006
Analytics with the Site To Do Business	2007
National USPAP Update	2007
The Valuation of Wetlands	2007
Analyzing Distressed Real Estate	2008
Maintaining Control: Dealing with Client Pressure	2008
Uniform Standards of Professional Practice, Business Practices and Ethics	2009
Spotlight on USPAP: Agreement of Services	2010
Appraising Distressed Commercial Real Estate	2010
National USPAP Update – Course 400	2010
Residential Design: The Makings of a Good House	2010

**STATE CERTIFICATION**

State of South Carolina

Cert. No. CG 292

**EXPERIENCE**

Charleston County Assessor's Office  
 Senior Staff Appraiser  
 Holcombe & Fair Realtors  
 Moore, Jackson, Donato & Santos  
 Atlantic Appraisals, LLC

1974 - 1979  
 1979 - 1984  
 1984 - 1986  
 1986 - Present

**PROFESSIONAL ASSOCIATION AND POSITIONS HELD**

National Association of Realtors  
 Charleston Trident Board of Realtors - Realtor  
 Commercial Investment Division of the Board of Realtors  
 Appraisal Institute - MAI - 1984  
 Past President of the Appraisal Institute South Carolina Chapter - 1993  
 Commercial Investment Real Estate Institute - CCIM – 1997  
 Appraisal Institute Region IX Education Liaison – 2001 thru 2004  
 Approved Instructor for the Appraisal Institute – 2003  
 Approved Instructor for the Appraisal Foundation - 2008

**LITIGATION EXPERIENCE**

A non-inclusive list of litigation clients:

South Carolina Department of Highways (SCDOT)

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Internal Revenue Service (IRS)  
NationsBank  
Wachovia  
SC State Ports Authority  
Santee Cooper  
Smith, Bundy, Bybee & Barnett  
Sinkler, Boyd  
Rosen Goodstein & Hagood  
Ogletree Deakins Nash Smoak and Stewart  
South Carolina Electric & Gas Co.  
SC Budget and Control Board  
Christopher McG. Holmes  
Ann M. Priest  
Thomas S. Worley, Jr.  
Young Clement Rivers & Tisdale  
Beaufort Memorial Hospital  
Jack M. Scoville  
Howell Gibson & Hughes  
Perry M. Buckner  
Santee Cooper  
Turner, Padgett, Graham & Laney, P.A.

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**AN APPRAISAL AND RESTRICTED REPORT  
OF 130 FAIRBANKS OAK ALLEE #2-A  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-021**

**AS OF**

**MARCH 28, 2008**

**AND**

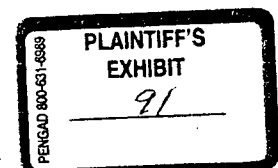
**DECEMBER 31, 2011**

**PREPARED FOR**

**SMITH, BUNDY, BYBEE & BARNETT  
W. H. BUNDY, JR. ESQUIRE  
1037 CHUCK DAWLEY BOULEVARD  
MT. PLEASANT, SOUTH CAROLINA 29464**

**BY**

**MICHAEL C. TAWES, SRA  
CHRISTOPHER D. DONATO, MAI, CCIM  
ATLANTIC APPRAISALS, LLC**



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**A**tlantic  
ppraisals, LLC  
REAL ESTATE APPRAISERS AND CONSULTANTS

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March 5, 2012

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**Re: An Appraisal and Restricted Report of 130 Fairbanks Oak Allee #2-A,  
Charleston SC – TMS NO. 276-05-01-021**

Dear Mr. Bundy:

As you requested, we have made an appraisal of the above referenced residential condominium unit. The unit is part of The Oaks at Rivers Edge Condominium Complex located in the Daniel Island area of the City of Charleston.

The subject unit is part of an ongoing law suit between the property owners and the developers of the complex for defects in construction. The purpose of the appraisal is to estimate fee simple market value of the unit within 3 separate scenarios.

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2nd scenario is to estimate the market value of the date of our last inspection, December 31, 2011, also assuming no construction defects. The final scenario is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

The intended use is for the client's use in an ongoing lawsuit involving the subject unit. The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Edward Wallace Barr III & Thomas Edward Keene. Anyone else relying on the report is an unintended and uninformed user.

Mr. Bundy  
March 5, 2012  
Page Two(2)

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

130 Fairbanks Oak Allee #2-A Edward Barr III & Thomas Keene	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$300,000

This is a restricted report, which does not present discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation for my opinions is retained in the file. The report is prepared for your eyes only and is not suitable for a third party.

We hereby certify that to the best of our knowledge and belief, the statements and opinions contained in this appraisal are full, true and correct, and that this appraisal is subject to the Certification of the Appraiser, General Underlying Assumptions, and General Limiting Conditions contained herein.

Your attention is invited to the following summary report, which is intended to comply with the standards promulgated by the Appraisal Foundation, USPAP, FIRREA, and the Standards of Professional Practice, Ethical Rules and Regulations of the Appraisal Institute.

We hereby certify that we have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation therefore, is contingent on the value of the property and this appraisal was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount which would result in an approval of a loan.

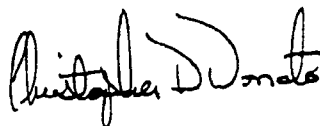
Mr. Bundy  
March 5, 2012  
Page Three (3)

Thank you for the opportunity to provide this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us.

Respectfully submitted,



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**RESTRICTED APPRAISAL REPORT**

*This is a Restricted Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop my opinion of value. Supporting documentation concerning data, reasoning, and analyses is retained in our file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. We are not responsible for unauthorized use of this report.*

**CLIENT:**

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**APPRAISERS:**

Mr. Michael C. Tawes, SRA  
SC Cert General #2243  
Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, SC 29465

Mr. Christopher D. Donato, MAI CCIM  
SC Cert. General #292  
Atlantic Appraisals, LLC  
P. O. Box 834  
Mt. Pleasant, SC 29465

**SUBJECT:**

Residential Condominium  
130 Fairbanks Oaks Allee #2-A  
The Oaks at Rivers Edge  
Charleston, SC 29482  
TMS # 276-05-01-021  
Owner – Edward Wallace Barr III & Thomas Edward Keene

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**PURPOSE OF THE APPRAISAL:**

To estimate fee simple market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**INTENDED USE:**

Litigation Purposes

**INTENDED USERS:**

The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Edward Wallace Barr III & Thomas Edward Keene. Anyone else relying on the report is an unintended and uninformed user.

**INTEREST VALUED:**

Fee Simple

**EFFECTIVE DATE OF VALUE:**

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2<sup>nd</sup> scenario is to estimate the market value of the date of our final inspection, December 31, 2012, also, assuming no construction defects. The final scenario, is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

**DATE OF REPORT:**

March 5, 2012

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal we,

- (1) inspected the interior and exterior of the subject property;
- (2) gathered and confirmed information concerning comparable residential condominiums sales.
- (3) used a sales comparison approach to value.
- (4) This Restricted Appraisal Report sets forth only the appraiser's conclusion. Supporting documentation is retained in my file.

**REAL ESTATE APPRAISED:**

130 Fairbanks Oak Allee Unit 2-A – The Oaks at Rivers Edge

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**HIGHEST AND BEST USE:**

Residential

**SALES COMPARISON APPROACH:**

We have used the sales comparison approach to value the unit within three different scenarios. Comparables were selected from competing developments on Daniel Island as well as other similar type projects located in nearby Mt. Pleasant. These comparables were analyzed and adjustments for differences in physical characteristic were made as warranted.

**CONCLUSION OF VALUE:**

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart.

130 Fairbanks Oak Allee #2-A Edward Barr III & Thomas Keene	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$300,000

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The appraiser hereby certifies that Atlantic Appraisals was engaged to appraise the market value of the leasehold interest in the following real property.

**130 FAIRBANKS OAK ALLE #2-A  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-021**

Neither Atlantic Appraisals nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Michael C. Tawes, SRA and Christopher D. Donato, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.

We certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

We certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based

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on a requested minimum valuation, a specific valuation, or the approval of a loan.

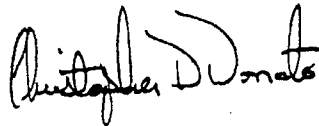
Employment of the appraiser(s) was not conditional upon the appraiser producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

130 Fairbanks Oak Allee #2-A Edward Barr III & Thomas Keene	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$300,000



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**GENERAL UNDERLYING ASSUMPTIONS**

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This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.
- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.
- The property is considered to be free of all liens and encumbrances.
- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.
- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property, which would render them more or less valuable.
- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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**GENERAL LIMITING CONDITIONS**

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This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.
- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.
- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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**QUALIFICATIONS OF THE APPRAISER**


---

**MICHAEL C. TAWES**

Atlantic Appraisals, LLC  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, S.C. 29464  
 (843) 884-1266

**EDUCATION**

Bishop England High School, 1988  
 B.S. Degree in Business Administration  
 Major - Finance  
 University of South Carolina, 1992

**PROFESSIONAL STUDIES**

The Citadel Evening College, 1993  
 Introduction & Basic Principles, 1993  
 The Valuation Process and Collection of Data  
 Valuation Methods: Sales Comparison, Cost, and Income  
 Partial Interest, Unique Properties, Reconciling Data & The Regulations, Standards, Ethics  
 & Law of Appraisals  
 FHA Guidelines to Appraisals  
 Basic Income Property Appraisal

**Appraisal Institute Courses**

Appraisal Institute Course 300 – RE Finance Stats/Valuation Modeling – March 2009  
 Appraisal Institute Course 310 – Basic Income Capitalization- January 2001  
 Appraisal Institute Course 410 – Standards & Professional Practice – Part A – April 2002  
 Appraisal Institute Course 420 – Standards & Professional Practice – Part B – July 2002  
 Appraisal Institute Course 510 - Advanced Income Capitalization – July 2002  
 Appraisal Institute Course 520 – Highest and Best Use – August 2003  
 Appraisal Institute Course 530 – Advance Sales Comparison/Cost Approach – April 2004  
 Appraisal Institute Course 540 – Advance Commercial Report Writing – March 2003  
 Appraisal Institute Course 550 - Advanced Applications – July 2004  
 Appraisal Institute Course – Advance Residential Report Writing Part 1 – April 2010  
 Appraisal Institute Course - Advance Residential Report Writing Part 2 – April 2010

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**Appraisal Institute Seminars**

Appraisal Institute Seminar – Litigator Skills for the Appraiser – June 2006  
 Appraisal Institute Seminar – The Valuation of Wetlands – July 2007  
 Appraisal Institute Seminar – Appraising Historic SC Homes – April 2008  
 Appraisal Institute Seminar – Dealing with Client Pressures – June 2008  
 Appraisal Institute Seminar – The New Market Conditions Form – April 2009  
 Appraisal Institute Seminar - Residential Appraisal Update 2010- January 2011  
 Appraisal Institute Seminar - Residential Appraisal Update 2011- March 2012

**PROFESSIONAL AFFILIATIONS**

State Certified General Appraiser - License # CG 2243  
 State Licensed Realtor  
 Associate Member of Appraisal Institute, 2000  
 Awarded SRA Designation from The Appraisal Institute, May 2010  
 Member of the Charleston Trident Board of Realtors  
 Member of National Association of Realtors

**EMPLOYMENT**

Atlantic Appraisals, LLC	1993 – Present
Residential Manager	1998 – Present
Partner- Atlantic Appraisals, LLC	2005 - Present

**PARTIAL LIST OF CLIENTS**

BB & T	First Federal of Charleston
Wells Fargo Bank	TD Bank
Southern Trust Mortgage	Tidelands Bank
Synovus Bank	Mortgage Research Corp.
The Bank of South Carolina	South Atlantic Bank
Carolina Federal Savings Banks	Community First Bank
Southcoast Community Bank	SunTrust Mortgage
Bradford Mortgage	SunTrust Bank
Fannie Mae	Lucey Mortgage
Bank of America	Regions Bank
South Carolina Bank and Trust	LSI
FDIC	

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### QUALIFICATIONS OF THE APPRAISER

Christopher D. Donato, MAI, CCIM  
 Atlantic Appraisals  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, South Carolina 29464

#### EDUCATION:

B.S. Degree 1973  
 College of Charleston  
 Charleston, South Carolina

24 Hours towards M.B.A. Degree  
 The Citadel  
 Charleston, South Carolina

#### PROFESSIONAL DESIGNATIONS

Awarded MAI Designation	1984
Awarded CCIM Designation	1997
Approved Instructor for the Appraisal Institute	2003 – Present
Approved USPAP Instructor	2008 - Present

#### PROFESSIONAL STUDIES (Courses Attended)

International Association of Assessing Officers	
Course I - Introduction	1975
Appraisal Institute	
Course I-A - Real Estate Appraisal Principles	1975
Course I-B - Capitalization Theory & Techniques	1975
Course VIII - Residential Valuation	1977
Course II - Case Studies in Real Estate Valuation	1978
Course VI - Real Estate Investment Analysis	1979
Demonstration Appraisal - Business Reports	1983
Demonstration Appraisal - Office Building	1983
Comprehensive Examination	1984
Market Analysis - Course X	1990
Standards of Professional Practice	1991
Standards of Professional Practice	1996
Standards of Professional Practice (Part C)	2001

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Instructor Leadership & Development Conference	2002
Seminar Blitz	2004
Commercial Investment Real Estate Institute	
CI 101 - Financial Analysis for Commercial Real Estate	1995
CI 201 - Market Analysis for Commercial Real Estate	1996
CI 301 - Decision Analysis for Commercial Investment Real Estate	1996
Comprehensive Examination	1997

**PROFESSIONAL STUDIES (Seminars Attended)**

R41-b and the Appraisers	1985
Computer-Assisted Income Capitalization Approach	1986
Income Capitalization Overview	1986
Standards of Professional Practice	1986
Valuing Income Properties	1986
Rates, Ratios & Reasonableness	1989
Extracting Market Adjustments	1989
Appraising After Hurricane Hugo	1989
Discounted Cash Flow Analysis	1989
Standards of Professional Practice Update	1990
Real Estate Risk Analysis	1990
Litigation Valuation	1993
FIRREA Overview & Practical Application	1993
Discounted Cash Flow Analysis	1993
Appraisal Regulations of the Federal Banking Agencies from the Lender's Perspective	1994
Understanding Limited Appraisals & Reporting Options	1994
Appraisal Institute Symposium: The Changing Role of the Real Estate Analyst	1994
Standards of Professional Practice - Part A	1996
Standards of Professional Practice - Part B	1996
Residential Consulting	1999
Litigation Skills for Appraisers	1999
Valuation of Detrimental Conditions	2000
Highest and Best Use Applications	2000
Data Confirmation and Verification Methods	2000
Appraisal Review, General	2000
Introduction to Appraising for Conservation Easements	2000
Eminent Domain and Condemnation Appraising	2001
Standards of Professional Practice - Part C	2001

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National USPAP Update – Course 400	2004
Eminent Domain Conference	2005
What Clients Would Like Their Appraisers to Know	2006
Feasibility Analysis, Market Value, and Investment Timing	2006
Analytics with the Site To Do Business	2007
National USPAP Update	2007
The Valuation of Wetlands	2007
Analyzing Distressed Real Estate	2008
Maintaining Control: Dealing with Client Pressure	2008
Uniform Standards of Professional Practice, Business Practices and Ethics	2009
Spotlight on USPAP: Agreement of Services	2010
Appraising Distressed Commercial Real Estate	2010
National USPAP Update – Course 400	2010
Residential Design: The Makings of a Good House	2010

**STATE CERTIFICATION**

State of South Carolina

Cert. No. CG 292

**EXPERIENCE**

Charleston County Assessor's Office	
Senior Staff Appraiser	1974 - 1979
Holcombe & Fair Realtors	1979 - 1984
Moore, Jackson, Donato & Santos	1984 - 1986
Atlantic Appraisals, LLC	1986 - Present

**PROFESSIONAL ASSOCIATION AND POSITIONS HELD**

National Association of Realtors  
 Charleston Trident Board of Realtors - Realtor  
 Commercial Investment Division of the Board of Realtors  
 Appraisal Institute - MAI - 1984  
 Past President of the Appraisal Institute South Carolina Chapter - 1993  
 Commercial Investment Real Estate Institute - CCIM – 1997  
 Appraisal Institute Region IX Education Liaison – 2001 thru 2004  
 Approved Instructor for the Appraisal Institute – 2003  
 Approved Instructor for the Appraisal Foundation - 2008

**LITIGATION EXPERIENCE**

A non-inclusive list of litigation clients:

South Carolina Department of Highways (SCDOT)

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Internal Revenue Service (IRS)  
NationsBank  
Wachovia  
SC State Ports Authority  
Santee Cooper  
Smith, Bundy, Bybee & Barnett  
Sinkler, Boyd  
Rosen Goodstein & Hagood  
Ogletree Deakins Nash Smoak and Stewart  
South Carolina Electric & Gas Co.  
SC Budget and Control Board  
Christopher McG. Holmes  
Ann M. Priest  
Thomas S. Worley, Jr.  
Young Clement Rivers & Tisdale  
Beaufort Memorial Hospital  
Jack M. Scoville  
Howell Gibson & Hughes  
Perry M. Buckner  
Santee Cooper  
Turner, Padgett, Graham & Laney, P.A.

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**AN APPRAISAL AND RESTRICTED REPORT  
OF 140 FAIRBANKS OAK ALLEE #2-A  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-033**

**AS OF**

**MARCH 28, 2008**

**AND**

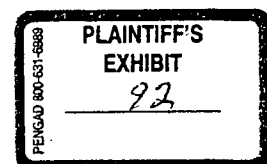
**DECEMBER 31, 2011**

**PREPARED FOR**

**SMITH, BUNDY, BYBEE & BARNETT  
W. H. BUNDY, JR. ESQUIRE  
1037 CHUCK DAWLEY BOULEVARD  
MT. PLEASANT, SOUTH CAROLINA 29464**

**BY**

**MICHAEL C. TAWES, SRA  
CHRISTOPHER D. DONATO, MAI, CCIM  
ATLANTIC APPRAISALS, LLC**



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# Atlantic Appraisals, LLC

REAL ESTATE APPRAISERS AND CONSULTANTS

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Fax: (843) 379-6222

March 5, 2012

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**Re: An Appraisal and Restricted Report of 140 Fairbanks Oak Allee #2-A,  
Charleston SC – TMS NO. 276-05-01-033**

Dear Mr. Bundy:

As you requested, we have made an appraisal of the above referenced residential condominium unit. The unit is part of The Oaks at Rivers Edge Condominium Complex located in the Daniel Island area of the City of Charleston.

The subject unit is part of an ongoing law suit between the property owners and the developers of the complex for defects in construction. The purpose of the appraisal is to estimate fee simple market value of the unit within 3 separate scenarios.

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2nd scenario is to estimate the market value of the date of our last inspection, December 31, 2011, also assuming no construction defects. The final scenario is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

The intended use is for the client's use in an ongoing lawsuit involving the subject unit. The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Joseph E. Chiovarou, Jr. Anyone else relying on the report is an unintended and uninformed user.

Mr. Bundy  
March 5, 2012  
Page Two(2)

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

140 Fairbanks Oak Allee #2-A Joseph E. Chiovarou	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$285,000

This is a restricted report, which does not present discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation for my opinions is retained in the file. The report is prepared for your eyes only and is not suitable for a third party.

We hereby certify that to the best of our knowledge and belief, the statements and opinions contained in this appraisal are full, true and correct, and that this appraisal is subject to the Certification of the Appraiser, General Underlying Assumptions, and General Limiting Conditions contained herein.

Your attention is invited to the following summary report, which is intended to comply with the standards promulgated by the Appraisal Foundation, USPAP, FIRREA, and the Standards of Professional Practice, Ethical Rules and Regulations of the Appraisal Institute.

We hereby certify that we have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation therefore, is contingent on the value of the property and this appraisal was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount which would result in an approval of a loan.

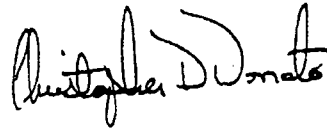
Mr. Bundy  
March 5, 2012  
Page Three (3)

Thank you for the opportunity to provide this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us.

Respectfully submitted,



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

**RESTRICTED APPRAISAL REPORT**

*This is a Restricted Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop my opinion of value. Supporting documentation concerning data, reasoning, and analyses is retained in our file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. We are not responsible for unauthorized use of this report.*

**CLIENT:**

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**APPRAISERS:**

Mr. Michael C. Tawes, SRA  
SC Cert General #2243  
Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, SC 29465

Mr. Christopher D. Donato, MAI CCIM  
SC Cert. General #292  
Atlantic Appraisals, LLC  
P. O. Box 834  
Mt. Pleasant, SC 29465

**SUBJECT:**

Residential Condominium  
140 Fairbanks Oaks Allee #2-A  
The Oaks at Rivers Edge  
Charleston, SC 29482  
TMS # 276-05-01-033  
Owner – Joseph E. Chiovarou, Jr.

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**PURPOSE OF THE APPRAISAL:**

To estimate fee simple market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**INTENDED USE:**

Litigation Purposes

**INTENDED USERS:**

The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Joseph E. Chiovarou, Jr. Anyone else relying on the report is an unintended and uninformed user.

**INTEREST VALUED:**

Fee Simple

**EFFECTIVE DATE OF VALUE:**

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2<sup>nd</sup> scenario is to estimate the market value of the date of our final inspection, December 31, 2012, also, assuming no construction defects. The final scenario, is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

**DATE OF REPORT:**

March 5, 2012

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal we,

- (1) inspected the interior and exterior of the subject property;
- (2) gathered and confirmed information concerning comparable residential condominiums sales.
- (3) used a sales comparison approach to value.
- (4) This Restricted Appraisal Report sets forth only the appraiser's conclusion. Supporting documentation is retained in my file.

**REAL ESTATE APPRAISED:**

140 Fairbanks Oak Allee Unit 2-A – The Oaks at Rivers Edge

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**HIGHEST AND BEST USE:**

Residential

**SALES COMPARISON APPROACH:**

We have used the sales comparison approach to value the unit within three different scenarios. Comparables were selected from competing developments on Daniel Island as well as other similar type projects located in nearby Mt. Pleasant. These comparables were analyzed and adjustments for differences in physical characteristic were made as warranted.

**CONCLUSION OF VALUE:**

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart.

140 Fairbanks Oak Allee #2-A	
Joseph E. Chiovarou	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$285,000

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The appraiser hereby certifies that Atlantic Appraisals was engaged to appraiser the market value of the leasehold interest in the following real property.

**140 FAIRBANKS OAK ALLE #2-A  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-033**

Neither Atlantic Appraisals nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Michael C. Tawes, SRA and Christopher D. Donato, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.

We certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

We certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based

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on a requested minimum valuation, a specific valuation, or the approval of a loan.

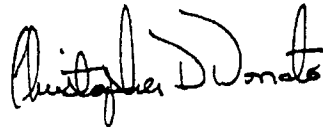
Employment of the appraiser(s) was not conditional upon the appraiser producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

140 Fairbanks Oak Allee #2-A Joseph E. Chiovarou	
Date	Value
March 28, 2008 - No Defects	\$800,000
December 31, 2011 - No Defects	\$565,000
December 31, 2011 - With Defects	\$285,000



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**GENERAL UNDERLYING ASSUMPTIONS**

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This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.
- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.
- The property is considered to be free of all liens and encumbrances.
- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.
- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property, which would render them more or less valuable.
- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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**GENERAL LIMITING CONDITIONS**

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This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.
- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.
- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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**QUALIFICATIONS OF THE APPRAISER**

---

**MICHAEL C. TAWES**

Atlantic Appraisals, LLC  
1250 Fairmont Avenue  
P.O. Box 834  
Mt. Pleasant, S.C. 29464  
(843) 884-1266

**EDUCATION**

Bishop England High School, 1988  
B.S. Degree in Business Administration  
Major - Finance  
University of South Carolina, 1992

**PROFESSIONAL STUDIES**

The Citadel Evening College, 1993  
Introduction & Basic Principles, 1993  
The Valuation Process and Collection of Data  
Valuation Methods: Sales Comparison, Cost, and Income  
Partial Interest, Unique Properties, Reconciling Data & The Regulations, Standards, Ethics  
& Law of Appraisals  
FHA Guidelines to Appraisals  
Basic Income Property Appraisal

**Appraisal Institute Courses**

Appraisal Institute Course 300 – RE Finance Stats/Valuation Modeling – March 2009  
Appraisal Institute Course 310 – Basic Income Capitalization- January 2001  
Appraisal Institute Course 410 – Standards & Professional Practice – Part A – April 2002  
Appraisal Institute Course 420 – Standards & Professional Practice – Part B – July 2002  
Appraisal Institute Course 510 - Advanced Income Capitalization – July 2002  
Appraisal Institute Course 520 – Highest and Best Use – August 2003  
Appraisal Institute Course 530 – Advance Sales Comparison/Cost Approach – April 2004  
Appraisal Institute Course 540 – Advance Commercial Report Writing – March 2003  
Appraisal Institute Course 550 - Advanced Applications – July 2004  
Appraisal Institute Course – Advance Residential Report Writing Part 1 – April 2010  
Appraisal Institute Course - Advance Residential Report Writing Part 2 – April 2010

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**Appraisal Institute Seminars**

Appraisal Institute Seminar – Litigator Skills for the Appraiser – June 2006  
 Appraisal Institute Seminar – The Valuation of Wetlands – July 2007  
 Appraisal Institute Seminar – Appraising Historic SC Homes – April 2008  
 Appraisal Institute Seminar – Dealing with Client Pressures – June 2008  
 Appraisal Institute Seminar – The New Market Conditions Form – April 2009  
 Appraisal Institute Seminar - Residential Appraisal Update 2010- January 2011  
 Appraisal Institute Seminar - Residential Appraisal Update 2011- March 2012

**PROFESSIONAL AFFILIATIONS**

State Certified General Appraiser - License # CG 2243  
 State Licensed Realtor  
 Associate Member of Appraisal Institute, 2000  
 Awarded SRA Designation from The Appraisal Institute, May 2010  
 Member of the Charleston Trident Board of Realtors  
 Member of National Association of Realtors

**EMPLOYMENT**

Atlantic Appraisals, LLC	1993 – Present
Residential Manager	1998 – Present
Partner- Atlantic Appraisals, LLC	2005 - Present

**PARTIAL LIST OF CLIENTS**

BB & T	First Federal of Charleston
Wells Fargo Bank	TD Bank
Southern Trust Mortgage	Tidelands Bank
Synovus Bank	Mortgage Research Corp.
The Bank of South Carolina	South Atlantic Bank
Carolina Federal Savings Banks	Community First Bank
Southcoast Community Bank	SunTrust Mortgage
Bradford Mortgage	SunTrust Bank
Fannie Mae	Lucey Mortgage
Bank of America	Regions Bank
South Carolina Bank and Trust	LSI
FDIC	

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### QUALIFICATIONS OF THE APPRAISER

Christopher D. Donato, MAI, CCIM  
 Atlantic Appraisals  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, South Carolina 29464

#### EDUCATION:

B.S. Degree 1973  
 College of Charleston  
 Charleston, South Carolina

24 Hours towards M.B.A. Degree  
 The Citadel  
 Charleston, South Carolina

#### PROFESSIONAL DESIGNATIONS

Awarded MAI Designation	1984
Awarded CCIM Designation	1997
Approved Instructor for the Appraisal Institute	2003 – Present
Approved USPAP Instructor	2008 - Present

#### PROFESSIONAL STUDIES (Courses Attended)

International Association of Assessing Officers	
Course I - Introduction	1975
Appraisal Institute	
Course I-A - Real Estate Appraisal Principles	1975
Course I-B - Capitalization Theory & Techniques	1975
Course VIII - Residential Valuation	1977
Course II - Case Studies in Real Estate Valuation	1978
Course VI - Real Estate Investment Analysis	1979
Demonstration Appraisal - Business Reports	1983
Demonstration Appraisal - Office Building	1983
Comprehensive Examination	1984
Market Analysis - Course X	1990
Standards of Professional Practice	1991
Standards of Professional Practice	1996
Standards of Professional Practice (Part C)	2001

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Instructor Leadership & Development Conference	2002
Seminar Blitz	2004
Commercial Investment Real Estate Institute	
CI 101 - Financial Analysis for Commercial Real Estate	1995
CI 201 - Market Analysis for Commercial Real Estate	1996
CI 301 - Decision Analysis for Commercial Investment Real Estate	1996
Comprehensive Examination	1997

**PROFESSIONAL STUDIES (Seminars Attended)**

R41-b and the Appraisers	1985
Computer-Assisted Income Capitalization Approach	1986
Income Capitalization Overview	1986
Standards of Professional Practice	1986
Valuing Income Properties	1986
Rates, Ratios & Reasonableness	1989
Extracting Market Adjustments	1989
Appraising After Hurricane Hugo	1989
Discounted Cash Flow Analysis	1989
Standards of Professional Practice Update	1990
Real Estate Risk Analysis	1990
Litigation Valuation	1993
FIRREA Overview & Practical Application	1993
Discounted Cash Flow Analysis	1993
Appraisal Regulations of the Federal Banking Agencies from the Lender's Perspective	1994
Understanding Limited Appraisals & Reporting Options	1994
Appraisal Institute Symposium: The Changing Role of the Real Estate Analyst	1994
Standards of Professional Practice - Part A	1996
Standards of Professional Practice - Part B	1996
Residential Consulting	1999
Litigation Skills for Appraisers	1999
Valuation of Detrimental Conditions	2000
Highest and Best Use Applications	2000
Data Confirmation and Verification Methods	2000
Appraisal Review, General	2000
Introduction to Appraising for Conservation Easements	2000
Eminent Domain and Condemnation Appraising	2001
Standards of Professional Practice -- Part C	2001

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National USPAP Update – Course 400	2004
Eminent Domain Conference	2005
What Clients Would Like Their Appraisers to Know	2006
Feasibility Analysis, Market Value, and Investment Timing	2006
Analytcs with the Site To Do Business	2007
National USPAP Update	2007
The Valuation of Wetlands	2007
Analyzing Distressed Real Estate	2008
Maintaining Control: Dealing with Client Pressure	2008
Uniform Standards of Professional Practice, Business Practices and Ethics	2009
Spotlight on USPAP: Agreement of Services	2010
Appraising Distressed Commercial Real Estate	2010
National USPAP Update – Course 400	2010
Residential Design: The Makings of a Good House	2010

**STATE CERTIFICATION**

State of South Carolina

Cert. No. CG 292

**EXPERIENCE**

Charleston County Assessor's Office	
Senior Staff Appraiser	1974 - 1979
Holcombe & Fair Realtors	1979 - 1984
Moore, Jackson, Donato & Santos	1984 - 1986
Atlantic Appraisals, LLC	1986 - Present

**PROFESSIONAL ASSOCIATION AND POSITIONS HELD**

National Association of Realtors  
 Charleston Trident Board of Realtors - Realtor  
 Commercial Investment Division of the Board of Realtors  
 Appraisal Institute - MAI - 1984  
 Past President of the Appraisal Institute South Carolina Chapter - 1993  
 Commercial Investment Real Estate Institute - CCIM – 1997  
 Appraisal Institute Region IX Education Liaison – 2001 thru 2004  
 Approved Instructor for the Appraisal Institute – 2003  
 Approved Instructor for the Appraisal Foundation - 2008

**LITIGATION EXPERIENCE**

A non-inclusive list of litigation clients:  
 South Carolina Department of Highways (SCDOT)

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Internal Revenue Service (IRS)  
NationsBank  
Wachovia  
SC State Ports Authority  
Santee Cooper  
Smith, Bundy, Bybee & Barnett  
Sinkler, Boyd  
Rosen Goodstein & Hagood  
Ogletree Deakins Nash Smoak and Stewart  
South Carolina Electric & Gas Co.  
SC Budget and Control Board  
Christopher McG. Holmes  
Ann M. Priest  
Thomas S. Worley, Jr.  
Young Clement Rivers & Tisdale  
Beaufort Memorial Hospital  
Jack M. Scoville  
Howell Gibson & Hughes  
Perry M. Buckner  
Santee Cooper  
Turner, Padget, Graham & Laney, P.A.

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**AN APPRAISAL AND RESTRICTED REPORT  
OF 136 FAIRBANKS OAK ALLEE #2-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-028**

**AS OF**

**MARCH 28, 2008**

**AND**

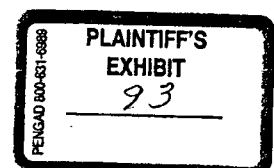
**DECEMBER 31, 2011**

**PREPARED FOR**

**SMITH, BUNDY, BYBEE & BARNETT  
W. H. BUNDY, JR. ESQUIRE  
1037 CHUCK DAWLEY BOULEVARD  
MT. PLEASANT, SOUTH CAROLINA 29464**

**BY**

**MICHAEL C. TAWES, SRA  
CHRISTOPHER D. DONATO, MAI, CCIM  
ATLANTIC APPRAISALS, LLC**



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# Atlantic Appraisals, LLC

REAL ESTATE APPRAISERS AND CONSULTANTS

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Fax: (843) 881-7532

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Beaufort, South Carolina 29901  
Phone: (843) 379-6220  
Fax: (843) 379-6222

March 5, 2012

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**Re: An Appraisal and Restricted Report of 136 Fairbanks Oak Allee #2-B,  
Charleston SC – TMS NO. 276-05-01-028**

Dear Mr. Bundy:

As you requested, we have made an appraisal of the above referenced residential condominium unit. The unit is part of The Oaks at Rivers Edge Condominium Complex located in the Daniel Island area of the City of Charleston.

The subject unit is part of an ongoing law suit between the property owners and the developers of the complex for defects in construction. The purpose of the appraisal is to estimate fee simple market value of the unit within 3 separate scenarios.

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2nd scenario is to estimate the market value of the date of our last inspection, December 31, 2011, also assuming no construction defects. The final scenario is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

The intended use is for the client's use in an ongoing lawsuit involving the subject unit. The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, John W. Edelen & Karen A. Nelson. Anyone else relying on the report is an unintended and uninformed user.

Mr. Bundy  
March 5, 2012  
Page Two(2)

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

136 Fairbanks Oak Allee #2-B	
John W. Edelen & Karen A. Nelson	
Date	Value
March 28, 2008 - No Defects	\$840,000
December 31, 2011 - No Defects	\$605,000
December 31, 2011 - With Defects	\$330,000

This is a restricted report, which does not present discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation for my opinions is retained in the file. The report is prepared for your eyes only and is not suitable for a third party.

We hereby certify that to the best of our knowledge and belief, the statements and opinions contained in this appraisal are full, true and correct, and that this appraisal is subject to the Certification of the Appraiser, General Underlying Assumptions, and General Limiting Conditions contained herein.

Your attention is invited to the following summary report, which is intended to comply with the standards promulgated by the Appraisal Foundation, USPAP, FIRREA, and the Standards of Professional Practice, Ethical Rules and Regulations of the Appraisal Institute.

We hereby certify that we have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation therefore, is contingent on the value of the property and this appraisal was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount which would result in an approval of a loan.

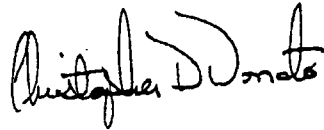
Mr. Bundy  
March 5, 2012  
Page Three (3)

Thank you for the opportunity to provide this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us.

Respectfully submitted,



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

**RESTRICTED APPRAISAL REPORT**

*This is a Restricted Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop my opinion of value. Supporting documentation concerning data, reasoning, and analyses is retained in our file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. We are not responsible for unauthorized use of this report.*

**CLIENT:**

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**APPRAISERS:**

Mr. Michael C. Tawes, SRA  
SC Cert General #2243  
Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, SC 29465

Mr. Christopher D. Donato, MAI CCIM  
SC Cert. General #292  
Atlantic Appraisals, LLC  
P. O. Box 834  
Mt. Pleasant, SC 29465

**SUBJECT:**

Residential Condominium  
136 Fairbanks Oaks Allee #2-B  
The Oaks at Rivers Edge  
Charleston, SC 29482  
TMS # 276-05-01-028  
Owner – John W. Edelen & Karen A. Nelson

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**PURPOSE OF THE APPRAISAL:**

To estimate fee simple market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**INTENDED USE:**

Litigation Purposes

**INTENDED USERS:**

The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, John W. Edelen & Karen A. Nelson. Anyone else relying on the report is an unintended and uninformed user.

**INTEREST VALUED:**

Fee Simple

**EFFECTIVE DATE OF VALUE:**

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2<sup>nd</sup> scenario is to estimate the market value of the date of our final inspection, December 31, 2012, also, assuming no construction defects. The final scenario, is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

**DATE OF REPORT:**

March 5, 2012

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal we,

- (1) inspected the interior and exterior of the subject property;
- (2) gathered and confirmed information concerning comparable residential condominiums sales.
- (3) used a sales comparison approach to value.
- (4) This Restricted Appraisal Report sets forth only the appraiser's conclusion. Supporting documentation is retained in my file.

**REAL ESTATE APPRAISED:**

136 Fairbanks Oak Allee Unit 2-B – The Oaks at Rivers Edge

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**HIGHEST AND BEST USE:**

Residential

**SALES COMPARISON APPROACH:**

We have used the sales comparison approach to value the unit within three different scenarios. Comparables were selected from competing developments on Daniel Island as well as other similar type projects located in nearby Mt. Pleasant. These comparables were analyzed and adjustments for differences in physical characteristic were made as warranted.

**CONCLUSION OF VALUE:**

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart.

136 Fairbanks Oak Allee #2-B	
John W. Edelen & Karen A. Nelson	
Date	Value
March 28, 2008 - No Defects	\$840,000
December 31, 2011 - No Defects	\$605,000
December 31, 2011 - With Defects	\$330,000

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The appraiser hereby certifies that Atlantic Appraisals was engaged to appraise the market value of the leasehold interest in the following real property.

**136 FAIRBANKS OAK ALLE #2-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-028**

Neither Atlantic Appraisals nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Michael C. Tawes, SRA and Christopher D. Donato, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.

We certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

We certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based

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on a requested minimum valuation, a specific valuation, or the approval of a loan.

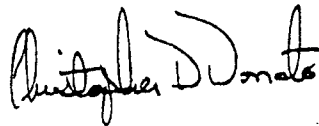
Employment of the appraiser(s) was not conditional upon the appraiser producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

136 Fairbanks Oak Allee #2-B John W. Edelen & Karen A. Nelson	
Date	Value
March 28, 2008 - No Defects	\$840,000
December 31, 2011 - No Defects	\$605,000
December 31, 2011 - With Defects	\$330,000



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**GENERAL UNDERLYING ASSUMPTIONS**

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This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.
- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.
- The property is considered to be free of all liens and encumbrances.
- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.
- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property, which would render them more or less valuable.
- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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**GENERAL LIMITING CONDITIONS**

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This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.
- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.
- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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**QUALIFICATIONS OF THE APPRAISER**

**MICHAEL C. TAWES**

Atlantic Appraisals, LLC  
1250 Fairmont Avenue  
P.O. Box 834  
Mt. Pleasant, S.C. 29464  
(843) 884-1266

**EDUCATION**

Bishop England High School, 1988  
B.S. Degree in Business Administration  
Major - Finance  
University of South Carolina, 1992

**PROFESSIONAL STUDIES**

The Citadel Evening College, 1993  
Introduction & Basic Principles, 1993  
The Valuation Process and Collection of Data  
Valuation Methods: Sales Comparison, Cost, and Income  
Partial Interest, Unique Properties, Reconciling Data & The Regulations, Standards, Ethics  
& Law of Appraisals  
FHA Guidelines to Appraisals  
Basic Income Property Appraisal

**Appraisal Institute Courses**

Appraisal Institute Course 300 – RE Finance Stats/Valuation Modeling – March 2009  
Appraisal Institute Course 310 – Basic Income Capitalization- January 2001  
Appraisal Institute Course 410 – Standards & Professional Practice – Part A – April 2002  
Appraisal Institute Course 420 – Standards & Professional Practice – Part B – July 2002  
Appraisal Institute Course 510 - Advanced Income Capitalization – July 2002  
Appraisal Institute Course 520 – Highest and Best Use – August 2003  
Appraisal Institute Course 530 – Advance Sales Comparison/Cost Approach – April 2004  
Appraisal Institute Course 540 – Advance Commercial Report Writing – March 2003  
Appraisal Institute Course 550 - Advanced Applications – July 2004  
Appraisal Institute Course – Advance Residential Report Writing Part 1 – April 2010  
Appraisal Institute Course - Advance Residential Report Writing Part 2 – April 2010

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**Appraisal Institute Seminars**

Appraisal Institute Seminar – Litigator Skills for the Appraiser – June 2006  
 Appraisal Institute Seminar – The Valuation of Wetlands – July 2007  
 Appraisal Institute Seminar – Appraising Historic SC Homes – April 2008  
 Appraisal Institute Seminar – Dealing with Client Pressures – June 2008  
 Appraisal Institute Seminar – The New Market Conditions Form – April 2009  
 Appraisal Institute Seminar - Residential Appraisal Update 2010- January 2011  
 Appraisal Institute Seminar - Residential Appraisal Update 2011- March 2012

**PROFESSIONAL AFFILIATIONS**

State Certified General Appraiser - License # CG 2243  
 State Licensed Realtor  
 Associate Member of Appraisal Institute, 2000.  
 Awarded SRA Designation from The Appraisal Institute, May 2010  
 Member of the Charleston Trident Board of Realtors  
 Member of National Association of Realtors

**EMPLOYMENT**

Atlantic Appraisals, LLC	1993 – Present
Residential Manager	1998 – Present
Partner- Atlantic Appraisals, LLC	2005 - Present

**PARTIAL LIST OF CLIENTS**

BB & T	First Federal of Charleston
Wells Fargo Bank	TD Bank
Southern Trust Mortgage	Tidelands Bank
Synovus Bank	Mortgage Research Corp.
The Bank of South Carolina	South Atlantic Bank
Carolina Federal Savings Banks	Community First Bank
Southcoast Community Bank	SunTrust Mortgage
Bradford Mortgage	SunTrust Bank
Fannie Mae	Lucey Mortgage
Bank of America	Regions Bank
South Carolina Bank and Trust	LSI
FDIC	

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### QUALIFICATIONS OF THE APPRAISER

Christopher D. Donato, MAI, CCIM  
 Atlantic Appraisals  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, South Carolina 29464

#### EDUCATION:

B.S. Degree 1973  
 College of Charleston  
 Charleston, South Carolina

24 Hours towards M.B.A. Degree  
 The Citadel  
 Charleston, South Carolina

#### PROFESSIONAL DESIGNATIONS

Awarded MAI Designation	1984
Awarded CCIM Designation	1997
Approved Instructor for the Appraisal Institute	2003 – Present
Approved USPAP Instructor	2008 - Present

#### PROFESSIONAL STUDIES (Courses Attended)

International Association of Assessing Officers	
Course I - Introduction	1975
Appraisal Institute	
Course I-A - Real Estate Appraisal Principles	1975
Course I-B - Capitalization Theory & Techniques	1975
Course VIII - Residential Valuation	1977
Course II - Case Studies in Real Estate Valuation	1978
Course VI - Real Estate Investment Analysis	1979
Demonstration Appraisal - Business Reports	1983
Demonstration Appraisal - Office Building	1983
Comprehensive Examination	1984
Market Analysis - Course X	1990
Standards of Professional Practice	1991
Standards of Professional Practice	1996
Standards of Professional Practice (Part C)	2001

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Instructor Leadership & Development Conference	2002
Seminar Blitz	2004
Commercial Investment Real Estate Institute	
CI 101 - Financial Analysis for Commercial Real Estate	1995
CI 201 - Market Analysis for Commercial Real Estate	1996
CI 301 - Decision Analysis for Commercial Investment Real Estate	1996
Comprehensive Examination	1997

**PROFESSIONAL STUDIES (Seminars Attended)**

R41-b and the Appraisers	1985
Computer-Assisted Income Capitalization Approach	1986
Income Capitalization Overview	1986
Standards of Professional Practice	1986
Valuing Income Properties	1986
Rates, Ratios & Reasonableness	1989
Extracting Market Adjustments	1989
Appraising After Hurricane Hugo	1989
Discounted Cash Flow Analysis	1989
Standards of Professional Practice Update	1990
Real Estate Risk Analysis	1990
Litigation Valuation	1993
FIRREA Overview & Practical Application	1993
Discounted Cash Flow Analysis	1993
Appraisal Regulations of the Federal Banking Agencies from the Lender's Perspective	1994
Understanding Limited Appraisals & Reporting Options	1994
Appraisal Institute Symposium: The Changing Role of the Real Estate Analyst	1994
Standards of Professional Practice - Part A	1996
Standards of Professional Practice - Part B	1996
Residential Consulting	1999
Litigation Skills for Appraisers	1999
Valuation of Detrimental Conditions	2000
Highest and Best Use Applications	2000
Data Confirmation and Verification Methods	2000
Appraisal Review, General	2000
Introduction to Appraising for Conservation Easements	2000
Eminent Domain and Condemnation Appraising	2001
Standards of Professional Practice - Part C	2001

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National USPAP Update – Course 400	2004
Eminent Domain Conference	2005
What Clients Would Like Their Appraisers to Know	2006
Feasibility Analysis, Market Value, and Investment Timing	2006
Analytics with the Site To Do Business	2007
National USPAP Update	2007
The Valuation of Wetlands	2007
Analyzing Distressed Real Estate	2008
Maintaining Control: Dealing with Client Pressure	2008
Uniform Standards of Professional Practice, Business Practices and Ethics	2009
Spotlight on USPAP: Agreement of Services	2010
Appraising Distressed Commercial Real Estate	2010
National USPAP Update – Course 400	2010
Residential Design: The Makings of a Good House	2010

**STATE CERTIFICATION**

State of South Carolina

Cert. No. CG 292

**EXPERIENCE**

Charleston County Assessor's Office	1974 - 1979
Senior Staff Appraiser	1979 - 1984
Holcombe & Fair Realtors	1984 - 1986
Moore, Jackson, Donato & Santos	1986 - Present
Atlantic Appraisals, LLC	

**PROFESSIONAL ASSOCIATION AND POSITIONS HELD**

National Association of Realtors  
 Charleston Trident Board of Realtors - Realtor  
 Commercial Investment Division of the Board of Realtors  
 Appraisal Institute - MAI - 1984  
 Past President of the Appraisal Institute South Carolina Chapter - 1993  
 Commercial Investment Real Estate Institute - CCIM - 1997  
 Appraisal Institute Region IX Education Liaison - 2001 thru 2004  
 Approved Instructor for the Appraisal Institute - 2003  
 Approved Instructor for the Appraisal Foundation - 2008

**LITIGATION EXPERIENCE**

A non-inclusive list of litigation clients:

South Carolina Department of Highways (SCDOT)

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Internal Revenue Service (IRS)  
NationsBank  
Wachovia  
SC State Ports Authority  
Santee Cooper  
Smith, Bundy, Bybee & Barnett  
Sinkler, Boyd  
Rosen Goodstein & Hagood  
Ogletree Deakins Nash Smoak and Stewart  
South Carolina Electric & Gas Co.  
SC Budget and Control Board  
Christopher McG. Holmes  
Ann M. Priest  
Thomas S. Worley, Jr.  
Young Clement Rivers & Tisdale  
Beaufort Memorial Hospital  
Jack M. Scoville  
Howell Gibson & Hughes  
Perry M. Buckner  
Santee Cooper  
Turner, Padgett, Graham & Laney, P.A.

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**AN APPRAISAL AND RESTRICTED REPORT  
OF 144 FAIRBANKS OAK ALLEE #4-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-044**

**AS OF**

**MARCH 28, 2008**

**AND**

**DECEMBER 31, 2011**

**PREPARED FOR**

**SMITH, BUNDY, BYBEE & BARNETT  
W. H. BUNDY, JR. ESQUIRE  
1037 CHUCK DAWLEY BOULEVARD  
MT. PLEASANT, SOUTH CAROLINA 29464**

**BY**

**MICHAEL C. TAWES, SRA  
CHRISTOPHER D. DONATO, MAI, CCIM  
ATLANTIC APPRAISALS, LLC**



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# Atlantic Appraisals, LLC

REAL ESTATE APPRAISERS AND CONSULTANTS

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Fax: (843) 379-6222

March 5, 2012

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**Re: An Appraisal and Restricted Report of 144 Fairbanks Oak Allee #4-B,  
Charleston SC – TMS NO. 276-05-01-044**

Dear Mr. Bundy:

As you requested, we have made an appraisal of the above referenced residential condominium unit. The unit is part of The Oaks at Rivers Edge Condominium Complex located in the Daniel Island area of the City of Charleston.

The subject unit is part of an ongoing law suit between the property owners and the developers of the complex for defects in construction. The purpose of the appraisal is to estimate fee simple market value of the unit within 3 separate scenarios.

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2nd scenario is to estimate the market value of the date of our last inspection, December 31, 2011, also assuming no construction defects. The final scenario is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

The intended use is for the client's use in an ongoing lawsuit involving the subject unit. The intended uses are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Robert J. & Maureen S. Graham. Anyone else relying on the report is an unintended and uninformed user.

Mr. Bundy  
March 5, 2012  
Page Two(2)

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

<b>144 Fairbanks Oak Allee #4-B</b>	
<b>Robert J. &amp; Maureen S. Graham</b>	
<b>Date</b>	<b>Value</b>
March 28, 2008 - No Defects	\$880,000
December 31, 2011 - No Defects	\$590,000
December 31, 2011 - With Defects	\$310,000

This is a restricted report, which does not present discussions of the data, reasoning, and analyses that were used in the appraisal process. Supporting documentation for my opinions is retained in the file. The report is prepared for your eyes only and is not suitable for a third party.

We hereby certify that to the best of our knowledge and belief, the statements and opinions contained in this appraisal are full, true and correct, and that this appraisal is subject to the Certification of the Appraiser, General Underlying Assumptions, and General Limiting Conditions contained herein.

Your attention is invited to the following summary report, which is intended to comply with the standards promulgated by the Appraisal Foundation, USPAP, FIRREA, and the Standards of Professional Practice, Ethical Rules and Regulations of the Appraisal Institute.

We hereby certify that we have no interest in the subject property, and that neither the employment to make this appraisal nor the compensation therefore, is contingent on the value of the property and this appraisal was not made nor was the appraisal rendered on the basis of a requested minimum valuation, specific valuation, or an amount which would result in an approval of a loan.

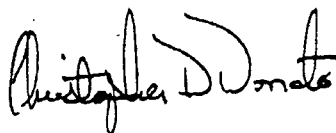
Mr. Bundy  
March 5, 2012  
Page Three (3)

Thank you for the opportunity to provide this service. If you have any questions regarding this appraisal or any other matter, please do not hesitate to contact us.

Respectfully submitted,



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

**RESTRICTED APPRAISAL REPORT**

*This is a Restricted Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal Report. As such, it does not present discussions of the data, reasoning, and analyses that were used in the appraisal process to develop my opinion of value. Supporting documentation concerning data, reasoning, and analyses is retained in our file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. We are not responsible for unauthorized use of this report.*

**CLIENT:**

Smith, Bundy, Bybee & Barnett  
W.H. Bundy, Jr. Esquire  
1037 Chuck Dawley, Boulevard  
Mt. Pleasant, South Carolina 29464

**APPRAISERS:**

Mr. Michael C. Tawes, SRA  
SC Cert General #2243  
Atlantic Appraisals, LLC  
P.O. Box 834  
Mt. Pleasant, SC 29465

Mr. Christopher D. Donato, MAI CCIM  
SC Cert. General #292  
Atlantic Appraisals, LLC  
P. O. Box 834  
Mt. Pleasant, SC 29465

**SUBJECT:**

Residential Condominium  
144 Fairbanks Oaks Allee #4-B  
The Oaks at Rivers Edge  
Charleston, SC 29482  
TMS # 276-05-01-044  
Owner – Robert J. & Maureen S. Graham

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**PURPOSE OF THE APPRAISAL:**

To estimate fee simple market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**INTENDED USE:**

Litigation Purposes

**INTENDED USERS:**

The intended users are Mr. W. H. Bundy and members of the Smith, Bundy, Bybee and Barnett Law Firm as representatives for the owners of the subject unit, Robert J. & Maureen S. Graham. Anyone else relying on the report is an unintended and uninformed user.

**INTEREST VALUED:**

Fee Simple

**EFFECTIVE DATE OF VALUE:**

The first scenario is to estimate the market value of the property as of March 28, 2008, assuming no construction defects. The 2<sup>nd</sup> scenario is to estimate the market value of the date of our final inspection, December 31, 2012, also, assuming no construction defects. The final scenario, is to estimate the market value of the unit, as of December 31, 2011, including all defects and current market conditions.

**DATE OF REPORT:**

March 5, 2012

**APPRAISAL DEVELOPMENT AND REPORTING PROCESS:**

In preparing this appraisal we,

- (1) inspected the interior and exterior of the subject property;
- (2) gathered and confirmed information concerning comparable residential condominiums sales.
- (3) used a sales comparison approach to value.
- (4) This Restricted Appraisal Report sets forth only the appraiser's conclusion. Supporting documentation is retained in my file.

**REAL ESTATE APPRAISED:**

144 Fairbanks Oak Allee Unit 4-B – The Oaks at Rivers Edge

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**HIGHEST AND BEST USE:**

Residential

**SALES COMPARISON APPROACH:**

We have used the sales comparison approach to value the unit within three different scenarios. Comparables were selected from competing developments on Daniel Island as well as other similar type projects located in nearby Mt. Pleasant. These comparables were analyzed and adjustments for differences in physical characteristic were made as warranted.

**CONCLUSION OF VALUE:**

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart.

144 Fairbanks Oak Allee #4-B Robert J. & Maureen S. Graham	
Date	Value
March 28, 2008 - No Defects	\$880,000
December 31, 2011 - No Defects	\$590,000
December 31, 2011 - With Defects	\$310,000

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The appraiser hereby certifies that Atlantic Appraisals was engaged to appraise the market value of the leasehold interest in the following real property.

**144 FAIRBANKS OAK ALLE #4-B  
CHARLESTON, SOUTH CAROLINA  
TMS NO. 276-05-01-044**

Neither Atlantic Appraisals nor the signatories of this Certification, have any present or contemplated future interest in the real estate that is the subject of this report.

The appraiser(s) have no personal interest or bias with respect to the subject matter of this report or to the parties involved other than as an unbiased advisor to the client. The reported analyses, opinions and conclusions are limited only by the special and General Assumptions and General Limiting Conditions set forth in this report.

To the best of the appraiser(s) knowledge and belief, the statements of fact contained in this appraisal report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct. No one other than the signatories of this Certification prepared the analyses, conclusions and opinions concerning the real estate set forth in this report.

To the best of the appraiser's knowledge and belief, the reported analyses, opinions and conclusions were developed and this report has been prepared in conformity with and is subject to the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

As of the date of this report, Michael C. Tawes, SRA and Christopher D. Donato, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.

We certify that, to the best of my knowledge and belief, the reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of The Appraisal Institute.

We certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives.

The compensation for this appraisal is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based

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on a requested minimum valuation, a specific valuation, or the approval of a loan.

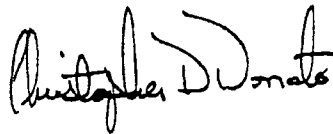
Employment of the appraiser(s) was not conditional upon the appraiser producing a specified value or a value within a given range. Future employment prospects are not dependent upon the appraiser producing a specified value. Employment of the appraiser and payment of the fee is not based on whether a loan application is approved or disapproved.

After due consideration of all of the factors involved, it is our opinion that the market value of the residential condominium under the assumption of each scenario is summarized in the following chart:

144 Fairbanks Oak Allee #4-B Robert J. & Maureen S. Graham	
Date	Value
March 28, 2008 - No Defects	\$880,000
December 31, 2011 - No Defects	\$590,000
December 31, 2011 - With Defects	\$310,000



Michael C. Tawes, SRA  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 2243



Christopher D. Donato, MAI CCIM  
S.C. Certified General Real Estate Appraiser  
Certification No. CG 292

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**GENERAL UNDERLYING ASSUMPTIONS**

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This appraisal report has been made with, and is subject to, the following general assumptions:

- That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.
- That the definition of value together with other definitions and assumptions on which our analyses are based are set forth in appropriate sections of this report and are a part of these General Assumptions as if included in their entirety.
- The property is considered to be free of all liens and encumbrances.
- That the facts, estimates and opinions furnished to the appraisers by others and contained in this report are considered to be from reliable sources and, where feasible, have been verified. However, no responsibility is assumed for the accuracy of the information. We reserve the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.
- All engineering and/or surveys are assumed to be correct. The sketches, plot plans and drawings included in the report are included only to assist the reader in visualizing the property.
- It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures or property, which would render them more or less valuable.
- Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances. The presence of potentially dangerous or hazardous materials, gases, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicted on the assumption that there is no such element on, in, or near the property that would cause a loss in value. No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.
- It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.
- It is assumed that all applicable zoning and use regulations and restrictions have been compiled with, unless a non-conformity has been stated, defined, and considered in the appraisal report.
- It is assumed that all required licenses, certificates of occupancy, legislative or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
- It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

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**GENERAL LIMITING CONDITIONS**

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This appraisal report has been made with, and is subject to, the following General Limiting Conditions:

- The appraisers, by reason of this appraisal report, are not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.
- The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.
- Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent and approval of the appraiser(s).
- Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without consent of the appraiser, and in any event only with proper written qualifications and only in its entirety.
- This appraisal report has been prepared for the exclusive benefit of the stated client. It may not be used or relied upon by any other party. Any party who uses or relies upon any information in this report, without the preparer's written consent, does so at his own risk.
- The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

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**QUALIFICATIONS OF THE APPRAISER****MICHAEL C. TAWES**

Atlantic Appraisals, LLC  
1250 Fairmont Avenue  
P.O. Box 834  
Mt. Pleasant, S.C. 29464  
(843) 884-1266

**EDUCATION**

Bishop England High School, 1988  
B.S. Degree in Business Administration  
Major - Finance  
University of South Carolina, 1992

**PROFESSIONAL STUDIES**

The Citadel Evening College, 1993  
Introduction & Basic Principles, 1993  
The Valuation Process and Collection of Data  
Valuation Methods: Sales Comparison, Cost, and Income  
Partial Interest, Unique Properties, Reconciling Data & The Regulations, Standards, Ethics  
& Law of Appraisals  
FHA Guidelines to Appraisals  
Basic Income Property Appraisal

**Appraisal Institute Courses**

Appraisal Institute Course 300 – RE Finance Stats/Valuation Modeling – March 2009  
Appraisal Institute Course 310 – Basic Income Capitalization- January 2001  
Appraisal Institute Course 410 – Standards & Professional Practice – Part A – April 2002  
Appraisal Institute Course 420 – Standards & Professional Practice – Part B – July 2002  
Appraisal Institute Course 510 - Advanced Income Capitalization – July 2002  
Appraisal Institute Course 520 – Highest and Best Use – August 2003  
Appraisal Institute Course 530 – Advance Sales Comparison/Cost Approach – April 2004  
Appraisal Institute Course 540 – Advance Commercial Report Writing – March 2003  
Appraisal Institute Course 550 - Advanced Applications – July 2004  
Appraisal Institute Course – Advance Residential Report Writing Part 1 – April 2010  
Appraisal Institute Course - Advance Residential Report Writing Part 2 – April 2010

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**Appraisal Institute Seminars**

Appraisal Institute Seminar – Litigator Skills for the Appraiser – June 2006  
 Appraisal Institute Seminar – The Valuation of Wetlands – July 2007  
 Appraisal Institute Seminar – Appraising Historic SC Homes – April 2008  
 Appraisal Institute Seminar – Dealing with Client Pressures – June 2008  
 Appraisal Institute Seminar – The New Market Conditions Form – April 2009  
 Appraisal Institute Seminar - Residential Appraisal Update 2010- January 2011  
 Appraisal Institute Seminar - Residential Appraisal Update 2011- March 2012

**PROFESSIONAL AFFILIATIONS**

State Certified General Appraiser - License # CG 2243  
 State Licensed Realtor  
 Associate Member of Appraisal Institute, 2000  
 Awarded SRA Designation from The Appraisal Institute, May 2010  
 Member of the Charleston Trident Board of Realtors  
 Member of National Association of Realtors

**EMPLOYMENT**

Atlantic Appraisals, LLC	1993 – Present
Residential Manager	1998 – Present
Partner- Atlantic Appraisals, LLC	2005 - Present

**PARTIAL LIST OF CLIENTS**

BB & T	First Federal of Charleston
Wells Fargo Bank	TD Bank
Southern Trust Mortgage	Tidelands Bank
Synovus Bank	Mortgage Research Corp.
The Bank of South Carolina	South Atlantic Bank
Carolina Federal Savings Banks	Community First Bank
Southcoast Community Bank	SunTrust Mortgage
Bradford Mortgage	SunTrust Bank
Fannie Mae	Lucey Mortgage
Bank of America	Regions Bank
South Carolina Bank and Trust	LSI
FDIC	

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### QUALIFICATIONS OF THE APPRAISER

Christopher D. Donato, MAI, CCIM  
 Atlantic Appraisals  
 1250 Fairmont Avenue  
 P.O. Box 834  
 Mt. Pleasant, South Carolina 29464

#### EDUCATION:

B.S. Degree 1973  
 College of Charleston  
 Charleston, South Carolina

24 Hours towards M.B.A. Degree  
 The Citadel  
 Charleston, South Carolina

#### PROFESSIONAL DESIGNATIONS

Awarded MAI Designation	1984
Awarded CCIM Designation	1997
Approved Instructor for the Appraisal Institute	2003 - Present
Approved USPAP Instructor	2008 - Present

#### PROFESSIONAL STUDIES (Courses Attended)

International Association of Assessing Officers	
Course I - Introduction	1975
Appraisal Institute	
Course I-A - Real Estate Appraisal Principles	1975
Course I-B - Capitalization Theory & Techniques	1975
Course VIII - Residential Valuation	1977
Course II - Case Studies in Real Estate Valuation	1978
Course VI - Real Estate Investment Analysis	1979
Demonstration Appraisal - Business Reports	1983
Demonstration Appraisal - Office Building	1983
Comprehensive Examination	1984
Market Analysis - Course X	1990
Standards of Professional Practice	1991
Standards of Professional Practice	1996
Standards of Professional Practice (Part C)	2001

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Instructor Leadership & Development Conference	2002
Seminar Blitz	2004
Commercial Investment Real Estate Institute	
CI 101 - Financial Analysis for Commercial Real Estate	1995
CI 201 - Market Analysis for Commercial Real Estate	1996
CI 301 - Decision Analysis for Commercial Investment Real Estate	1996
Comprehensive Examination	1997

**PROFESSIONAL STUDIES (Seminars Attended)**

R41-b and the Appraisers	1985
Computer-Assisted Income Capitalization Approach	1986
Income Capitalization Overview	1986
Standards of Professional Practice	1986
Valuing Income Properties	1986
Rates, Ratios & Reasonableness	1989
Extracting Market Adjustments	1989
Appraising After Hurricane Hugo	1989
Discounted Cash Flow Analysis	1989
Standards of Professional Practice Update	1990
Real Estate Risk Analysis	1990
Litigation Valuation	1993
FIRREA Overview & Practical Application	1993
Discounted Cash Flow Analysis	1993
Appraisal Regulations of the Federal Banking	
Agencies from the Lender's Perspective	1994
Understanding Limited Appraisals &	
Reporting Options	1994
Appraisal Institute Symposium: The Changing	
Role of the Real Estate Analyst	1994
Standards of Professional Practice - Part A	1996
Standards of Professional Practice - Part B	1996
Residential Consulting	1999
Litigation Skills for Appraisers	1999
Valuation of Detrimental Conditions	2000
Highest and Best Use Applications	2000
Data Confirmation and Verification Methods	2000
Appraisal Review, General	2000
Introduction to Appraising for Conservation Easements	2000
Eminent Domain and Condemnation Appraising	2001
Standards of Professional Practice - Part C	2001

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National USPAP Update – Course 400	2004
Eminent Domain Conference	2005
What Clients Would Like Their Appraisers to Know	2006
Feasibility Analysis, Market Value, and Investment Timing	2006
Analytics with the Site To Do Business	2007
National USPAP Update	2007
The Valuation of Wetlands	2007
Analyzing Distressed Real Estate	2008
Maintaining Control: Dealing with Client Pressure	2008
Uniform Standards of Professional Practice, Business Practices and Ethics	2009
Spotlight on USPAP: Agreement of Services	2010
Appraising Distressed Commercial Real Estate	2010
National USPAP Update – Course 400	2010
Residential Design: The Makings of a Good House	2010

**STATE CERTIFICATION**

State of South Carolina

Cert. No. CG 292

**EXPERIENCE**

Charleston County Assessor's Office	
Senior Staff Appraiser	1974 - 1979
Holcombe & Fair Realtors	1979 - 1984
Moore, Jackson, Donato & Santos	1984 - 1986
Atlantic Appraisals, LLC	1986 - Present

**PROFESSIONAL ASSOCIATION AND POSITIONS HELD**

National Association of Realtors  
 Charleston Trident Board of Realtors - Realtor  
 Commercial Investment Division of the Board of Realtors  
 Appraisal Institute - MAI - 1984  
 Past President of the Appraisal Institute South Carolina Chapter - 1993  
 Commercial Investment Real Estate Institute - CCIM - 1997  
 Appraisal Institute Region IX Education Liaison - 2001 thru 2004  
 Approved Instructor for the Appraisal Institute - 2003  
 Approved Instructor for the Appraisal Foundation - 2008

**LITIGATION EXPERIENCE**

A non-inclusive list of litigation clients:  
 South Carolina Department of Highways (SCDOT)

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Internal Revenue Service (IRS)  
NationsBank  
Wachovia  
SC State Ports Authority  
Santee Cooper  
Smith, Bundy, Bybee & Barnett  
Sinkler, Boyd  
Rosen Goodstein & Hagood  
Ogletree Deakins Nash Smoak and Stewart  
South Carolina Electric & Gas Co.  
SC Budget and Control Board  
Christopher McG. Holmes  
Ann M. Priest  
Thomas S. Worley, Jr.  
Young Clement Rivers & Tisdale  
Beaufort Memorial Hospital  
Jack M. Scoville  
Howell Gibson & Hughes  
Perry M. Buckner  
Santee Cooper  
Turner, Padget, Graham & Laney, P.A.

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

JUL 07 2015

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

**SC Court of Appeals**

J. C. Nicholson, Jr., Circuit Court Judge

Trial Case No.'s 2009-CP-08-1068, 2009-CP-08-3916,  
2009-CP-08-1413, 2008-CP-08-2714  
Appellate Case No. 2014-002390

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC., JOHN E. ATKINSON, JOAN D. STRANDQUIST, JOSEPH E. CHIOVAROU, JR., PEYTON H. COOK, JR., BRENDA COOK, JOHN W. EDELEN, KAREN A. NELSON, ROBERT J. GRAHAM, MAUREEN S. GRAHAM, NANCY K. JOHNSON-as trustee for the Nancy K. Johnson Revocable Trust, WILLIAM JUNG, CHARLES MARAZITI, PATRICIA MARAZITI, GEORGE S. POLLARD, ELEANOR J. POLLARD, ROBERT REECE, GERARD M. RUVO AND SUE S. RUVO as trustees for the Ruvo 2006 Living Trust, CAROLYN M. JENNINGS, THOMAS EDWARD KEANE, EDWARD WALLACE BARR, III, RICHARD B. PEKRUHN, PAULINE PEKRUHN, MATTHEW J. SEVERANCE, and ELIZABETH ASHLEY PHILLIPS SEVERANCE,

Respondents,

v.

DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC, CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal Vol. I through Vol. VI, pursuant to the Order entered June 12, 2015, on Respondents on July 6, 2015, addressed to its attorneys of record,

W.H. Bundy, Jr., Esquire, and M. Brent McDonald, Esquire, Smith, Bundy, Bybee & Barnett,  
P.C., 1037 Chuck Dawley Blvd., Building F, Suite 100, Mt. Pleasant, South Carolina 29464.

July 6, 2015



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Attorneys for Appellants