

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

JUL 07 2015

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, and CARRIAGE HILL
ASSOCIATES OF CHARLESTON, LLC,

Appellants.

RECORD ON APPEAL
Vol. VI of VI

Charles S. Altman
Meredith L. Coker
Melissa A. Fried
575 King Street, Suite A
Charleston, SC 29403
(843) 853-9907
Attorneys for Appellant

Roy P. Maybank
Amanda Maybank
531 Savannah Highway
Charleston, SC 29407
(843) 766-8101
Attorneys for Appellant

W.H. Bundy
M. Brent McDonald
Post Office Box 1542
Mt. Pleasant, SC 29465
(843) 881-1623
Attorneys for Respondent

INDEX

Orders & Judgments

Order of October 25, 2013 (with Exhibits).....1
Form 4 Order of October 25, 201338
Form 4 Order of November 4, 201341
Form 4 Order of October 7, 201442

Pleadings

Complaint of AC Construction 1/12/07.....44
DIRD Answer & Counterclaim to AC Construction 4/9/07.....59
Travelers Answer & Counterclaim to AC Construction 11/1/07.....67
Notice of Motion and Motion to Intervene 1/20/09.....72
POA Complaint 2/9/0974
DIRD Answer 2/20/09105
CHAC Answer 2/20/09.....115
CHNY Answer 2/20/09.....125
DIRD and CHAC Complaint 2/16/09.....132
Notice of Motion and Motion to Consolidate 3/11/09.....146
Muhler Answer 5/1/09148
Weather Shield Answer 5/4/09162
AC Construction Answer 5/15/09.....175
POA Complaint 12/3/09188
POA/Unit Owners First Amended Complaint 5/5/2010.....213
POA/Unit Owners Third Amended Complaint 12/20/10239
POA/Unit Owners Fourth Amended Complaint 6/6/12.....277

DIRD Answer to Muhler’s Amended Answer and Cross-Claims 6/13/12.....	327
CHAC Answer to Muhler’s Amended Answer and Cross-Claims 6/13/12	334
CAOBA Doors Answer 6/20/12	341
CHNY Answer 6/21/12.....	350
Answer of Defendants Edward J. D’Orazio & Gerald Rumplick 6/21/12	379
AC Construction Answer 7/2/12.....	394
Muhler Answer to Fourth Amended Complaint and Cross Claims 7/5/12.....	405
Weather Shield Answer 7/6/12	442
Weather Shield Reply 7/17/12	469
CHNY Answer to Muhler’s Answer and Third Party Complaint 8/3/12	488
CAOBA Doors Answer 8/6/12	512
Castle Siding, Inc. Motion to Dismiss 8/9/12	521
Muhler Co., Inc. Answer 8/15/12	524
Castle Siding, Inc.’s Answer 8/09/12	531
Rich Behringer Answer 2/27/13	543
Stipulation of Dismissal 7/10/13.....	551
<u>Trial Testimony</u>	
Proceedings	576
Opening Statement by Mr. Bundy	612
Opening Statement by Mr. Maybank.....	626
Joe Chiovarou	
Direct Examination	644
Cross Examination.....	760
Redirect Examination.....	823
Recross Examination	828

Sue Ruvo	
Direct Examination	832
Cross Examination	842
Redirect Examination.....	853
Recross Examination	855
Terry Johnson	
Direct Examination	856
Cross Examination	865
John L. Atkinson	
Direct Examination	878
Cross Examination	890
Thomas Scholtens	
Direct Examination	916
Cross Examination	948
Redirect Examination.....	953
Recross Examination	956
Further Redirect	958
William C. Jung	
Direct Examination.....	960
Cross Examination	998
Redirect Examination	1011
Robert Reece	
Direct Examination.....	1013
Cross Examination	1033
Redirect Examination.....	1043
George S. Pollard	
Direct Examination.....	1046
Cross Examination	1076
Stipulation of Counsel.....	1072
Charles Maraziti	
Direct Examination.....	1085
Cross Examination	1095
Brenda Cook	
Direct Examination.....	1102
Cross Examination	1115

Karen Nelson	
Direct Examination.....	1118
Cross Examination	1124
Robert J. Graham	
Direct Examination.....	1134
Cross Examination	1141
Wallace Barr	
Direct Examination.....	1147
Cross Examination	1150
Elizabeth A. Severance	
Direct Examination.....	1169
Cross Examination.....	1188
Richard Pekruhn	
Direct Examination.....	1198
Hayden Jennings	
Direct Examination	1207
Cross Examination	1210
Christopher Donato	
Direct Examination.....	1218
Cross Examination	1232
Continued Cross Examination.....	1256
Redirect Examination.....	1280
Theodore G. Padgett	
Direct Examination.....	1289
Cross Examination	1360
Redirect Examination	1392
Noral Stewart	
Direct Examination.....	1396
Voir Dire Examination.....	1398
Continued Direct Examination	1399
Cross Examination.....	1425
Redirect Examination.....	1457
Examination by the Court.....	1458
Further Recross Examination.....	1465
Further Redirect Examination.....	1466
David Willis	
Direct Examination.....	1479

Voir Dire Examination.....	1488
Continued Direct Examination	1490
Cross Examination.....	1508
 Mike Parker	
Direct Examination	1542
Continued Direct Examination	1577
Cross Examination.....	1579
Redirect Examination	1601
 <u>Post Trial Motions</u>	
Damages Memorandum 5/17/13.....	1609
CHAC and DIRD’s Motion for Order Requiring Election of Remedies 11/14/13.....	1661
CHAC and DIRD’s Motion for Allocation of Damages 11/14/13	1666
CHAC and DIRD’s Motion for Set-Off 11/14/13	1672
CHAC and DIRD’s Motion 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 11/14/13	1677
Plaintiffs’ Memorandum in Opposition to Defendants’ Post Trial Motions 5/23/14	1704
Plaintiffs’ Supplemental Memorandum in Opposition to Defendants’ Post Trial Motions 6/3/14	1734
Plaintiffs’ Response to Defendants’ Supplemental Memorandum in Support of Defendants’ Post Trial Motions 8/20/14.....	1741
 <u>Post Trial Motions Hearing</u>	
Transcript	1794
 <u>Trial Exhibits</u>	
<u>Plaintiff’s Exhibits</u>	
31-A	1856
31-B.....	1857
32.....	1859
49.....	1877
75-A	1898
90.....	1899
91.....	1918

92.....	1937
93.....	1956
94.....	1975
95.....	1994
96.....	2013
97.....	2032
98.....	2051
99.....	2070
100.....	2089
101.....	2108
101-A.....	2127
109.....	2146
117-B.....	2153
123-B.....	2159
143.....	2165
144.....	2240
145.....	2246
146.....	2347
147.....	2364
148.....	2365
149.....	2371
151.....	2372
152.....	2373
154.....	2374
155.....	2375
163A-H.....	2388
164 A-E.....	2396
165A-B.....	2401
166A-I.....	2403
167A-D.....	2412
168A-I.....	2416
171.....	2423
178.....	2430
179.....	2431
180.....	2432
181.....	2451
182.....	2492
184.....	<i>filed separately</i>

Defendant's Exhibits

218.....	2494
229.....	2496
256.....	2524

Post Trial Hearing Exhibits

P-1	2527
P-2	2528
P-3	2529
P-4	2538
Certificate of Appellant.....	2557

BEFORE THE SOUTH CAROLINA BOARD OF ARCHITECTURAL EXAMINERS

In the Matter of:

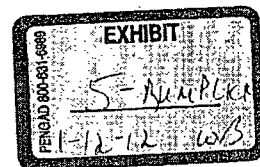
GERALD S. RUMPLICK,

Applicant.

ORDER

This matter is before the Board pursuant to the application, dated October 4, 2006, of Gerald S. Rumplick (Applicant) for licensure to practice architecture in this state by reciprocity with New York. Applicant was licensed in New York in 1995 and is currently in good standing in that state. Applicant holds a Council Certification, dated October 5, 2006, from the National Council of Architectural Registration Boards (NCARB). During the course of his application review, NCARB notified this Board of concerns that Applicant might be practicing in South Carolina without a license. Applicant appeared before the Board at its regular meetings on November 16, 2006, and January 16, 2007, and offered evidence concerning his qualifications for licensure. The Board also considered the documents contained in his NCARB dossier supporting his application for Council Certification.

Initially, it should be recognized that, in considering any application for licensure or renewal of licensure, the burden is upon the applicant to show that he qualifies for the license requested. Applicant has met the basic requirements by demonstrating Council Certification and a current license in good standing in New York. However, the Board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action. S.C. Code §40-3-130. Aiding, directly or indirectly, in the unlicensed practice of architecture is such a ground. S.C. Code §§ 40-1-110 and 40-3-30(D). Applicant's NCARB dossier presented a series of projects to demonstrate his mastery of design at the advanced level. He identified himself as "the principal architect" for Carriage Hill Associates as they developed projects in the Charleston, S.C., area since 2003. He stated that he has been personally responsible "for electrical and plumbing engineering of several projects," noting in particular that he personally completed the electrical design for The Oaks at River's Edge. He further stated that "For all projects in South Carolina, the design development drawings are created by myself. The construction documents are prepared by my staff under the direct supervision of a licensed architect from South Carolina." He testified that this licensee was Edward J. D'Orazio of Saint James, NY. Mr. D'Orazio is licensed in South Carolina. At each hearing, Applicant testified that the architecture of the South Carolina projects were joint ventures between Mr. D'Orazio and Applicant's firm. In each hearing, he testified that he was the team leader. Neither Applicant nor the Firm of Carriage Hill Associates have ever held a license to practice architecture in South Carolina. Applicant presented the design work of these projects to NCARB for evaluation of his personal experience.



Based upon the record placed before this Board by Applicant, the conclusion is inescapable that Applicant and his firm, Carriage Hill Associates, engaged in the unlicensed practice of architecture in this state for at least two and one half years prior to applying to this Board. Any other conclusion requires a finding that Mr. D'Orazio has failed to observe his legal and ethical responsibilities as a licensee in this state. See specifically S.C. Reg 11-10(B) and (C) which states that "An architect registered in South Carolina shall be responsible for complying with these regulations as they may apply to any association or joint venture with another architect or architects [and that] each office maintained for the preparation of drawings, specifications, reports, and other professional work shall have an architect duly registered with this Board, in full authority and responsible charge, having direct knowledge and supervisory control of such work." This Board is authorized to deny licensure upon these grounds.

However, the Board is mindful of the complex nature of the relationships between design professionals, the developers, and the contractors on a major project. Based upon the evidence before us and after weighing the public interest and the need for the continued services of qualified architects against the countervailing concern that society be protected from professional ineptitude, this Board finds that Applicant can practice safely, but that it is necessary to recognize that sanction for an extensive period of unlicensed practice is appropriate.

THEREFORE, IT IS ORDERED that Applicant shall cease and desist from all practice of architecture in this state until properly licensed.

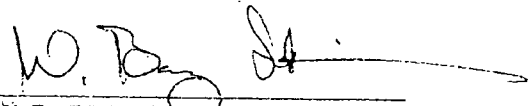
IT IS FURTHER ORDERED that Applicant's application for licensure to practice architecture in this State be and hereby is granted on or after April 15, 2007, upon the payment of a civil penalty in the amount of Three thousand (\$3000.00) dollars.

AND IT IS SO ORDERED.

BOARD OF ARCHITECTURAL EXAMINERS

1/31/07
Date

BY:


W. BARRY JENKINS
Chairman

Quietly Making Noise, LLC

Acoustical Consulting and Noise Control

Acoustical Test Report The Oaks at River's Edge

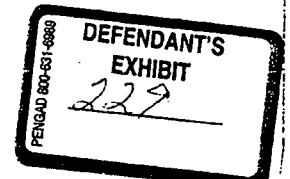
Prepared for:
The Oaks at River's Edge Property Owners' Association

November 20, 2009

Prepared by:
Lisa A. Schott
President and Principal Acoustical Consultant

4521 Old Carriage Trail - Oviedo, Florida 32765
Phone: (407) 681-7444 (681-SPEECH) Fax: (407) 682-7444 (682-SPEECH)
www.quietlymakingnoise.com
Member, Institute of Noise Control Engineers and National Council of Acoustical Consultants

131.001
Padgett0491



**Acoustical Test Report for The Oaks at River's Edge Property Owners' Association
The Oaks at River's Edge**

Executive Summary

The Oaks at River's Edge Property Owners' Association contracted with Quietly Making Noise, LLC (QMN) to conduct acoustical testing at The Oaks at River's Edge condominium building number 5 in Daniel Island, South Carolina.

The objective of the test was to determine the apparent sound transmission class (ASTC) rating and field impact insulation class (FIIC) rating for two different floor / ceiling systems between stacked residences and compare the acoustical performance. One of the two floor / ceiling assemblies was still in the condition of the original building construction. The second assembly had been modified by attaching an additional layer of gypsum board below the existing ceiling to a grid suspended on wires with acoustical isolators. In addition, fiberglass insulation batts were added in the cavity formed between the existing and new layers of gypsum board. The goal of these modifications was to improve the ASTC and FIIC ratings.

ASTC and FIIC are two of the most common values used in the industry for comparing the acoustical performance of partitions. ASTC is an indication of the partition's ability to reduce airborne noise, such as human voices, televisions, and stereos, while FIIC provides an indication of the partition's ability to reduce impact noise, such as footfalls.

ASTC testing was conducted in accordance with ASTM E336 [1]. FIIC testing was conducted in accordance with ASTM E1007 [2].

The data was analyzed, and the results for the two assemblies were compared with each other and with the applicable building code requirements. This report describes the testing and shows the analysis and results. Table 1 summarizes the test results.

Table 1. Test Results Summary – ASTC and FIIC Ratings

Partition	Floor Covering and Room	ASTC Rating		FIIC Rating	
		Building Code Requirement	Tested Value	Building Code Requirement	Tested Value
Original Construction Floor / Ceiling System between Units 2A and 3A	Wood, Great Room	45	53	45	41
Modified Floor / Ceiling System between Units 3A and 4A	Wood, Great Room	45	63	45	49

The ASTC and FIIC ratings for the modified floor / ceiling system are 10 and 8 points higher, respectively, than the original construction. The original FIIC rating fell below the minimum building code requirement of 45 or higher. All other tested values are in compliance with the building code criteria. Please refer to the Detailed Report for further discussion.

Detailed Test Report

Objectives of the Test

Determine the apparent sound transmission class (ASTC) rating and field impact insulation class (FIIC) rating for two different floor / ceiling system designs between stacked residences in Building 5 at The Oaks at River's Edge condominiums.

Conduct the ASTC testing in accordance with ASTM E336, "Standard Test Method for Measurement of Airborne Sound Attenuation between Rooms in Buildings" [1]. Conduct the FIIC testing in accordance with ASTM E1007, "Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission through Floor-Ceiling Assemblies and Associated Support Structures" [2].

Analyze the data and compare the results of the two assemblies with each other and with the applicable building code requirements.

Applicable Requirements

The International Building Code (IBC) [3,4] requires a minimum Sound Transmission Class (STC) rating of 50 in a laboratory test or 45 in a field test for all partitions between residential units (i.e.: tenant separation walls and floor / ceiling systems) and between residences and adjacent public areas. The IBC also requires a minimum Impact Insulation Class (IIC) rating of 50 in a laboratory test or 45 in a field test for floor / ceiling assemblies between residential units and between residences and public or service areas.

For both the STC and IIC ratings, higher values will result in a quieter acoustical environment.

Description of Partitions

QMN was unable to view the actual construction of the floor / ceiling system between residences since construction was completed and the building was occupied. Based upon discussions with the client and review of a test report from another acoustical consultant, the original floor / ceiling system design is believed to be constructed as follows:

14 inch deep open web wood trusses topped by a ¾" thick plywood subfloor. The ceiling is formed using one layer of 5/8" thick gypsum board attached to hat channels that are installed perpendicular to the trusses. R19 fiberglass batt insulation is installed in the truss cavity. Wood floor coverings are used in all of the great rooms that were involved in the test. It is believed that a layer of 0.085 inch thick polyurethane underlayment was installed beneath the wood flooring.

According to the other acoustical consultant's prior test report, the modified floor / ceiling system included the following changes:

One additional layer of 5/8" thick gypsum board was installed by attaching it to a grid that was suspended on wires 5 1/2" below the existing ceiling. The wires were hung from Kinetics Isogrid 150 isolators that were attached to the trusses through holes cut in the original gypsum ceiling board. Fiberglass insulation batts were installed in the cavity between the existing and new layers of gypsum board. The new ceiling gypsum board was installed so that it did not contact the walls, and the perimeter was caulked. Crown molding was then installed by attaching it to the wall only.

Description of Rooms Tested

The tests were conducted between the great rooms of three stacked residences, Units 2A, 3A, and 4A in Building 5. The residences involved in the test were completely constructed and occupied, and all floor coverings, cabinets, and other fixtures were installed at the time of the test.

Summary of Test

Test Procedure - ASTC Testing

The ASTC testing was conducted in accordance with ASTM E336, "Standard Test Method for Measurement of Airborne Sound Attenuation between Rooms in Buildings" [1].

Basically, the ASTC test involves generating a standard pink noise spectrum using a standardized noise generator and amplifier / loudspeaker system and then directly measuring the sound pressure levels in both the noise source room and the receiving room, which is the adjacent room on the opposite side of the partition being tested. Reverberation measurements were taken in the receiving room in accordance with ASTM E2235, "Standard Test Method for Determination of Decay Rates for Use in Sound Insulation Test Methods" [5]. Sixteen decay rate measurements were taken in each receiving room. The measured sound pressure levels and reverberation decay rates are then used in calculations specified by the ASTM E336 test method to determine the one-third octave band apparent transmission loss (ATL) values and the ASTC rating.

For this project, ASTC testing was completed for two floor / ceiling systems. More information about the test equipment is given below, along with a description of the measurement locations.

Test Procedure - FIIC Testing

The FIIC testing was conducted in accordance with ASTM E1007, "Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission through Floor-Ceiling Assemblies and Associated Support Structures" [2].

The FIIC test requires a standardized tapping machine for creation of noise. The tapping machine is placed on the floor of an upper level residence while impact sound pressure levels are measured in the room directly below.

QMN

Reverberation measurements were taken in each receiving room in accordance with ASTM E2235, "Standard Test Method for Determination of Decay Rates for Use in Sound Insulation Test Methods" [5]. Sixteen decay rate measurements were taken in each receiving room. The measured impact sound pressure levels and reverberation decay rates are then used in the calculations specified by the ASTM E1007 test method to determine the normalized impact sound pressure levels and the FIIC rating.

For this project, FIIC testing was completed for two floor / ceiling systems. More information about the test equipment is given below, along with a description of the measurement locations.

Test Equipment

The following equipment was used during the test:

- One (1) Norsonic 118 Sound Level Meter equipped with a Norsonic 1225 one-half inch microphone. This meter meets the requirements for Type 1 sound level meters according to the latest revision of ANSI S1.4 [6].
- One (1) Norsonic 1251 Hand-Held Calibrator
- One (1) Ivie Technologies, Incorporated IE-20B Noise Generator (pink and white)
- Two (2) QSC HPR1521 two-way 15" powered loudspeakers
- One (1) Norsonic 211A Tapping Machine

Current laboratory calibration certificates of conformance for the sound level meter, microphone, calibrator, and tapping machine are on file at the QMN offices and are available upon request. On-site calibrations using the hand held calibrator were performed before and after the test. The results of the calibrations are shown on the data sheets in Appendix 1. The calibration level varied by 0.1 decibels and was therefore within the allowable tolerance of ± 0.5 decibels, as specified in Section 7.3 of ASTM E336.

Test Conditions

The testing was conducted on Monday, November 2, 2009. All measurements were taken indoors. Environmental conditions during the test are noted on the data sheets in Appendix 1. Conditions were favorable.

The residences were generally quiet with no major sources of exterior noise. Background sound level measurements were obtained in every room tested, and it was found that any minor background noise was not interfering with the test results. All background measurements are reported in the data sheets, along with the sound level measurements taken during the loudspeaker and tapping machine testing.

Other observations made by test personnel regarding conditions during the test are noted on the data sheets in Appendix 1.

Measurement Locations

The ASTC and FIIC ratings were each tested in two locations, between three stacked residences. For the ASTC testing, the loudspeakers were setup in the great rooms of Units 2A and 3A at different times, and measurements were taken in the room with the loudspeakers and the great room of Units 3A or 4A directly above it. Please refer to Figures 1 and 2 for the loudspeaker test setup and measurement locations.

For the FIIC testing, the tapping machine was setup on the wood floors in the great room of Units 3A and 4A at different times, and measurements were taken in the Units 2A or 3A great room directly below. Please refer to Figures 3 through 5 for the tapping machine positions and measurement locations.

The loudspeaker system was used to determine the reverberation time in each receiving room for the ASTC and FIIC testing, in accordance with the ASTM E336, E1007, and E2235 test methods [1,2,5]. Please refer to Figures 1 and 2 for the reverberation time measurement positions.

All measurements were taken at heights between five (5) feet and six (6) feet above the interior floor of the room being tested. The height of each measurement location is listed in the data sheets in Appendix 1.

Background Measurements

Background measurements were obtained in each room tested. At least one sample per room, with a minimum duration of thirty seconds was measured, and the data is reported in the data sheets in Appendix 1. The background readings were used in the calculations.

Loudspeaker Noise Generation Measurements

Pink noise was generated with the Ivie IE-20B noise generator and amplified through the powered loudspeakers. The noise generator provides a standard pink noise spectrum, and the level does not vary throughout the test. Levels were set to be sufficiently loud to overcome the background noise levels in the receiving room, after transmission through the partition.

The sound level meter was set to continuously obtain data during a fifteen second period at each measurement location. The meter is an integrating sound level meter that stores the results for every one second period throughout the duration of the measurement. The meter was set to record the maximum, minimum, and average sound level for every second, along with additional statistical data. One third octave band sound pressure levels were measured, along with overall linear and A-weighted sound levels.

Tapping Machine Impact Noise Generation Measurements

Impact noise was generated using the Norsonic 211A tapping machine to make impacts on the floor at a rate of ten (10) times per second. The machine is in compliance with all requirements of the ASTM E1007 standard [2].

The sound level meter was set to continuously obtain data during a fifteen second period at each measurement location in the receiving room located directly below the tapping machine setup. Four different tapping machine locations for each floor / ceiling assembly were tested in accordance with ASTM E1007. The meter is an integrating sound level meter that stores the results for every one second period throughout the duration of the measurement. The meter was set to record the maximum, minimum, and average sound level for every second, along with additional statistical data. One third octave band sound pressure levels were measured, along with overall linear and A-weighted sound levels.

Data Measurements and Reporting

In order to fully characterize the airborne and impact noise attenuation of partitions, it is important to measure the apparent transmission loss (ATL) and impact sound pressure level values across a wide range of frequencies. The ATL values and impact sound pressure levels are then analyzed to determine the ASTC and FIIC ratings. For this test, one-third octave bands were measured and recorded across the entire audible range of normal human hearing. The data from the 50 Hertz through the 10,000 Hertz one-third octave bands is reported in Appendix 1. Graphs showing the results are included in Appendix 2.

Summary of Measurements and Results

The loudspeaker system generated noise levels as high as 94 dB(A) in the room where it was setup. In the adjacent unit, the noise levels ranged from 41 to 50 dB(A) during the loudspeaker testing. Background sound levels inside the buildings ranged from 28 to 39 dB(A). Where required, background corrections were made in accordance with the ASTM E336 standard.

Table 2 summarizes the ASTC ratings.

Table 2. Apparent Sound Transmission Class (ASTC) Rating

Partition	ASTC Rating	
	Building Code Requirement	Tested Value
Original Construction Floor / Ceiling System between Units 2A and 3A	45	53
Modified Floor / Ceiling System between Units 3A and 4A	45	63

The tapping machine system generated noise levels ranging from 60 to 71 dB(A) in the receiving rooms. Where required, background corrections were made in accordance with the ASTM E1007 standard.

Table 2 shows the FIIC ratings determined for the floor / ceiling systems.

Table 2. Field Impact Insulation Class (FIIC) Rating

Partition	Floor Covering and Room	FIIC Rating	
		Building Code Requirement	Tested Value
Original Construction Floor / Ceiling System between Units 2A and 3A	Wood, Great Room	45	41
Modified Floor / Ceiling System between Units 3A and 4A	Wood, Great Room	45	49

All test results are shown in the data tables in Appendix 1, graphs of the data are included in Appendix 2, and the test setup and measurement locations are shown in Figures 1 through 5.

Calculations

For the ASTC calculations, the noise reduction (NR) value is calculated for each one-third octave band for the partition between each pair of adjacent rooms tested. The reverberation time of the receiving room is measured using the loudspeaker system and an integrating sound level meter. Based upon the reverberation time, a room absorption correction is applied to each one-third octave band to calculate the apparent transmission loss (ATL) values. The ATL values are then plotted and evaluated to determine the ASTC rating for each partition, in accordance with the standard, ASTM E413 [7]. Please refer to the data tables in Appendix 1.

For the FIIC calculations, each impact sound pressure level measurement is corrected for background sound levels, and then the average of the sixteen background corrected sound levels is calculated for each one-third octave band. The reverberation time of the receiving room is measured using the loudspeaker system and an integrating sound level meter. Based upon the reverberation time, a room absorption correction is applied to each one-third octave band to calculate the normalized impact sound pressure levels. Finally, the normalized impact sound pressure levels are plotted and evaluated to determine the FIIC rating for each partition, in accordance with the standard, ASTM E989-89, R99 [8]. Please refer to the data tables in Appendix 1.

Conclusions and Recommendations

The ASTC ratings exceeded the minimum building code requirements for both the original and modified floor / ceiling system designs. The modified design had an ASTC rating of 63 which is 10 points higher than the original design ASTC rating of 53.

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.

An increase of 8 to 10 points in the two ratings is a significant improvement. As a general rule of thumb, an increase of 3 points in the ASTC and/or FIIC rating is just perceptible to a person with normal hearing sensitivity. An increase of 5 points is considered to be a significant change, and an increase of 10 points is generally perceived to be "half as loud".

The FIIC rating of 41 for the original floor / ceiling system design is inadequate since it does not meet the building code. Although the FIIC rating of 49 for the modified assembly is significantly higher than the original construction and exceeds the minimum building code criterion, this rating indicates that many impact noises will remain audible in the residences below. QMN observed audible footsteps during the on-site testing.

The original ASTC rating of 53 would be acceptable to some residents, and the improved ASTC rating of 63 is quite high and should be adequate to reduce most normal residential sounds, including loud voices and amplified sound (except for very loud stereos).

It is very difficult to improve the FIIC rating in multi-story wood frame construction. The design modifications 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.

A small incremental improvement may be possible by replacing the existing acoustical underlayment below the floor covering with a better performing product and installing at least one inch of lightweight concrete over the plywood subfloor (either below or above the improved acoustical underlayment material). This would require removal of all hard floor coverings, installation of the lightweight concrete and an approved acoustical underlayment, installation of proper perimeter isolation in all areas with hard floor coverings, and reinstallation of new floor coverings. This would be a disruptive and expensive modification, and the possible improvement may be only 1 to 3 points in the ASTC and FIIC ratings. If the improved acoustical underlayment is installed without the addition of lightweight concrete, the same small improvement of 1 to 3 points in the FIIC ratings may be achieved, but no change would be expected in the ASTC rating.

Acoustical underlayments typically reduce the middle to higher frequencies and have little effect on the low frequency sound that is characteristic of wood frame construction. This is the

QMN

primary reason that such a small improvement has been projected for the FIIC rating. Therefore, the sound of high heeled shoes or sharp objects being dropped may be reduced, but the "thumping" sound of heavy footsteps will likely not be affected.

Please contact QMN for a list of approved acoustical underlayments if it is decided to implement these modifications.

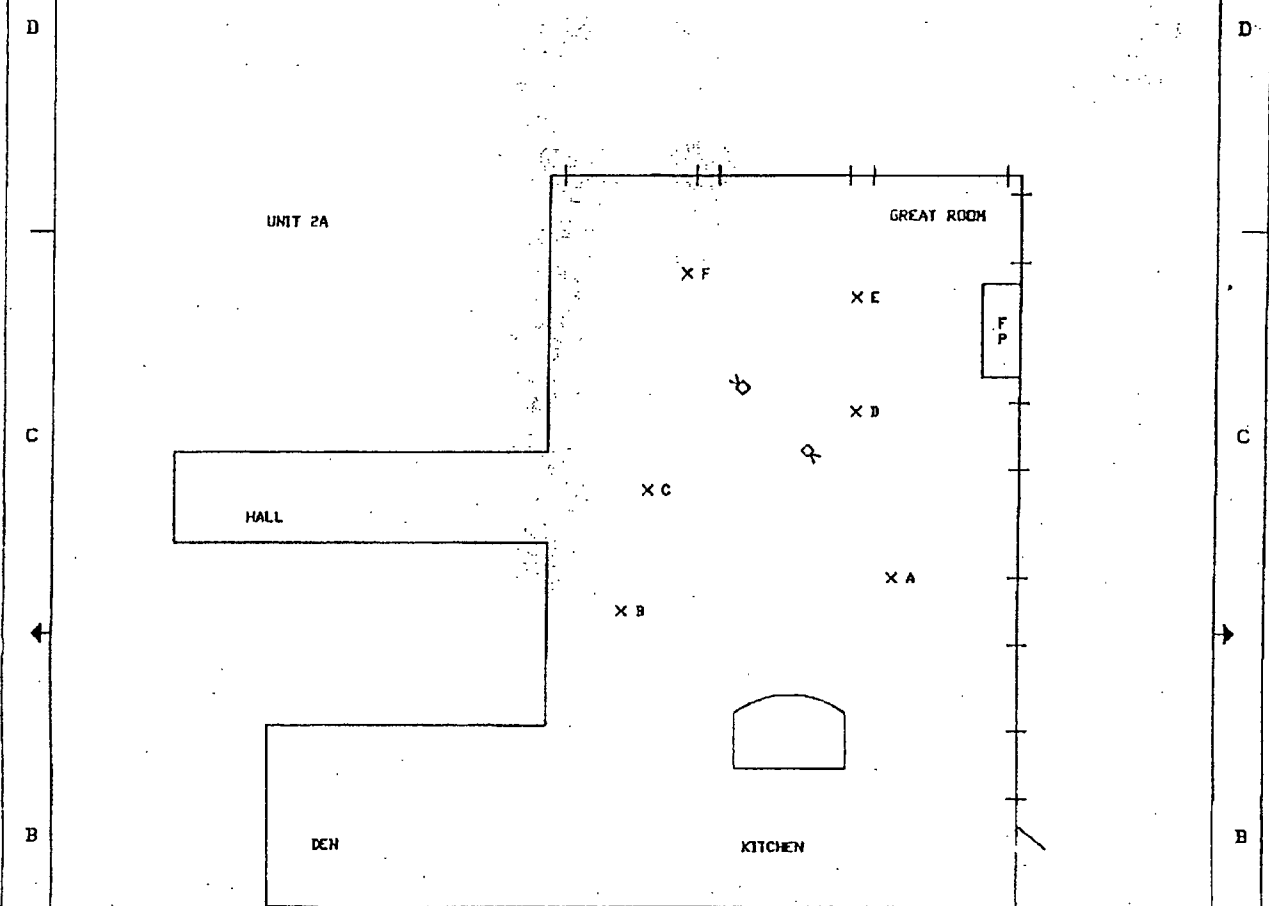
References

1. ASTM E336-05, "Standard Test Method for Measurement of Airborne Sound Attenuation between Rooms in Buildings"
2. ASTM E1007 - 04e1, "Standard Test Method for Field Measurement of Tapping Machine Impact Sound Transmission through Floor-Ceiling Assemblies and Associated Support Structures"
3. 2006 International Building Code®, International Code Council, March 2006.
4. 2003 International Building Code®, International Code Council, Inc., Country Club Hills, IL, Fifth Printing, May 2004, Section 1207, p. 241.
5. ASTM E2235-04, "Standard Test Method for Determination of Decay Rates for Use in Sound Insulation Test Methods"
6. ANSI S1.4 - 1983, "Specification for Sound Level Meters"
7. ASTM E413-04, "Classification for Rating Sound Insulation"
8. ASTM E989 - 89 (Reapproved 1999), "Standard Classification for Determination of Impact Insulation Class (IIC)"

QMLN

Figures

FIGURE 1. STC MEASUREMENT POSITIONS

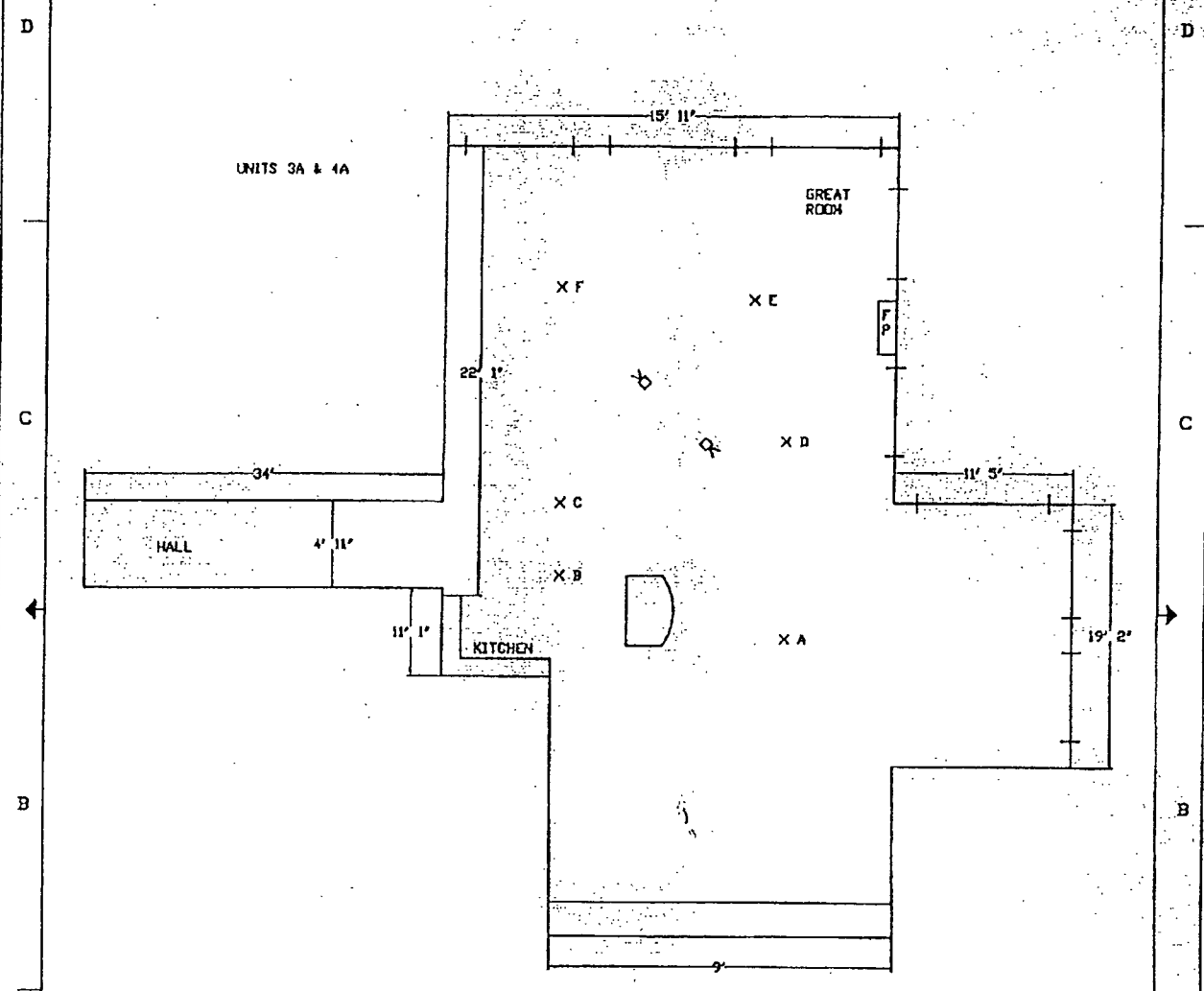


NOTE: REVERBERATION MEASUREMENTS TAKEN AT POSITIONS A,B,E, AND F.

131.001
Padgett0502

DRAWN BY	SMP	11/16/09	DRAWING TOLERANCE	Quietly Making Noise, LLC <i>Acoustical Consulting and Noise Control</i>	4521 Old Carriage Trail Oviedo, FL 32765 Office: (877) 891-7444 www.quietlymakingnoise.com
APPROVED BY	LAS	11/16/09			
DATE	NTS	B			
THE CONTENT OF THIS DRAWING IS THE INTELLECTUAL PROPERTY OF QUIETLY MAKING NOISE, LLC. ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY, AND ANY DISCLOSURE, MISUSE OR MISDIRECTION IS STRICTLY PROHIBITED. ANY PART OF THIS DOCUMENT SHALL NOT BE REPRODUCED IN ANY FORM EXCEPT AS NECESSARY TO EXECUTE THE CONTRACTED WORK.				CUSTOMER THE OAKS AT RIVER'S EDGE	REFERENCE DRAWING N/A
				PROJECT BUILDING 5	
				DESCRIPTION STC MEASUREMENT POSITIONS	DRAWING NUMBER P09-0441-1
				SHEET # 1 1	

FIGURE 2. STC MEASUREMENT POSITIONS



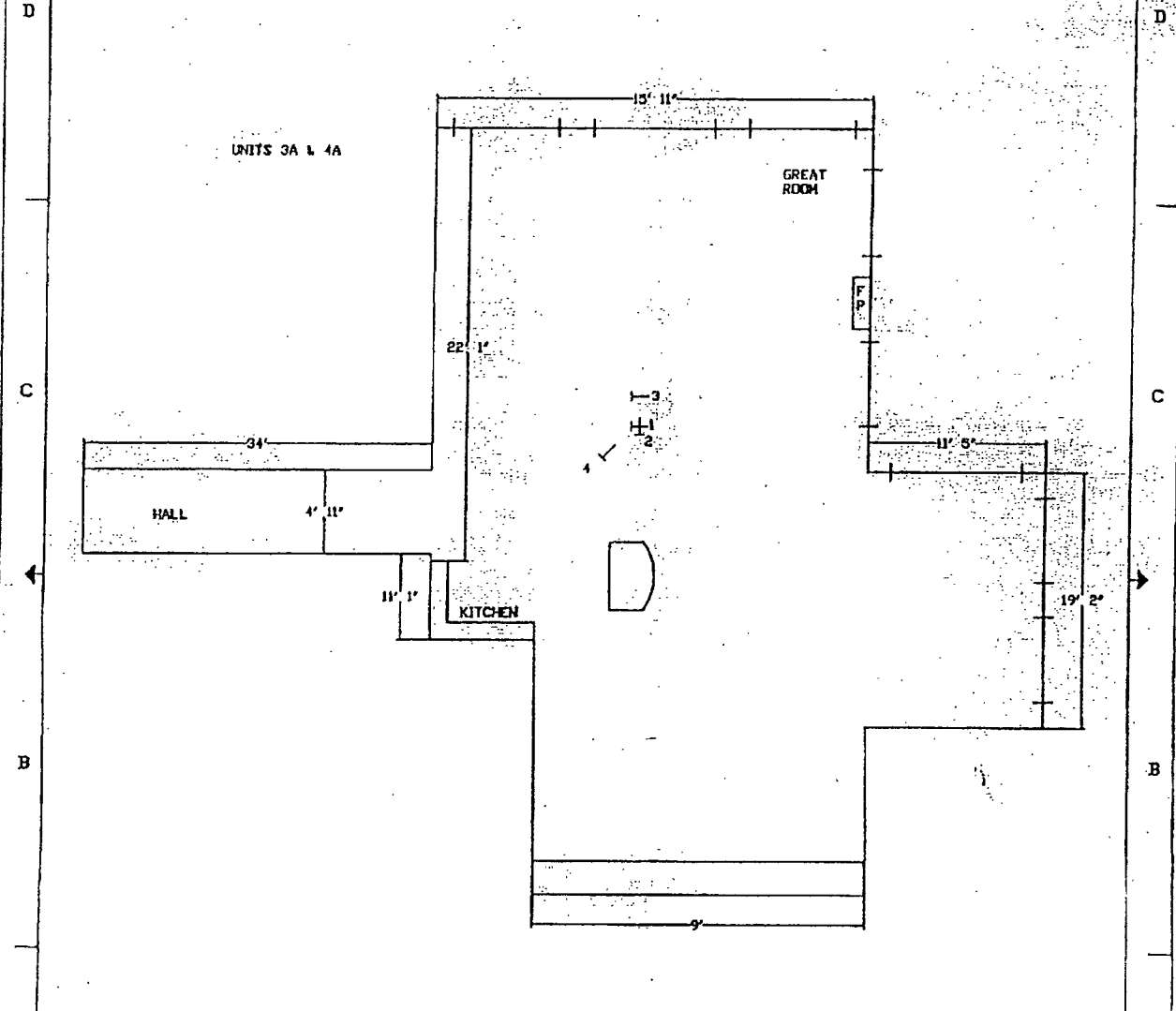
NOTE: REVERBERATION MEASUREMENTS TAKEN AT POSITIONS A,B,E, AND F.

Paiggett0503

DRAWN BY	SHF	11/16/09	DRAWING TOLERANCE	Quietly Making Noise, LLC Acoustical Consulting and Noise Control 4321 Old Carriage Trail Ocala, FL 32765 Office: (407) 882-7444 www.qmno.com
APPROVED BY	LAS	11/16/09		
SCALE	NTS	B		CUSTOMER: THE OAKS AT RIVER'S EDGE PROJECT: BUILDING 5 DESCRIPTION: STC MEASUREMENT POSITIONS REFERENCE DRAWING: N/A DRAWING NUMBER: P09-0441-2 DATE: 11 REVISION: 0

THE CONTENT OF THIS DRAWING IS THE INTELLECTUAL PROPERTY OF QUIETLY MAKING NOISE, LLC. ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY, AND ANY DISCLOSURE, MISUSE OR MISDIRECTION IS STRICTLY PROHIBITED. ANY PART OF THIS DOCUMENT SHALL NOT BE REPRODUCED IN ANY FORM EXCEPT AS NECESSARY TO EXECUTE THE CONTRACTED WORK.

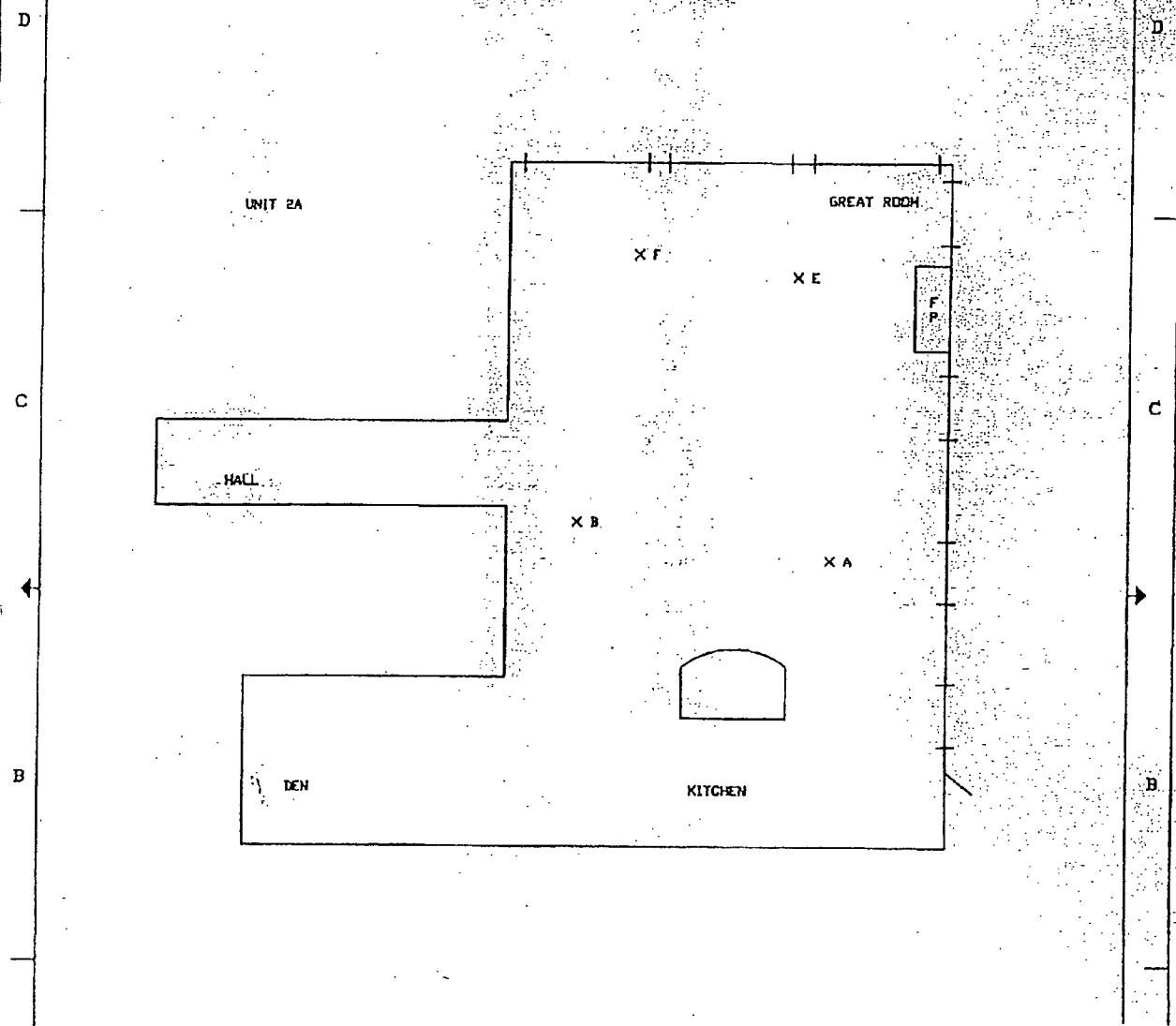
FIGURE 3. TAPPING MACHINE POSITIONS



131.001
Padgett0504

DRAWN BY	SMP	11/16/09	DRAWING TOLERANCE	<i>Quietly Making Noise, LLC</i> Acoustical Consulting and Noise Control 4521 Old Carriage Trail Oviedo, FL 32765 Office (407) 881-7444 www.quietlymakingnoise.com
APPROVED BY	LAS	11/16/09		
TITLE	NTS	B		
THE CONTENT OF THIS DRAWING IS THE INTELLECTUAL PROPERTY OF QUIETLY MAKING NOISE, LLC. ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY, AND ANY DISCLOSURE, MISUSE OR MISDIRECTION IS STRICTLY PROHIBITED. ANY PART OF THIS DOCUMENT SHALL NOT BE REPRODUCED IN ANY FORM EXCEPT AS NECESSARY TO EXECUTE THE CONTRACTED WORK.				CUSTOMER THE OAKS AT RIVER'S EDGE BUILDING 5
DESCRIPTION TAPPING MACHINE POSITIONS				REFERENCE DRAWING N/A
DRAWING NUMBER P09-0441-3				SHEET OF 1 1 REVISION 0

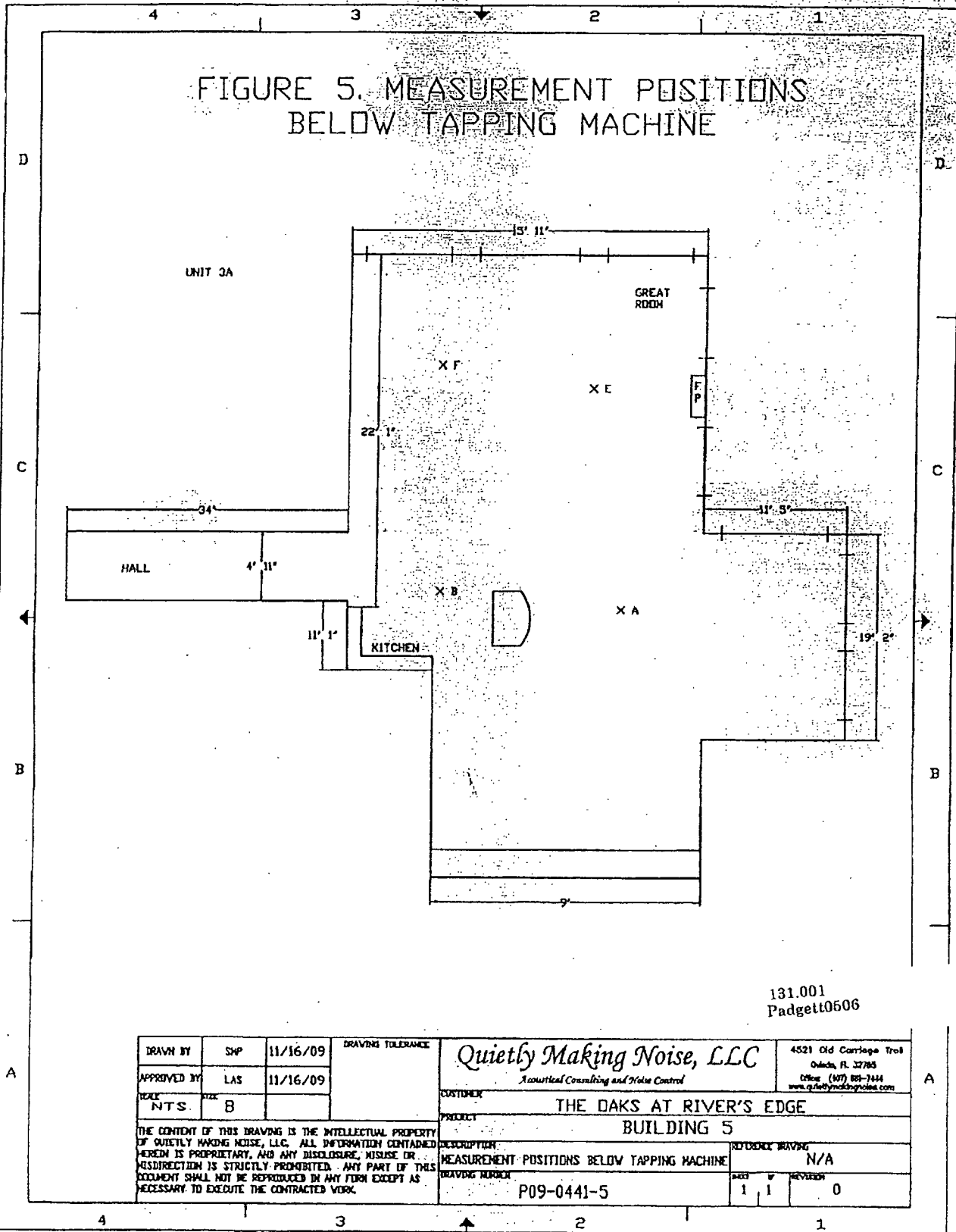
FIGURE 4. MEASUREMENT POSITIONS BELOW TAPPING MACHINE



131.001
Padgett0505

DRAWN BY	SHP	11/16/09	DRAWING TOLERANCE	<i>Quietly Making Noise, LLC</i> Acoustical Consulting and Noise Control	4521 Old Carriage Trail Ocala, FL 32768 Office (877) 868-7444 www.quietlymakingnoise.com
APPROVED BY	LAS	11/16/09			
SCALE	N.T.S.	B			
THE CONTENT OF THIS DRAWING IS THE INTELLECTUAL PROPERTY OF QUIETLY MAKING NOISE, LLC. ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY, AND ANY DISCLOSURE, MISUSE OR MISDIRECTION IS STRICTLY PROHIBITED. ANY PART OF THIS DOCUMENT SHALL NOT BE REPRODUCED IN ANY FORM EXCEPT AS NECESSARY TO EXECUTE THE CONTRACTED WORK.				CUSTOMER	THE OAKS AT RIVER'S EDGE
				PROJECT	BUILDING 5
				DESCRIPTION	MEASUREMENT POSITIONS BELOW TAPPING MACHINE
				DRAWING NUMBER	P09-0441-4
				REFERENCE DRAWING	N/A
				PIECES	1
				REVISIONS	0

FIGURE 5. MEASUREMENT POSITIONS BELOW TAPPING MACHINE



131.001
Padgett0606

DRAWN BY	SHP	11/16/09	DRAWING TOLERANCE	<i>Quietly Making Noise, LLC</i> Acoustical Consulting and Noise Control 4521 Old Carriage Trail Ocala, FL 32765 Office: (352) 885-7144 www.quietlymakingnoise.com
APPROVED BY	LAS	11/16/09		
SCALE	NTS	B		CUSTOMER
THE CONTENT OF THIS DRAWING IS THE INTELLECTUAL PROPERTY OF QUIETLY MAKING NOISE, LLC. ALL INFORMATION CONTAINED HEREIN IS PROPRIETARY, AND ANY DISCLOSURE, MISUSE OR MISDIRECTION IS STRICTLY PROHIBITED. ANY PART OF THIS DOCUMENT SHALL NOT BE REPRODUCED IN ANY FORM EXCEPT AS NECESSARY TO EXECUTE THE CONTRACTED WORK.				THE OAKS AT RIVER'S EDGE BUILDING 5
MEASUREMENT POSITIONS BELOW TAPPING MACHINE				REFERENCE DRAWING N/A
DRAWING NUMBER P09-0441-5				SHEET # 1 1
				REVISION 0

QMN

Appendix 1. Test Data and Calculations

Page 17 of 27
This page alone is not a complete report.

131.001
Padgett0507

QMN

Table A1.1. Basic Information

<i>Quietly Making Noise, LLC</i>	
Acoustical Test Data Sheet	
Client:	The Oaks at River's Edge Property Owners' Association
Project:	The Oaks at River's Edge Building 5
Location:	Daniel Island, South Carolina
Test Personnel #1: Lisa Schott, Principal Acoustical Consultant, Quietly Making Noise, LLC	
Date: 11/2/09	Start Time: 13:30 EDT
Day of Week: Monday	End Time: 17:15 EDT
Ambient Conditions:	
Dry Bulb Temperature:	Indoor temperature ~75° F - observed estimate
Relative Humidity:	Indoor relative humidity 60% - observed estimate
Wind Speed:	Not applicable
Wind Direction:	Not applicable
Sky Conditions:	Not applicable
Observations (Include audible noise sources, discrete tones, variations in sound level over time, etc.):	
The building was generally quiet. There were no major sources of exterior noise.	

Table A1.2. Sound Testing Equipment

Device	Manufacturer	Model #	Serial #	ANSI Type	Last Laboratory Calibration
Sound Level Meter	Norsonic	Type 118	28926	1	1/20/09
Microphone	Norsonic	Type 1225	33212	N/A	1/20/09
Calibrator	Norsonic	Type 1251	20777	N/A	1/20/09
Tapping Machine	Norsonic	Type 211A	29733	N/A	1/21/09
Noise Generator	Ivie	IE-20B	4903H285	N/A	N/A
Loudspeaker	QSC	HPR152i	N/A	N/A	N/A
Loudspeaker	QSC	HPR152i	N/A	N/A	N/A

QMN

Table A1.3 On-Site Calibration Record

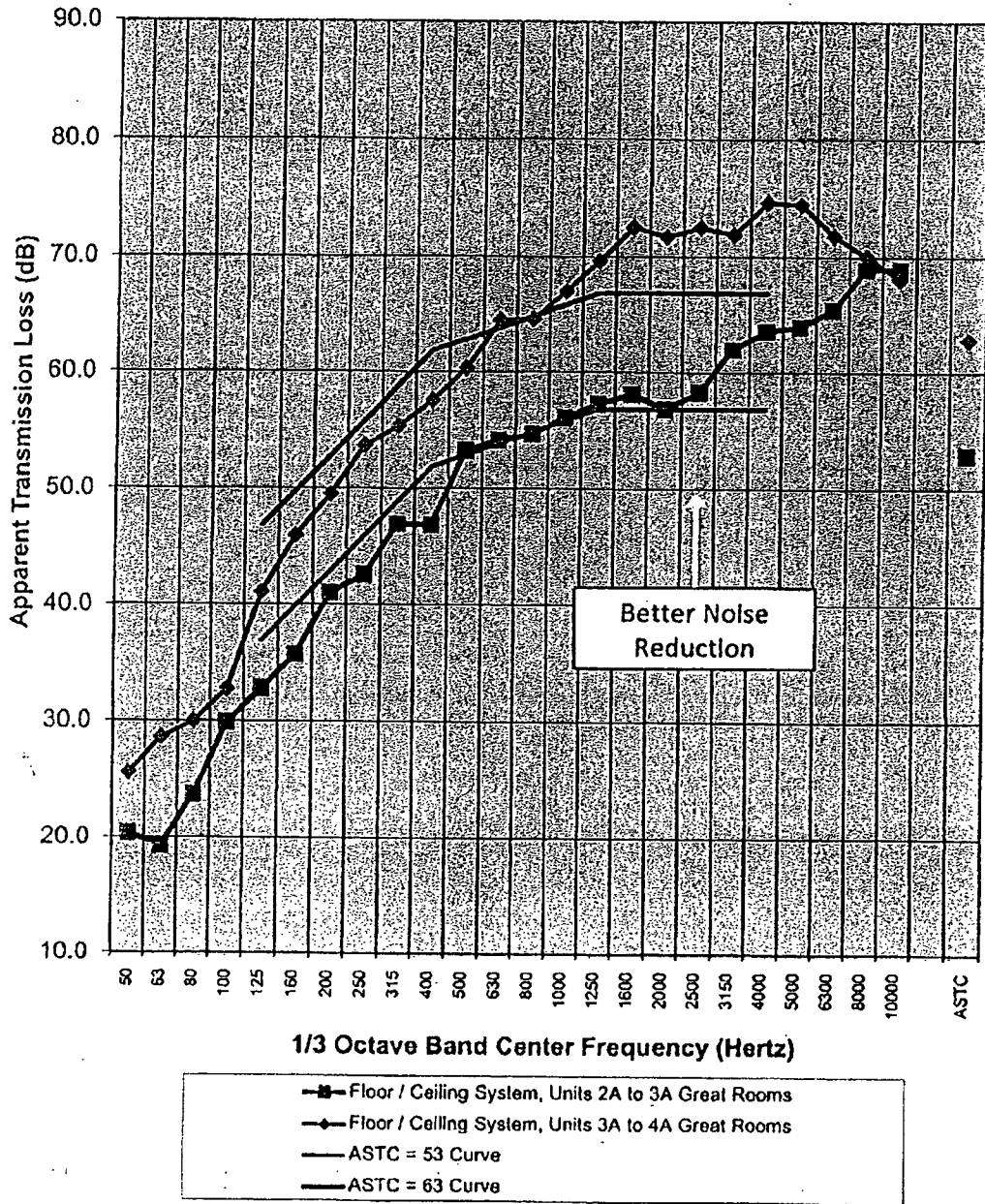
Event	Number	Calibration Frequency, Hz	Calibration Level, dB	Measured Level, dB	Date	Time*
Start of Test	1	1000	114.0	113.9	11/2/09	13:40
End of Test	2	1000	114.0	113.8	11/2/09	17:00

* All times are Eastern Daylight Savings time.

QMN

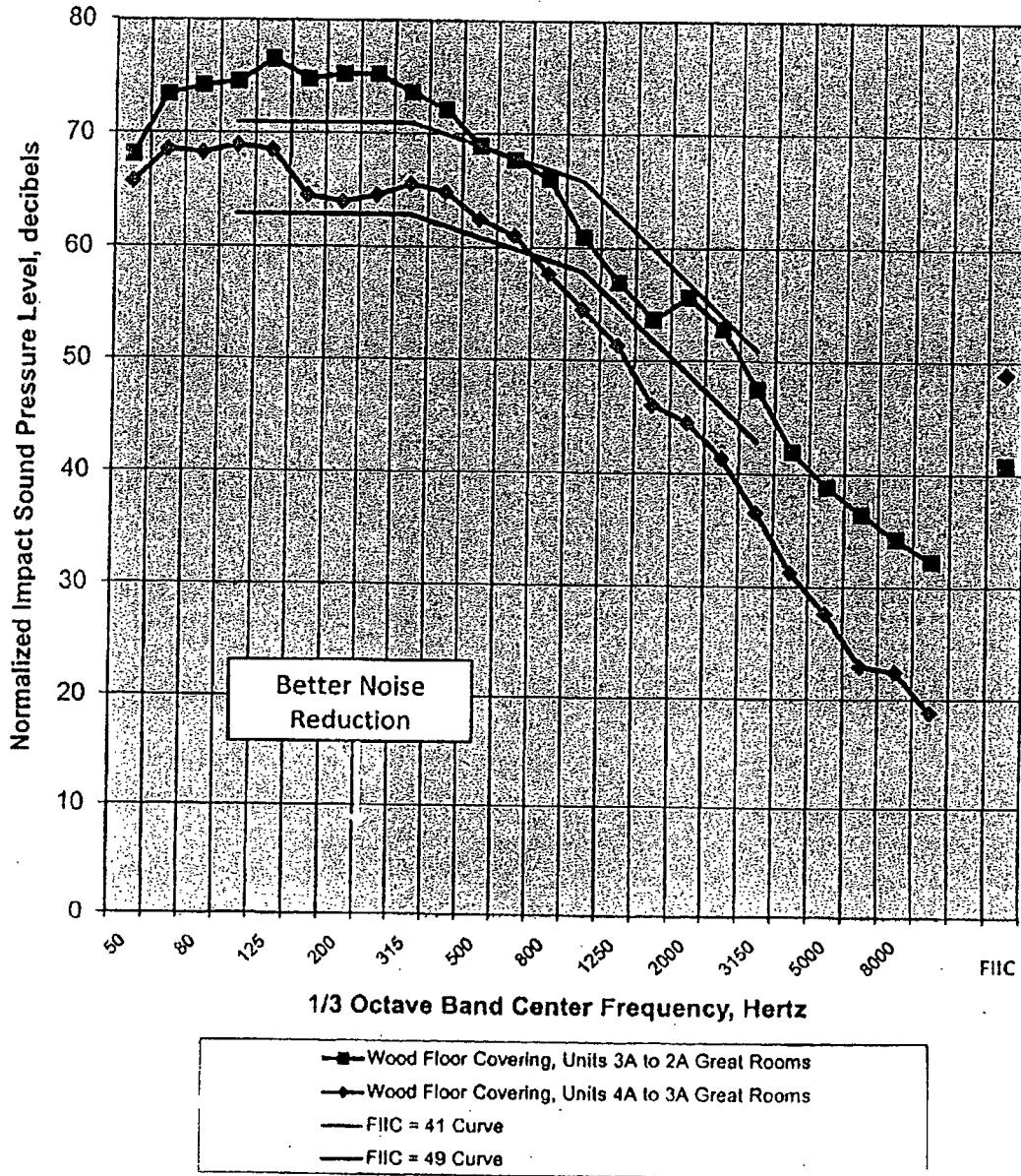
Appendix 2. Test Results Presented in Graphical Format

**Figure A2.1 Floor / Ceiling System STC Rating
Airborne Noise Reduction between Units 2A, 3A, and 4A**



131.001
Padgett0516

Figure A2.2 Floor / Ceiling System IIC Rating
 Impact Sound Pressure Levels Between
 Units 2A, 3A, and 4A with Wood Floor Coverings



131.001
 Padgett0517

Stewart Acoustical Consultants

7406 L Chapel Hill Road
Raleigh, NC 27607

sac@sacnc.com
919-858-0899

March 24, 2008

Mr. Dan Tollens
Regime / Property Manager
The Oaks at River's Edge Property Owners Association, Inc.
1202-B Palm Blvd
Isle of Palms, SC 29451

Re: Floor-ceiling sound isolation at The Oaks at Rivers Edge

Dear Mr. Tollens:

In December of 2006, Mr. Richard Behringer contacted me regarding sound isolation at the Oaks at River's Edge, especially impact sounds on hard surface floors. Sounds from floor impacts differ from airborne sounds such as speech in the air of one space transmitted to another. I visited in January 2007, discussed construction details and performed extensive tests of both airborne and impact isolation. Impact isolation was confirmed to be unsatisfactory. Airborne isolation was much better.

Some alternative changes were developed for evaluation and more testing of these was conducted in March, 2007. These results identified the best method to implement with some refinements. This work was completed in June, 2007 and additional extensive testing was conducted to evaluate results. The results, as described below, exceeded the standards set by the building codes.

Any wood-frame structure generates audible low-frequency footstep sound even with carpet. Hard floor surfaces add a tapping sound that varies depending on design but which is usually also audible in wood-frame structures. Airborne sounds such as loud speech and music, and other sounds related to mechanical systems and outdoor sources will also usually be heard at times. The building code sets minimum standards for airborne isolation in terms of the apparent sound blocking ability of a partition (ASTC) for airborne sound and impact isolation in terms of the sound generated by a standardized tapping machine (FIIC) adjusted to the expected level in a small, hard room. Higher numbers are better for both ratings, indicating lower, more muffled sounds from adjacent spaces. However, perfect isolation is never achieved. All partitions transmit some sound and all floors generate some sound. For a floor-ceiling that is the same size as the room, the ASTC correlates well with what is heard. However, the FIIC can be misleading because it does not take into consideration the size and furnishings of the room.

The building code requires field test results for both measurements to be at least 45. The average final results were ASTC 59 and FIIC 50 in the wood floor areas and ASTC 56 and FIIC 46 in the baths. The actual perceived impact sound in large living-dining spaces will be several points quieter, comparable to a higher FIIC. Lower FIIC results are usually acceptable in bathrooms as people are often barefoot there and do not take many steps.

This was a very successful remediation of a difficult situation with major improvements. Results are now clearly in compliance with code requirements with very good airborne isolation.

Sincerely,

STEWART ACOUSTICAL CONSULTANTS



Noral D. Stewart, Ph.D.

Oaks00165

131.001
Padgett0518

Member Firm - National Council of Acoustical Consultants

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
BEFORE THE SOUTH CAROLINA BOARD OF ARCHITECTURAL EXAMINERS**

In the Matter of:

**Edward J. d'Orazio, d/b/a Edward J.
d'Orazio, AIA, Architects & Planners**
License No. AR-6546,
Respondent.

Case No. 2007-0005

**ORDER
(Public)**

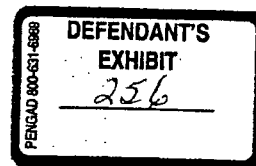
This matter came before the Board of Architectural Examiners (the Board) for hearing on September 22, 2009, as a result of the Notice and Complaint dated July 8, 2009, which was served upon the Respondent and filed with the Commission. A quorum of the Commission was present. The hearing was held pursuant to S.C. Code Ann. §40-3-90, S.C. Code Ann. §40-1-70(6), Regulation 11-13, and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.* (1976, as amended), to determine whether sanctions should be imposed upon the Respondent. Christa T. Bell, Assistant General Counsel, represented the State. The Respondent appeared without counsel.

The Respondent was charged with violation of S.C. Code Ann. §40-1-110(f) and S.C. Code Regs. 11-12(B)(9) (Supp. 2003).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the facts of the case are found to be as follows:

1. The Respondent is licensed by the Board as an architect, and was duly licensed at the time of the events at issue in this matter.
2. On or about March 21, 2007, pursuant to an ongoing investigation, the Board asked the Respondent to provide project and work files for *Carriage Hill Executive Center, The Oaks at River's Edge*, and *The Grand Oaks Preserve*; this was by letter from Mr. Todd Bond, an investigator with the South Carolina Department of Labor, Licensing, and Regulation (LLR).
3. When the Respondent replied on or about August 22, 2007, more than five (5) months later, he failed to provide the project and work files as requested.
4. On or about March 24, 2008, the Board subpoenaed the Respondent to deliver any and all records pertaining to his designs for the projects at *Carriage Hill Executive Center, The Oaks*



at River's Edge, and The Grand Oaks Preserve for the Board's review.

5. The Respondent provided the requested information on or about June 3, 2008; his undue and prolonged delay resulted in additional time and expenses for the State, and an unnecessary delay of the case.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, it is found and concluded as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that grounds for discipline exist, S.C. Code Ann. §41-1-120 provides the Board has authority to: issue a public reprimand; impose a fine; place a licensee on probation, or restrict or suspend the individual's license for a definite or indefinite time, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs; permanently revoke a license; and impose the reasonable costs of the investigation and prosecution of a case. The Board also may impose a civil penalty of up to two thousand dollars (\$2,000.00) for each violation of the provisions of the Architectural Practice Act, S.C. Code Ann. §40-3-10, *et seq.*, as amended, or the regulations of the Board, provided the total of the penalties imposed for these violations may not exceed ten thousand dollars (\$10,000.00).

2. The State failed to prove by a preponderance of the evidence that the Respondent violated S.C. Code Ann. §40-1-110(f).

3. The Respondent violated S.C. Code Regs. 11-12(B)(9), in that he failed to cooperate fully upon request in a matter pertaining to a Board investigation, as evidenced by his failure to respond to the request in question for approximately fourteen (14) months, and other facts as described above.

4. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continued services of qualified architects against the countervailing concern that society be protected from professional ineptitude and misconduct.

5. The sanction imposed is designed not to punish the Respondent, but to protect the welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

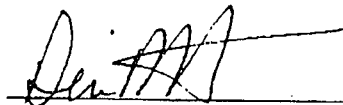
1. The Respondent is hereby publicly reprimanded.

2. The Respondent shall pay a fine of Five Hundred Dollars (\$500.00) within thirty (30) days of the date of this Final Order. This fine shall not be deemed paid until it is received by the Board. Failure to pay the fine may prevent the Respondent from being re-licensed.

3. This Final Order shall take effect immediately upon its receipt by the Respondent or his counsel.

AND IT IS SO ORDERED.

BOARD OF ARCHITECTURAL EXAMINERS



Dennis S. Ward
Chairperson

October 1, 2009

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this Order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Emergency Mail Service addressed to the party (ies) or their attorney (s), to the following address: 11 John Olsen Lane, St. James, NY 11780

This 13 day of October, 2009

By: Linda M. Summerford, Admin Asst.

Printed name, title & signature
Linda M. Summerford

SETTLEMENT FUNDS
OAKS AT RIVERS EDGE

Rumplick & D'Orazio Total	\$1,200,000.00
DIRD/CHAC	\$1,365,907.69
Carriage Hill (NY)	\$234,092.31
Behringer	\$10,000.00

TOTAL PAID **\$2,810,000.00**

REMAINDER OWED

DIRD/CHAC	\$900,000.00
-----------	--------------

SETTLEMENT FUNDS
OAKS AT RIVERS EDGE

Coastal Caulking	\$230,000.00
The Muhler Company	\$1,000,000.02
Caoba Doors	\$100,000.00
AC Construction	\$422,552.00
Weather Shield Mfg.	\$1,912,500.00
Castle Siding	\$75,000.00
Coastal Roofing	\$14,092.31
<u>TOTAL PAID</u>	\$3,754,144.33

REMAINDER OWED

Weather Shield Mfg	\$262,500.00
<u>TOTAL OWED</u>	\$262,500.00

STATE OF SOUTH CAROLINA
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.

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

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-08-1068

MEMORANDUM OF SETTLEMENT

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 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,)
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., 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 COMPANY, INC.,)
)
Third-Party Plaintiff,)
)
vs.)
)
CASTLE SIDING, INC. and CAOBA)
DOORS,)
)
Third-Party Defendants,)

■ PAYMENT TO HOA OF THREE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$3,700,000.00), TO BE PAID AS FOLLOWS: A PAYEMENT OF \$1,600,000.00 PAYABLE IN 3 WEEKS FROM THE DATE OF THIS AGREEMENT AND THE BALANCE PAID AT THE RATE OF \$300,000.00 EVERY QUARTER UNTIL PAID IN FULL WITH THE FIRST SUCH PAYMENT 90 DAYS FROM THE DATE OF THE INITIAL PAYMENT. A CONDITION PRECEDENT TO THIS PAYMENT AGREEMENT IS THE EXECUTION OF SUFFICIENT PERSONAL GURANTEES, LETTER OF CREDIT, BONDING CAPABILITY, AND FINANCIAL STATEMENTS BY THE PARTIES MAKING PAYMENTS.

■ PAYMENT WILL PROVIDE COMPLETE RELEASE FOR CARRIAGE HILL ASSOCIATES, INC., THE ARCHITECTS, AND RICHARD BEHRINGER, IN HIS INDIVIDUAL CAPACITY AND IN HIS CAPACITY AS MEMBER OF THE BOARD OF THE HOA. FROM ANY CLAIMS BY HOA AND THE INDIVIDUAL PLAINTIFFS NAMED IN CIVIL ACTION NUMBER 2009-CP-08-3916 (HEREINAFTER "INDIVIDUAL UNIT OWNERS"). THE ARCHITECTS WILL MAKE THEIR FULL SETTLEMENT CONTRIBUTION WIITHIN 3 WEEKS, AND THEIR RELEASE AND DISMISSAL WITH PREJUDICE IS NOT AND WILL NOT BE CONTINGENT ON ANY OTHER PROMISES BY ANY OTHER PARTIES OR CONDITIONS LISTED HEREIN. CHNY AND THE ARCHITECTS WILL EXCHANGE MUTUAL COMPLETE RELEASES RELATED TO THIS PROJECT AND THE CLAIMS MADE IN THIS CASE.

■ WHETHER OR NOT CHAC AND DIRD WILL RECEIVE CREDIT ON THE JUDGMENT FOR AMOUNT PAID BY CHANY, ARCHITECTS AND RICHARD BEHRINGER IN HIS INDIVIDUAL CAPACITY, OR ANY AMOUNT PAID BY OTHER DEFENDANTS IN SETTLEMENT WILL BE DETERMINED BY THE COURT CONSISTENT WITH SOUTH CAROLINA LAW.

■ IF THE HOA OR INDIVIDUAL UNIT OWNERS RECEIVE A JUDGMENT(S) AGAINST CHAC AND/OR DIRD AND TO THE EXTENT IT IS NOT SATISFIED AND THE EXECUTION UPON THE JUDGMENT(S) IS RETURNED NULLA BONA, DIRD AND CHAC WILL ASSIGN ANY AND ALL CLAIMS THEY MAY HAVE AGAINST MT. HAWLEYS, BURNS & WILCOX AND BRADY TO APPLY TO THE SATISFACTION OF ANY JUDGMENT(S). THE PARTIES COUNSEL WILL BE CO-COUNSEL ON THE CASE AGAINST MT. HAWLEYS ET AL, PROVIDED THE HOA COUNSEL SHALL BE LEAD COUNSEL. COUNSEL SHALL DIVIDE ALL ATTORNEY'S FEES FOR THE CASE AGAINST MT. HAWLEYS ET AL AS AGREED. THE NET PROCEEDS FROM THE SUIT SHALL BE DIVIDED AS FOLLOWS: THE PROCEEDS SHALL BE DIVIDED ON A 50-50 BASIS UNTIL THE HOA AND THE INDIVIDUAL UNIT OWNERS ON A PRO RATA BASIS ON ONE HAND AND DIRD AND CHAC ON THE OTHER HAVE EACH RECEIVED \$1,000,000.00, AFTER WHICH THE HOA AND THE INDIVIDUAL UNIT OWNERS SHALL RECEIVE THE PROCEEDS ON A PRO RATA BASIS UNTIL SUCH TIME AS THE HOA AND THE INDIVIDUAL UNIT OWNERS HAVE RECEIVED THE BALANCE DUE ON THE JUDGMENT AND THEN THE REMAINING SUMS SHALL BE PAID TO DIRD AND CHAC.

■ HOA AND UNIT OWNERS WILL NOT CHALLENGE ANY EXISTING MORTGAGE ON PROPERTY OWNED BY DIRD.

■ IN THE EVENT DIRD SEEKS TO OBTAIN FINANCING FROM A THIRD PARTY LENDER FOR PROPERTY OWNED BY DIRD AND AS A RESULT NO FUNDS WILL BE AVAILABLE FOR JUNIOR CREDITORS, HOA AND INDIVIDUAL UNIT OWNERS WILL SUBORDINATE ANY JUDGMENT TO THE LIEN OF THE NEW MORTGAGE. A CONDITION PRECEDENT TO ANY SUBORDINATION IS THAT PAYMENT IN FULL (AS SET FORTH IN THE FIRST PARAGRAPH) UNDER THIS AGREEMENT HAS BEEN MADE. IF ANY PROPERTY OWNED BY DIRD IS SOLD AND AFTER THE SATISFACTION OF ANY MORTGAGE, THE JUDGMENT CREDITORS SHALL RECEIVE ONE HALF OF SAID PROCEEDS TOWARDS THE SATISFACTION OF ANY OUTSTANDING BALANCE OF THE JUDGMENT(S). DIRD MAY OBTAIN A NEW OR REFINANCED MORTGAGE ON THE PROPERTY OR SALE THE PROPERTY ON TERMS TO BE AGREED TO BY THE PARTIES IN A SEPARATE AGREEMENT.

■ WHEN ANY JUDGMENT OBTAINED BY HOA OR UNIT OWNERS AGAINST EITHER OR BOTH CHAC OR DIRD IS PAID BY PAYMENT MADE BY OTHER ENTITIES, OTHER DEFENDANTS OR INSURERS ON BEHALF OF DIRD OR CHAC, THE JUDGMENT WILL BE SATISFIED OF RECORD, AND IF A PARTIAL PAYMENT IS MADE ON ANY JUDGMENT OBTAINED BY HOA OR UNIT OWNERS AGAINST EITHER OR BOTH CHAC OR DIRD IS PAID BY PAYMENT MADE BY OTHER ENTITIES, OTHER DEFENDANTS OR INSURERS ON BEHALF OF DIRD OR CHAC, THE HOA AND UNIT OWNERS WILL FILE A CERTIFICATE OF REDUCTION OF THE AMOUNT OWED ON THE JUDGMENT CONSISTENT WITH THE PAYMENT MADE AND RECEIVED.

■ AS TO THE HOAS' AND UNIT OWNERS' CLAIMS AGAINST DIRD AND CHAC, ONLY THE HOA AND THE INDIVIDUAL UNIT OWNERS WILL DISMISS WITH PREJUDICE CLAIMS AGAINST DIRD AND CHAC, ONLY FOR UTPA, PIERCING, FRAUD, INDIVIDUAL LIABILITY, AMALGAMATION, AIDING AND ABETTING, AIDING AND ABETTING BREACH OF FIDUCIARY DUTY, AND BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT. THE HOA AND THE INDIVIDUAL UNIT OWNERS AGREE NOT TO SEEK PUNITIVE DAMAGES OR ATTORNEYS' FEES ARISING OUT OF ANY CAUSE OF ACTION, AGAINST DIRD AND CHAC, ONLY, ALL CLAIMS AND CAUSES OF ACTION REMAIN AS TO ALL REMAINING DEFENDANTS. THE REMAINING CLAIMS AGAINST DIRD AND CHAC ONLY, ARE BREACH OF FIDUCIARY DUTY, NEGLIGENT MISREPRESENTATION, NEGLIGENCE, BREACH OF EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WORKMANLIKE SERVICE, AND BREACH OF CONTRACT. ALL CLAIMS AND CAUSES OF ACTION REMAIN AS TO ALL REMAINING DEFENDANTS.

■ ALL REFERENCES TO CARRIAGE HILL ASSOCIATES, INC. SHALL INCLUDE ITS SHAREHOLDER, MEMBERS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES.

■ CHNY AND THE ARCHITECTS AGREE TO ALLOW THE HOA AND THE INDIVIDUAL UNIT OWNERS TO TAKE POSSESSION AND USE ANY DEMONSTRATIVE EXHIBITS, TO INCLUDE BUT NOT LIMITED TO THE WINDOW THAT IS TO BE BROUGHT INTO THE COURT. PLAINTIFF'S WILL SHARE THE POSSESSION AND USE OF ANY SUCH EXHIBITS WITH CHAC AND DIRD.

MEMORANDUM OF SETTLEMENT

The Oaks at Rivers Edge HOA, et al v. Carriage Hill Associates, Inc., et al

WE AGREE:

THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC.

By: Joseph E. Chinn

Its: PRESIDENT, HOA OAKS AT RIVERS EDGE

3/23/13

MEMORANDUM OF SETTLEMENT

The Oaks at Rivers Edge HOA, et al v. Carriage Hill Associates, Inc., et al

WE AGREE:

CARRIAGE HILL ASSOCIATES, INC.

By: [Signature], LLC, LLP

Its: Attorney

MEMORANDUM OF SETTLEMENT

The Oaks at Rivers Edge HOA, et al v. Carriage Hill Associates, Inc., et al

WE AGREE:

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

By: Robert A. Behrens by Cheryl Altman
Attorney with permission

Its: MDA PER

MEMORANDUM OF SETTLEMENT

The Oaks at Rivers Edge HOA, et al v. Carriage Hill Associates, Inc., et al

WE AGREE:

EDWARD J. D'ORAZIO & GERALD RUMPLICK

By: AGREED - TO BE SIGNED

Its: _____

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

THIS MUTUAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into by and between the undersigned parties as of the date set forth next to the signatures hereunder. The parties to this Agreement are THE OAKS AT RIVERS EDGE PROPERTY OWNERS ASSOCIATION, INC. ("the POA"), DANIEL ISLAND RIVERSIDE DEVELOPERS, LLC ("DIRD"), CARRIAGE HILL ASSOCIATES OF CHARLESTON, LLC ("CHAC"), CARRIAGE HILL ASSOCIATES, INC. ("CH-NY"), WEATHER SHIELD MFG., INC. ("Weather Shield"), THE MUHLER CO., INC. ("Muhler"), A.C. CONSTRUCTION, INC. ("A.C."), COASTAL CAULKING, INC. ("Coastal Caulking"), GERALD RUMPLICK ("Rumplick"), EDWARD J. D'ORAZIO ("D'Orazio"), and RICHARD BEHRINGER ("Behringer") including the successors, heirs, purchasers, assigns, officers, directors, partners, shareholders, owners, representatives, servants, agents, subcontractors, employees, attorneys, sureties, insurers, affiliates, parent corporations, and subsidiary corporations of each of them, except as otherwise specifically documented by this Agreement. Pursuant to the terms of the Memorandum of Settlement this Agreement is only a Partial Release by the POA as to DIRD and CHAC. This Agreement and Release also does not in any way apply to Mt. Hawley Insurance Company, Clifford T. Brady, Robert P. Brady Agency, Inc., and Burns & Wilcox, Ltd.

WHEREAS, the POA is non-profit corporation and association of owners of condominium units in six (6) buildings known as The Oaks at Rivers Edge Condominiums (the "Project") and built on property known as The Oaks at Rivers Edge Horizontal Property Regime (the "Regime"), a horizontal property regime established pursuant to the South Carolina Horizontal Property Regime Act codified at S.C. Code Ann. § 27-31-10 *et al.* The POA has an interest in and duty to maintain certain portions of the Project, including the common areas located within the Regime; and

WHEREAS, the POA and others have alleged that there are numerous problems and defects in the Project, and that said problems are a result of alleged improper design, manufacture, instructions, marketing, sale, testing, certification, advertisement, construction, application, installation, incorporation, maintenance, and repair of the Project and its components and breaches of duties relative to establishment and management of the horizontal property regime by DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer; and

WHEREAS, the POA has instituted a civil action in the Court of Common Pleas for Berkeley County, South Carolina, case no.: 2009-CP-08-3916, styled as *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 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, Richard Jennings, Matthew J. Severance, and*

dec

Elizabeth Ashley Phillips Severance, Plaintiffs, vs. Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC, Carriage Hill Associates, Inc., Weather Shield Mfg., 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, and The Muhler Co., Inc., Third-Party Plaintiff vs. Castle Siding, Inc. and Caoba Doors, Third-Party Defendants; and

WHEREAS, DIRD and CHAC have instituted a civil action in the Court of Common Pleas for Berkeley County, South Carolina, case no.: 2009-CP-08-1068, styled as *Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC vs. Weather Shield Mfg., Inc., The Muhler Co., Inc., and A.C. Construction, Inc.*, which was consolidated with the POA's lawsuit listed above and others¹ (hereinafter known as "the Lawsuits"); and

WHEREAS, A.C. has instituted a civil action in the Court of Common Pleas for Berkeley County, South Carolina, case no. 2009-CP-08-1413, styled as *A.C. Construction, Inc. vs. Daniel Island Riverside Developers, LLC, and Travelers Casualty and Surety Company of America* which alleges non-payment for A.C.'s work and asserts a mechanics lien against the "Project"; and

WHEREAS, DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer deny the claims and allegations asserted against them in the Lawsuits and have filed various answers and other pleadings disputing said claims and allegations and asserting affirmative defenses, counterclaims, cross-claims, and third-party claims; and

WHEREAS, the parties to this Agreement desire to avoid the expense, uncertainties and risks of further litigation between and among themselves and to fully, finally and forever compromise and settle all past, present and future claims, excluding remaining claims of the POA against DIRD and CHAC as outlined in the Memorandum of Settlement and currently pending before the Honorable J. C. Nicholson, Jr., whether known or unknown or hereafter discovered, between and among them involving, in any way, the Project, including, but not limited to, all claims which were raised or could have been raised in the Lawsuits related to the design, manufacture, construction, application, installation, marketing, maintenance, loss of use, loss of value, stigma and/or sale of the Project or its components; as a result of the products designed, manufactured, distributed, or sold by any party to this Agreement; or any relating to or concerning any aspect of the scope of work or the establishment and management of the horizontal property regime of or by DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer, with the sole exception that the POA's release by and of DIRD and CHAC is limited to the terms of the Memorandum of Settlement and does not in any way apply to the claims currently pending before the Honorable

¹ In addition to the lawsuits identified above, the following civil action in the Court of Common Pleas for Berkeley County, South Carolina was consolidated into one matter for purposes of discovery and trial under case no. 2008-CP-08-3936: *Geoffrey C. Ciphala and Samuel C. Ages vs. Daniel Island Riverside Developers, LLC, Carriage Hill Associates of Charleston, LLC, Carriage Hill Associates, Inc.* (case no. 2008-CP-08-2714). The Ciphala case is not included in the definition of "the Lawsuits" herein.

Jac H

J. C. Nicholson, Jr., or to any claims against Mt. Hawley Insurance Company, Clifford T. Brady, Robert P. Brady Agency, Inc., and Burns & Wilcox, Ltd.

NOW THEREFORE, KNOW ALL BY THESE PRESENTS THAT:

1. **Incorporation.** The terms of the Whereas clauses are incorporated herein.
2. **Release by the POA.** The POA, for valuable consideration as set forth below agrees to the release of its claims against various parties to this Agreement as follows:

(a.) For valuable consideration in the total amount of Three Million, Seven Hundred Thousand Dollars and No Cents (\$3,700,000.00) to be paid to the POA^b by or on behalf of DIRD, CHAC, CH-NY Rumplick, D'Orazio, and Behringer, the sufficiency of which is hereby acknowledged, does for itself, its successors, heirs, purchasers and assigns, hereby remises, releases, acquits, and forever discharges DIRD and CHAC consistent with the terms of the Memorandum of Settlement and specifically reserving all claims pending at the time of this Agreement before the Honorable J. C. Nicholson, Jr. Further, the POA remises, releases, acquits and forever discharges CH-NY, Rumplick, D'Orazio, and Behringer, and their successors, heirs, purchasers, assigns, officers, directors, partners, shareholders, owners, representatives, servants, agents, subcontractors, employees, attorneys, sureties, insurers, affiliates, parent corporations, and subsidiary corporations of and from any and all past, present and future claims, demands, debts, rights, actions, express or implied warranties, damages (including direct, indirect, incidental, special, consequential, statutory, punitive, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue, and all known and unknown, discovered and undiscovered, foreseen and unforeseen losses and damages resulting from, or which in any way may be alleged to have resulted from, any and all matters or things done, omitted or suffered to be done by CH-NY, Rumplick, D'Orazio, and Behringer or any one of them in connection with the Project, its components or the Regime.

It is the express intent of the POA to fully, completely and forever release CH-NY, Rumplick, D'Orazio, and Behringer, the scope of work of CH-NY, Rumplick, D'Orazio, and Behringer, and any consequential damage arising therefrom, that is the subject of the Lawsuits and from any and all claims now existing or which may hereafter arise. It is the express intent of the POA, to partially release DIRD and CHAC consistent only with the terms of the Memorandum of Settlement and the POA does not release DIRD and CHAC for the claims pending before the Honorable J. C. Nicholson, Jr. at the time of this Agreement. Nothing herein operates to release any claims against Mt. Hawley Insurance Company, Clifford T. Brady, Robert P. Brady Agency, Inc., and Burns & Wilcox, Ltd.

(b.) For valuable consideration in the total amount of Four Million, Two Thousand, Five Hundred Fifty-Two and No/100 Dollars (\$4,002,552.00) to be paid to the POA by or on behalf of Weather Shield, Muhler, A.C., and Coastal Caulking, the sufficiency of which is hereby acknowledged, does for itself, its successors, heirs, purchasers and assigns, hereby remises, releases, acquits, and forever discharges Weather Shield, Muhler, A.C., and Coastal

Dec 1

Caulking, and their successors, heirs, purchasers, assigns, officers, directors, partners, shareholders, owners, representatives, servants, agents, subcontractors, employees, attorneys, sureties, insurers, affiliates, parent corporations, and subsidiary corporations of and from any and all past, present and future claims, demands, debts, rights, actions, express or implied warranties, damages (including direct, indirect, incidental, special, consequential, statutory, punitive, and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts, and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue, and all known and unknown, discovered and undiscovered, foreseen and unforeseen losses and damages resulting from, or which in any way may be alleged to have resulted from, any and all matters or things done, omitted or suffered to be done by Weather Shield, Muhler, A.C. or Coastal Caulking or any one of them in connection with the Project, its components or the Regime, including, but without limiting the above in any way, of and from:

(i.) All claims which were raised or which could have been raised as to Weather Shield, Muhler, A.C. or Coastal Caulking in the Lawsuits; and

(ii.) All claims related to the design, production, manufacture, instructions, marketing, sale, testing, certification, advertisement, construction, assembly, performance, application, installation, incorporation, maintenance or repair of any products, materials, or combination of products made or generated by or on behalf of Weather Shield or Muhler, including the windows, window units, exterior doors, exterior door units, railings, and balustrades at the Project and any other scope of work of Weather Shield or Muhler including consequential damage; and

(iii.) All claims related to the design, construction, application, installation, incorporation, assembly, maintenance or repair of the windows, window units, exterior doors, exterior door units, framing, caulking, railings, and balustrades at the Project and any other scope of work of Weather Shield, Muhler, A.C. or Coastal Caulking including consequential damages; and

(iv.) All claims relating in any way to alleged warranties, acts, omissions, trade practices or acts or representations made or failing to be made by or by or on behalf of Weather Shield, Muhler, A.C. or Coastal Caulking.

It is the express intent of the POA to fully, completely and forever release Weather Shield, Muhler, A.C., and Coastal Caulking, the scope of work of Weather Shield, Muhler, A.C., and Coastal Caulking, and any consequential damage arising therefrom, that is the subject of the Lawsuits and from any and all claims now existing or which may hereafter arise.

3. Settlement Payments to the POA.

(a.) DIRD's, CHAC's, CH-NY's, Rumplick's, D'Orazio's, and Behringer's shares of the Settlement Amount shall be paid by checks made payable to the order of "Smith Bundy Bybee & Barnett, PC" as the attorneys for the POA pursuant to the terms of the Memorandum of

Settlement Payment(s) shall be held in trust until this Agreement and the Stipulation of Dismissal have been executed by all parties.

(b.) Weather Shield's, Muhler's, A.C.'s, and Coastal Caulking's shares of the Settlement Amount shall be paid by checks made payable to the order of "Smith Bundy Bybee & Barnett, PC" as the attorneys for the POA and shall be held in trust until this Agreement and the Stipulation of Dismissal have been executed by all parties, with the exception that Four Hundred Thirty Seven Thousand, Five Hundred and No/100ths Dollars (\$437,500.00) of Weather Shield's contribution shall be secured by suitable Letters of Credit delivered to the offices of Smith Bundy Bybee & Barnett, PC, and made payable on the following schedule:

- the first payment in the amount of Eighty Seven Thousand, Five Hundred and No/100ths Dollars (\$87,500.00) will be due on October 26, 2013;
- the second payment in the amount of Eighty Seven Thousand, Five Hundred and No/100ths Dollars (\$87,500.00) will be due on April 26, 2014;
- the third payment in the amount of Eighty Seven Thousand, Five Hundred and No/100ths Dollars (\$87,500.00) will be due on October 26, 2014;
- the fourth payment in the amount of Eighty Seven Thousand, Five Hundred and No/100ths Dollars (\$87,500.00) will be due on April 26, 2015; and
- the fifth and final payment in the amount of Eighty Seven Thousand, Five Hundred and No/100ths Dollars (\$87,500.00) will be due on October 26, 2015.

The contributions (including the amount secured by the suitable Letters of Credit) amongst Weather Shield, Muhler, A.C., and Coastal Caulking, or on their behalf, total Four Million, Two Thousand Five Hundred and Fifty Two and No/100 Dollars (\$4,002,552.00). The Holder of the Letters of Credit agrees to execute and return the Release within two (2) business days of receipt of the funds under each Letter of Credit. If any payment under the Letters of Credit by Weather Shield, as outlined above, is received by the POA's Counsel more than two (2) business days late, the entire outstanding amount of the Letter of Credit is subject to being called.

4. Release by and Among the Other Parties. DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer for and in consideration of each party's contribution to the Settlement Amount herein (and settlement payments by or on behalf of each party to other parties in the Lawsuits) and this Release, the receipt and sufficiency of which is hereby acknowledged, do for themselves, their successors, heirs, purchasers, assigns, officers, directors, partners, shareholders, owners, representatives, servants, agents, subcontractors, employees, attorneys, sureties, insurers, affiliates, parent corporations, and subsidiary corporations, hereby remise, release, acquit, and forever discharge one another, their successors, heirs, purchasers, assigns, officers, directors, partners, shareholders, owners, representatives, servants, agents, subcontractors, employees, attorneys, sureties, insurers, affiliates, parent corporations, and subsidiary corporations, of and from any and all past, present and future claims, demands, debts, rights, actions, express or implied warranties, damages (including direct, indirect, incidental, special, consequential, statutory, punitive and exemplary damages), costs, causes of action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue, and all known and unknown,

Jacob

discovered and undiscovered, foreseen and unforeseen losses and damages resulting from, or which in any way may be alleged to have resulted from, any and all matters or things done, omitted or suffered to be done by DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio or Behringer in connection with the Project, its components or the Regime. The parties hereto specifically release each other from claims for contribution and indemnity in addition to all claims that were or could have been brought as claims, counterclaims, cross-claims or third party claims against one another in the Lawsuits, but specifically retain and preserve such claims as may exist against others who are not party to this Agreement.

5. Termination of Existing Warranties. The POA also, without limiting the generality of the release contained herein, for itself, its successors, heirs, purchasers and assigns, specifically releases CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer from any and all express warranties and from all implied warranties related to the Project or any of its components which may be imposed under South Carolina law.

6. Dismissal of Lawsuits. The parties to the Agreement also agree to execute, or cause their counsel to execute, such stipulations, orders or other documents required to dismiss with prejudice all claims and causes of action asserted by the POA against DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer in the Lawsuits, and asserted by DIRD, CHAC, CH-NY, Weather Shield, Muhler, A.C., Coastal Caulking, Rumplick, D'Orazio, and Behringer against each other in the Lawsuits, provided that such dismissal shall not dismiss certain claims by the POA against DIRD and CHAC, as specifically reserved in the Memorandum of Settlement. The reservation of these claims by and between the POA, DIRD, and CHAC shall not in any way affect the full, total, and complete release of any other claim or any other party and does not create any new claim or right against any released party. Each party shall be responsible for paying its own respective attorney's fees and costs.

7. No Admission of Liability. The parties to the Agreement agree and acknowledge that this settlement is a compromise of doubtful and disputed claims, and that neither the recitals, terms, conditions or other statements in the Settlement Agreement nor the payment of sums herein mentioned shall be construed as an admission of liability on the part of the persons, firms, and corporations who are hereby released for any allegation or claim, by whom liability is expressly denied. This Agreement shall not be admissible in the Lawsuits or in any other action, suit or legal proceeding as evidence of any liability, culpability or fault of or on the part of any party to this Agreement.

8. Hold Harmless. The POA agrees to indemnify and hold harmless the persons and entities hereby released against any loss, costs, damages, liens, expenses (including attorneys' fees), by reason of any third person or entity claiming to have any lien and/or subrogation interest for all services provided to the POA in conjunction with the Lawsuits or claiming to be an assignee or subrogee of any of the claims or causes of action mentioned above.

9. **Succession.** This Agreement shall be binding upon and shall enure to the benefit of the parties and their respective heirs, representatives, administrators, successors, receivers, trustees, purchasers, and assigns.

10. **Understanding of Agreement.** The parties have read all of the terms of this Agreement. They had an adequate opportunity to review this Agreement with their attorneys and have their attorneys explain the terms of this Agreement to them. The parties understand and agree with everything stated in this Agreement. The parties have signed this Agreement freely and voluntarily, without any duress or coercion, and upon the advice of their attorneys.

11. **Entire Agreement (Merger and Integration Clause).** This Agreement constitutes and merges the entire understanding of the parties and supersedes any and all prior and contemporaneous oral and written negotiations between the parties. There are no representations, warranties, or obligations between the parties other than those expressly set forth herein. The parties acknowledge that they have read this Agreement and that it is a complete, written statement of the terms and conditions of the settlement. The parties agree that all of the terms of this Agreement are contractual and not a mere recital.

12. **No Reliance on Other Party (Non-Reliance).** The parties have entered into this Agreement based solely upon their own independent investigation, knowledge, and judgment of their particular situation, the extent of their damages and injuries, and the facts and circumstances related to their dealings and involvement with the other parties. The parties agree that any information, facts, statements or representations they received from any other party (including any persons or entities representing, or claiming to represent, a party) that were relevant to their decision to enter into this Agreement could have been and should have been written into this Agreement, and in signing this Agreement the parties have not relied on, and have not been influenced by, any oral or written information, facts, statements, representations or anything else that has been said or supplied to them by or on behalf of a party that are not expressly stated in this Agreement.

13. **Adequate Consideration.** The parties agree that they have received, or will receive pursuant to the payment terms herein, valuable and satisfactory consideration in exchange for entering into this Agreement, including without limitation payments made or received and the dismissal and release of the claims and disputes existing between the parties, and the parties further agree that this settlement shall be a complete bar to any subsequent action to set aside or vacate this Agreement because of a mistaken fact or otherwise.

14. **Governing Law and Interpretation of this Agreement.** This Agreement shall be deemed to have been prepared, signed, and delivered exclusively in the State of South Carolina, and this Agreement shall be governed by, interpreted, performed, and enforced in accordance with the laws of the State of South Carolina. No provision of this Agreement shall be interpreted for or against any party by virtue of the fact that the provision was drafted by that party or that party's attorney.

15. **Authority to Sign this Agreement.** The persons signing this Agreement on behalf of a corporate or legal entity (including any LLC or partnership) represent and warrant that they

Jac J

have full authority to execute this Agreement and make it fully binding upon the party for whom they have signed.

16. Fax and Email Signatures and Execution in Counterparts. This Agreement can be executed in counterparts by all parties signing this Agreement and, when taken together, the signed counterparts shall constitute one complete and fully executed and binding document. Any party may rely on a copy of the signed original received from another party by facsimile or email and may consider the copy as a legal, binding, and enforceable document.

17. Effective Date of this Agreement. This Agreement shall be deemed effective as of the date of the last signature of the parties below.

18. Proper Party to Receive Settlement Funds. The POA further represents and warrants that it has not heretofore assigned to any other person or entity all or any portion of any claim whatsoever which it may have or may have had or may claim in the future to have against the persons and entities hereby released, and represents and warrants that it is the sole proper party to receive the Settlement Proceeds discussed herein.

19. Confidentiality Provision. The parties to this Agreement and their respective counsel hereby agree and stipulate that the settlement sum and any contributions by any party shall be deemed confidential and not published, released or disseminated to any other person or entity except to governmental agencies for tax purposes, unless by written agreement of the parties or by court order or as otherwise required by law. This provision in no way affects the affirmative duty of the POA to disclose this litigation and the subject matter to prospective purchasers of the Property pursuant to South Carolina law and the POA may use all engineering reports generated in the Lawsuits for such purposes, if applicable.

20. Severability. Whenever possible, each provision of this Agreement shall be interpreted so as to be valid under existing law. A finding of invalidity as to any provision of this Agreement or any portion thereof shall void only that provision or portion and no other, and this Agreement shall be interpreted as if it did not contain the invalid provision or portion.

IN WITNESS WHEREOF, each party hereunto sets its hand and seal as follows:

^a This Agreement incorporates by reference the terms of the Memorandum of Settlement executed by counsel for the POA, DIRD, CHAC, CH-NY, D'Orazio, Rumplick, Behringer, and all individual Plaintiffs in civil action 2009-CP-08-3916 (hereinafter "Memorandum of Settlement") as if restated verbatim herein. The terms of the Memorandum of Settlement shall be binding on the POA, DIRD, CHAC, CH-NY, D'Orazio, Rumplick, Behringer, and all individual Plaintiffs in civil action 2009-CP-08-3916 only. Each and every reference to this "Agreement" shall include the terms of the Memorandum of Settlement.

^b Payment shall be made pursuant to the terms of the Memorandum of Settlement executed by counsel for the POA, DIRD, CHAC, CH-NY, D'Orazio, Rumplick, and Behringer. Pursuant to the terms of the Memorandum of Settlement, it is expressly understood that in consideration of the payment to the POA, the POA and all individual Plaintiffs in civil action 2009-CP-08-3916 will provide a complete release for CH-NY, D'Orazio, Rumplick, and Behringer. Such release shall be executed separately but is incorporated by reference herein.

^c This Agreement incorporates by reference the terms of the Memorandum of Settlement as if restated verbatim herein. The terms of the Memorandum of Settlement shall be binding on the POA, DIRD, CHAC, CH-NY, D'Orazio, Rumplick, and Behringer only.

MUTUAL AGREEMENT AND SETTLEMENT RELEASE
The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6/18/13

The Oaks at Rivers Edge Property Owners
Association, Inc.

By: Joseph A. Chenev
Its: PRESIDENT

Samuel Boil
(Witness signature)

Samuel Rock
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 10-28-13

Daniel Island Riverside Developers, LLC

By: [Signature]

Its: [Signature]

[Signature]
(Witness signature)

Carole S. Baker
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE
The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 10-28-13

Carriage Hill Associates of Charleston, LLC

By: [Signature]

Its: member

[Signature]
(Witness signature)

Carole E. Parker
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE
The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6-28-13

Carriage Hill Associates, Inc.

By: [Signature]

Its: Power

[Signature]
(Witness signature)

Carole S. Boher
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6/14/13

Weather Shield Mfg., Inc.

By: 

Its: _____


(Witness signature)

Brandon Brunner
(Witness name)

-CONFIDENTIAL-

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916.

Date: 6/17/2013

The Muhler Company, Inc.

By: [Signature]

Its: President

Cynthia R. Curtis
(Witness signature)

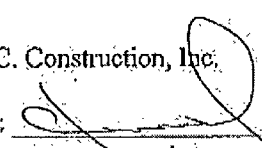
Cynthia R. Curtis
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6/27/13

A.C. Construction, Inc.

By: 

Its: President


(Witness signature)

SUE MILLINAX
(Witness name)

-CONFIDENTIAL-

MUTUAL AGREEMENT AND SETTLEMENT RELEASE
The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: JUNE 26, 2013

Coastal Caulking, Inc:

By: [Signature]

Its: CWRP

[Signature]
(Witness signature)

DAVID COBB
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 7/11/13

Richard Behringet

By: EP. Canyon

Elizabeth J. Fulton
(Witness signature)

Elizabeth Fulton
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE
The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6-24-13

Gerald Rumplink

By: Gerald Rumplink

[Handwritten Signature]
(Witness signature)

Marian Middleton
(Witness name)

MUTUAL AGREEMENT AND SETTLEMENT RELEASE

The Oaks at Rivers Edge POA v. Daniel Island Riverside Developers, et al
Berkeley County Case Nos.: 2009-CP-08-1068, 2009-CP-08-1413,
2008-CP-08-2714, 2008-CP-08-3916

Date: 6/25/13

Edward J. D'Orazio

By: [Signature]

[Signature]
(Witness signature)

Tracy Siciliano
(Witness name)

RECEIVED

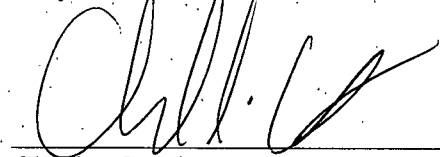
JUL 07 2015

Certificate of Counsel

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 20, 2015



Charles S. Altman
Meredith L. Coker
Melissa A. Fried
ALTMAN & COKER, LLC
575 King Street, Suite A
Charleston, SC 29403
T: (843) 853-9907
F: (843) 853-9838

And

Roy P. Maybank
Amanda Maybank
MAYBANK LAW FIRM, LLC
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
T: (843) 766-8101
F: (843) 766-8102

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

JUL 07 2015

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



Charles S. Altman
Meredith L. Coker
Melissa A. Fried
ALTMAN & COKER, LLC
575 King Street, Suite A
Charleston, SC 29403
T: (843) 853-9907
F: (843) 853-9838

Roy P. Maybank
Amanda Maybank
MAYBANK LAW FIRM, LLC
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
T: (843) 766-8101
F: (843) 766-8102

Attorneys for Appellants