

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049
Appellate Case No. 2016-000185

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., (from December 16, 2008 to present),.....Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick Tarragon Apartments, LLC, a South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development, Compliance & Inspectors, Inc., H2L Consulting Engineers, Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 6, 2006 to December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., d/b/a Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply, Inc., as successor in interest to Manga Wall Inc., All South Vinyl Products, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mikey Mason d/b/a Mason Contractors KMAC of the Carolinas, Inc., NEO Corporation and Vava Guzman Construction Company, Inc.,.....Defendants,

And Mt. Hawley Insurance Company.....is the Appellant/Proposed Intervenor.

SUPPLEMENTAL RECORD ON APPEAL
(Pages 1 – 21)

INDEX

**Official Record Page No. at
Bottom Center of Page**

1. Final Order Approving Class Action Settlement.....1

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-10-0049

MARK F. TESENIAR and NAN M. TESENIAR, on behalf of
themselves and others similarly situated, and TWELVE OAKS
AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from
December 16, 2008 to present)

PROFESSIONAL PLASTERING & STUCCO, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2151

Judge Code

07/30/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

CLERK OF COURT

Court Reporter: Denise Lauder

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

**FINAL ORDER APPROVING
CLASS ACTION SETTLEMENT**

Plaintiffs,)

vs.)

PROFESSIONAL PLASTERING &)
STUCCO, INC.,)

Defendant.)

FILED
2015 AUG -4 AM 10:13
JULIE J. ARMSTRONG
CLERK OF COURT

This matter was before the Court upon Plaintiffs' motion for a Fairness Hearing, pursuant to Rule 23 SCRCP, to finally approve¹ the settlement concerning the above-captioned matter. A Fairness Hearing was conducted on July 29, 2015 beginning at 9:30 a.m. at the Charleston County Judicial Center located at 100 Broad Street, Charleston, South Carolina. Counsel for the Plaintiffs and Professional Plastering & Stucco, Inc. were present.

The above-captioned matter involves claims for construction deficiencies and latent defects in common elements and limited common elements combined within the Twelve Oaks at Fenwick Property Owners Association (hereinafter the "POA"). At the time suit was originally filed, the governing board of directors of the POA was still controlled by the developers. As such, a class of condominium unit owners was certified by this Court on or about October 16, 2008. Ultimately, the developers turned over control of the POA to the homeowners and the POA was added as a party-plaintiff in this proceeding. As such, the POA, in essence, took over the claims concerning damage and repairs to common elements

¹ Preliminary approval of the settlement was granted by Order of this Court dated June 25, 2015.

SUPP POA 003 7/30/15

as defined by the governing documents of the POA, namely the Master Deed. The suit also involves class action allegations asserting claims on behalf of the individual condominium unit owners at Twelve Oaks for loss of use, interior damage and the like.

This matter was tried to verdict May 9 through May 13, 2011. Ultimately the Court of Appeals overturned the verdict and the South Carolina Supreme Court denied a petition for certiorari and this matter was remanded back to this Court for a new trial. As a result of lengthy, arms-length negotiations, Plaintiffs have reached a final settlement with Professional Plastering & Stucco, Inc. pursuant to a payment by National Fire and Marine Insurance Company on behalf of Professional Plastering & Stucco, Inc. in the amount of Ninety-Two Thousand Five Hundred and No/100 Dollars (\$92,500.00). This payment by National Fire is in addition to the \$1,300,000.00 settlement with other insurance carriers of Professional Plastering & Stucco, Inc. that this court approved on September 13, 2013, which settlement also included an assignment to the Plaintiffs of Professional Plastering & Stucco, Inc.'s policy rights and claims against National Fire. Separately, the Plaintiff POA has negotiated a settlement with Professional Plastering & Stucco, Inc.'s alleged joint venture partner, Keenan Hopkins Schmidt & Stowell Contractors, Inc. in the amount of \$160,000.00, bringing the total gross settlement concerning the Twelve Oaks project to \$9,577,500.00.

The prior gross settlements allotted to the Class total \$932,500.00. Importantly, each and every member of the Class is also a member of the POA and owns an undivided interest in the common elements of the POA as tenants-in-common. Given the total of the prior payments to the Class coupled with the large expense to the POA to repair the damage to the common elements of the project, the POA and the Class Representatives have advised the Court that the POA and the Class Representatives are in agreement to allot the entire \$92,500.00 of this settlement to the POA for repairs to the common elements of the POA. From the evidence presented and the record before the Court, I find that allotting the

settlement proceeds to the POA to repair the common elements of the buildings in which the Class members all own an undivided interest is fair and reasonable.

This settlement ends all of Plaintiffs' claims, including assigned claims, against Professional Plastering & Stucco, Inc.

Based on the record before the Court and the testimony presented, the Court makes the following findings of fact and conclusions of law:

NOW, THEREFORE, good cause appearing, the Court hereby finds the following:

1. The Court has received an Affidavit from J. Ashley Garrett, paralegal to Plaintiffs' attorney, Jesse A. Kirchner, Esq., dated July 27, 2015 affirming that the Notice was sent to each class member in accordance with the Order of Preliminary Approval entered by this Court on June 25, 2015. I, therefore, find that proper and reasonable notice of this Final Hearing has been sent to each class member. The Affidavit further affirms that J. Ashley Garrett has examined the records of the Clerk of Court in the above-captioned matter and that no objections to the settlement by any class member have been filed or received by Class counsel.

2. The Notice indicated to all Class Members that the settlement funds would be allotted to the POA for repairs to the buildings and common elements within Twelve Oaks and no objection was received from or filed by any Class Member.

3. This lawsuit was commenced in January of 2008. This litigation involves claims for design and construction deficiencies and latent defects in an apartment complex which was later converted to condominiums for sale to the public. The litigation has been extremely complex and difficult. The prosecution of this case thus far has taken more than seven years, including a jury trial in May of 2011, and has resulted in many hours being expended by the legal teams for both sides. Class Counsel engaged experts to determine the nature and extent of the deficiencies as well as experts to determine the cost of repairing the

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deficiencies. Extensive written discovery was been conducted and more than thirty-five thousand documents have been exchanged among the parties. Many depositions were taken, with many occurring outside of South Carolina, involving much travel, time and expense. Additionally, the prosecution of this case has resulted in multiple other cases being litigated in Federal Court for the District of South Carolina, a judgment domestication and collection action in the State of Florida, as well as supplemental proceedings before the Charleston County Master-In-Equity. This settlement brings the total recovery amount to \$9,577,500.00) by way of a gross settlement for the Twelve Oaks project. I find the results obtained in this settlement are beneficial to the Class.

4. The Court also finds that proper notice was given of the hearing to each of the known class members and that no objection has been made by any class member and that no objection whatsoever was made pursuant to the instructions for objectors set forth in this Court's Order of June 25, 2015.

5. From the evidence before the Court, the testimony presented, and the arguments of counsel, the Court finds that all the criteria of Rule 23 SCRPC have been met and that this settlement should be approved.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

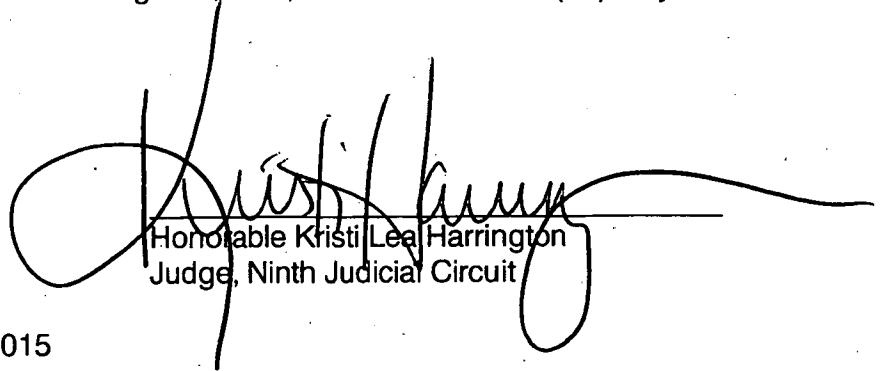
- (a) The allocation of the settlement funds to the POA is reasonable and proper under the circumstances and is hereby approved;
- (b) The Class Representatives are authorized to execute the agreed upon full, final and complete release agreement (Exhibit A) on behalf of the Class and an order or stipulation ending this case and all claims with prejudice as to Professional Plastering & Stucco, Inc.;
- (c) All settlement funds approved herein are due to Class Counsel no later than thirty (30) days from the date of receipt by National Fire & Marine Insurance

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Company of the completely executed release agreement reflecting a complete, immediate, final and unconditional resolution of all claims.

- (d) Donnie King, shall sign the Full, Final and Complete Release Agreement on behalf of Professional Plastering & Stucco, Inc. within fifteen (15) days of the date of this Order.

IT IS SO ORDERED.



Honorable Kristi Lea Harrington
Judge, Ninth Judicial Circuit

This 30th day of July, 2015
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

MARK F. TESENIAR AND) CIVIL ACTION NO.: 2:11-cv-01452-CWH
NAN M. TESENIAR, on behalf of)
themselves and others similarly situated,)
and TWELVE OAKS AT FENWICK)
PROPERTY OWNERS ASSOCIATION,)
INC., (from December 16, 2008, to present),)
Plaintiffs,)

vs.)

NATIONAL FIRE & MARINE)
INSURANCE COMPANY, ADMIRAL)
INSURANCE COMPANY, ESSEX)
INSURANCE COMPANY, AUDUBON)
INDEMNITY COMPANY AND)
PROFESSIONAL PLASTERING &)
STUCCO, INC.,)

Defendants.)

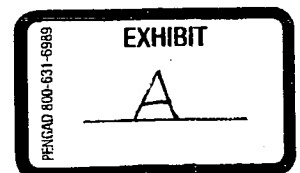
MARK F. TESENIAR AND) CIVIL ACTION NO.: 2:11-cv-02371-CWH
NAN M. TESENIAR, on behalf of)
themselves and others similarly situated,)
and TWELVE OAKS AT FENWICK)
PROPERTY OWNERS ASSOCIATION,)
INC., (from December 16, 2008, to present),)

Plaintiffs,)

vs.)

ADMIRAL INSURANCE COMPANY,)

Defendant.)



FULL, FINAL AND COMPLETE RELEASE AGREEMENT

THIS FULL, FINAL AND COMPLETE RELEASE AGREEMENT (the "Release"), is made this _____ day of _____, 20____, by and between Plaintiffs Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves, others similarly situated, and as assignees, and Twelve Oaks at Fenwick Property Owners Association, Inc., a/k/a Twelve Oaks at Fenwick Plantation Property Owners Association, Inc., for itself and as assignee (together, the "Teseniar and Twelve Oaks Plaintiffs") and Professional Plastering & Stucco, Inc., of Sanford, FL ("PP&S") and National Fire & Marine Insurance Company. (hereinafter, "National Fire").

WHEREAS, the Teseniars and Twelve Oaks Plaintiffs include persons and entities who are owners of condominium units that are part of the Twelve Oaks at Fenwick Plantation Property Owners Regime and includes the non-profit property owners association corporation that is organized and existing pursuant to the laws of the State of South Carolina.

WHEREAS, National Fire is an insurance company organized and existing pursuant to the laws of the State of Nebraska.

WHEREAS, National Fire issued an insurance policy with commercial general liability coverage to PP&S effective for the period May 30, 2003 to May 30, 2004.

WHEREAS, the Teseniars and Twelve Oak Plaintiffs instituted Civil Action No. 2008-CP-10-0049 in the Court of Common Pleas, Charleston County, SC, as a class action pursuant to South Carolina Rule of Civil Procedure 23, against numerous parties, including PP&S, involved in the development, design, construction, sale and conversion (into condominiums) of the buildings that comprise the Twelve Oaks at Fenwick Plantation Property Owners Regime. (hereinafter, "Class Action").

WHEREAS, the Teseniars and Twelve Oaks Plaintiffs settled with all Defendants in the Class Action except for PP&S.

WHEREAS the Teseniars and Twelve Oaks Plaintiffs and PP&S tried the Class Action before a jury during the week of May 9, 2011. A judgment based on a jury verdict was entered against PP&S in the amount of \$7,723,225.00. PP&S appealed the verdict and judgment to the South Carolina Court of Appeals.

WHEREAS, on May 16, 2011, the Teseniars and Twelve Oak Plaintiffs instituted Civil Action No. 2:11-cv-01452-CWH seeking declaratory relief, as to the verdict and judgment entered against PP&S, or as to insurance coverage for the claims and damages alleged against PP&S in the

Class Action, against National Fire, Essex Insurance Company ("Essex"), Admiral Insurance Company ("Admiral") and, later, Audubon Insurance Company. (the "DJ Action").¹

WHEREAS, in May 2013, the Teseniar and Twelve Oaks Plaintiffs, Essex and PP&S executed a document styled Settlement Agreement, to resolve the Class Action and DJ Action, which document included, among other things, an assignment of claims, rights and remedies by Essex and Admiral against National Fire in favor of the Teseniar and Twelve Oaks Plaintiffs. (the "Settlement Agreement").

WHEREAS, in June 2013, the Teseniar and Twelve Oaks Plaintiffs and PP&S executed a document styled Assignment of Insurance Claims and Covenant Not to Execute in settlement of the class Action and DJ Action. (the "Assignment of Insurance Claims").

WHEREAS, PP&S commenced a civil action against National Fire, Admiral and Essex in the Eighteenth Judicial Circuit, for the State of Florida, Seminole County, Case No. 12-CA-4627-16-G. The civil action was removed to the United States District Court, Middle District of Florida and assigned Civil Action No. 6:12-cv-1613-PCF-DAB. (the "Florida Action"). The United States District Court judge dismissed the Florida Action without prejudice as to National Fire on August 8, 2013. By virtue of the Assignment of Insurance Claims and Settlement Agreement, the Teseniar and Twelve Oaks Plaintiffs allege to have standing, to the exclusion of PP&S, Admiral and Essex, to prosecute any rights, claims and remedies of PP&S, or any other party to Civil Action No. 6:12-cv-1613-PCF-DAB, against National Fire.

WHEREAS, the Teseniar and Twelve Oaks Plaintiffs moved to amend their Complaint in the DJ Action to prosecute assignments of claims, rights and remedies given by PP&S, Essex and Admiral to the Teseniar and Twelve Oaks Plaintiffs in the Assignment of Insurance Claims and Settlement Agreement. As of the mediation between parties herein held on March 18, 2015, the motion to amend was under advisement by the presiding judge in Civil Action No.: 2:11-cv-01452-CWH.

WHEREAS, the South Carolina Court of Appeals issued Opinion No. 5188 filed on January 8, 2014, reversing the verdict and judgment against PP&S and remanding the Class Action for a new trial. The Teseniar and Twelve Oaks Plaintiffs sought a writ of certiorari to the South Carolina Supreme Court, which denied the writ of certiorari by order dated August 21, 2014. The South Carolina Court of Appeals issued a Remittitur on September 2, 2014.

WHEREAS, the Teseniar and Twelve Oaks Plaintiffs are the assignee of claims, rights and remedies of Summit Contractors, Inc. ("Summit"), against PP&S, in the amount of \$5,000,000.00, from a settlement entered into between the Teseniar and Twelve Oaks Plaintiffs and Summit in the Class Action; and the Teseniar and Twelve Oaks Plaintiffs previously made a demand for arbitration of the claims against PP&S. ("Summit Assignment").

¹ The DJ Action was commenced in the Court of Common Pleas and was removed to the United States District Court for the District of South Carolina by National Fire, Essex and Admiral.

WHEREAS, the parties to the Release desire to fully, finally and forever compromise, settle and end all past, present and future matters between and among them involving, in any way, the Twelve Oaks at Fenwick Plantation community and/or buildings, the Class Action, the DJ Action, the Assignment of Insurance Claims, the Settlement Agreement the Summit Assignment and the Florida Action.

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS THAT:

The Teseniar and Twelve Oaks Plaintiffs and PP&S, for and in consideration of the sum of \$92,500.00, plus other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do for themselves or itself, those similarly situated, as representatives, as assignees, for any successor-in-interest, purchaser, assign, director, principal, officer, shareholder, member, employee, partner, agent, insurer, surety and servant, hereby remise, release, acquit, and forever discharge National Fire and any purchaser, successor-in-interest, assign, director, principal, officer, shareholder, member, employee, partner, agent, insurer, surety, servant and attorney of and from the following, arising out of or relating in any way to the Twelve Oaks at Fenwick Plantation community and/or buildings, the Class Action, DJ Action, the Summit Assignment, the Assignment of Insurance Claims, the Settlement Agreement and the Florida Action:

- a) any past, present or future liability, claims or causes of action, whether sought in the Class Action, the DJ Action, the Summit Assignment, the Assignment of Insurance Claims, the Settlement Agreement or the Florida Action, or not, including, but not limited to, claims for compensation or reimbursement for the duty to defend or indemnify, claims for additional insured policy benefits, contractual liability claims, contribution, subrogation, breach of contract, bad faith denial of coverage or processing of claims, negligence, breach of duty, public policy and reasonable expectations, contractual or equitable indemnity, breach of warranty, failure to settle, fraud or constructive fraud, negligent misrepresentation, promissory estoppel, equitable estoppel, declaratory relief or judgment; and
- b) any past, present or future legal or equitable relief, remedies and/or damages, whether sought in the Class Action, the DJ Action, the Summit Assignment, the Assignment of Insurance Claims, the Settlement Agreement or the Florida Action, or not, whether to person, property or rights, including, but not limited to, defense attorneys fees or costs, indemnity, property damage, personal injury, bodily injury, compensatory, injunction, restitution, prospective, actual, direct, special, indirect, consequential, continuing, incidental, economic loss, loss of use, diminution in value or depreciation, statutory, exemplary, punitive or treble; and
- c) any past, present and/or future costs, expenses, and fees, including, but not limited to, attorneys, consultants and/or experts.

The release and discharge in favor of National Fire includes any rights or remedies whether based in law or equity, statutory, regulatory or common law, state or federal law, tort or contract, express or implied by law; and, including, but not limited to, whether known or unknown, discovered or undiscovered, in existence or not in existence, envisioned or not envisioned, liquidated or not liquidated, contingent or not contingent, disputed or undisputed, fixed or unfixed, accrued or not accrued, mature or not mature, ripe or unripe, foreseen or unforeseen, temporary or permanent, manifested or not manifested, latent or patent, related in any way whatsoever to the Twelve Oaks at Fenwick Plantation community and/or buildings, the Class Action, the DJ Action, the Summit Assignment, the Assignment of Insurance Claims, the Settlement Agreement and the Florida Action.

IT IS THE EXPRESS INTENT OF THE TESENIARS AND TWELVE OAK PLAINTIFFS AND PP&S TO FULLY, COMPLETELY AND FOREVER RELEASE NATIONAL FIRE FROM ANY AND ALL MATTERS EXISTING IN THE PAST, NOW EXISTING, OR WHICH MAY HEREAFTER ACCRUE OR ARISE, HAVING ANYTHING TO DO, IN ANY WAY WHATSOEVER, WITH THE TWELVE OAKS AT FENWICK PLANTATION COMMUNITY OR BUILDINGS, THE CLASS ACTION, THE DJ ACTION, THE SUMMIT ASSIGNMENT, THE ASSIGNMENT OF INSURANCE CLAIMS, THE SETTLEMENT AGREEMENT AND THE FLORIDA ACTION.

The Teseniars and Twelve Oaks Plaintiffs, for and in consideration of the sum of \$92,500.00, plus other valuable consideration, to be paid by National Fire herein on behalf of PP&S, the receipt and sufficiency of which is hereby acknowledged, do for themselves, those similarly situated, as representatives, as assignees and their successors-in-interest and title, purchasers and assigns, hereby remise, release, acquit, and forever discharge PP&S and any purchaser, successor-interest and title, assign, director, principal, officer, shareholder, manager, member, employee, partner, agent, insurer, surety, servant and attorney of and from, arising out of or relating in any way to Twelve Oaks at Fenwick Plantation community and/or buildings, the Class Action, DJ Action and/or Summit Assignment:

a) any past, present and/or future liability, claims or causes of action, or judgment, whether sought in the Class Action, the DJ Action, the Summit Assignment, or not, including, but not limited to, for negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, negligence per se, negligent misrepresentation, breach of contract, breach of warranty of habitability, breach of warranty against latent defects, breach of warranty of workmanlike service, breach of warranty for fitness of a particular purpose and breach of warranty of merchantability and serviceability, breach of express warranty by general contractor, breach of

fiduciary duty, unfair trade practices, contractual or equitable indemnity and/or contribution; and

b) any past, present and/or future legal or equitable relief, remedies and/or damages whatsoever, whether sought in the Class Action, the DJ Action, the Summit Assignment, or not, whether to person, property or individual or group rights, including, but not limited to, property, bodily injury, personal injury, compensatory, injunction, restitution, prospective, actual, direct, special, indirect, consequential, continuing, incidental, economic loss, loss of use, cost of repair, diminution in value or depreciation, statutory, exemplary, punitive or treble; and

c) any past, present and/or future costs, expenses, and fees, including, but not limited to, those of attorneys, consultants and/or experts;

The release and discharge in favor of PP&S includes any rights or remedies whether based in law or equity, statutory, regulatory or common law, state or federal law, tort or contract, express or implied by law; and, including, but not limited to, whether known or unknown, discovered or undiscovered, in existence or not in existence, envisioned or not envisioned, liquidated or not liquidated, contingent or not contingent, disputed or undisputed, fixed or unfixed, accrued or not accrued, mature or not mature, ripe or unripe, foreseen or unforeseen, temporary or permanent, manifested or not manifested, latent or patent, related in any way whatsoever to the Twelve Oaks at Fenwick Plantation community and/or buildings, the Class Action, the DJ Action and/or the Summit Assignment.

IT IS THE EXPRESS INTENT OF THE TESENIARS AND TWELVE OAK PLAINTIFFS TO FULLY, COMPLETELY AND FOREVER RELEASE PP&S FROM ANY AND ALL MATTERS EXISTING IN THE PAST, NOW EXISTING, OR WHICH MAY HEREAFTER ACCRUE OR ARISE, HAVING ANYTHING TO DO, IN ANY WAY WHATSOEVER, WITH TWELVE OAKS AT FENWICK PLANTATION COMMUNITY OR BUILDINGS, THE CLASS ACTION, THE DJ ACTION AND THE SUMMIT ASSIGNMENT.

1. For the consideration set forth above, the Teseniars and Twelve Oaks Plaintiffs agree to cause their counsel to file a Notice of Proposed Settlement of Class Action; participate in a fairness hearing for the class settlement herein; promote the reasonableness and fairness of the settlement herein; and obtain a final and un-appealed Order Approving Class Action Settlement, pursuant to South Carolina Rule of Civil Procedure 23, that dismisses the Class Action with prejudice; and that is satisfactory in its terms and conditions to National Fire.

2. For the consideration set forth above, the Teseniars and Twelve Oaks Plaintiffs and National Fire will cause their counsel to execute any required documents to dismiss the DJ Action with prejudice with all attorneys' fees and costs incurred by each respective party to be

borne by each respective party only and not the other party.

3. The Parties to the Release hereby acknowledge that the terms of Release herein are a compromise of disputed matters and that the consideration herein is not to be construed as an admission of any liability and/or damages on the part of National Fire or PP&S, but is entered into in order to avoid further litigation.

4. The Parties to the Release hereby acknowledge that this compromise and settlement is and shall be a complete bar to any subsequent action or proceeding to set aside or vacate the Release because of a mistake in fact or otherwise.

5. The Teseniar and Twelve Oaks Plaintiffs acknowledge and represent that they are the real party-in-interest, as class representatives, pursuant to South Carolina Rule of Civil Procedure 23 and as the property owners association corporation, to assert claims, commence and prosecute the Class Action, the DJ Action, the Summit Assignment, the Assignment of Insurance Claims, the Settlement Agreement and the Florida Action, to receive the consideration herein, on behalf of the unit owners and members of the Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. and the Twelve Oaks at Fenwick Plantation Horizontal Property Regime. Further, the Teseniar and Twelve Oaks Plaintiffs acknowledge and represent that no other person or entity has or claims an interest herein in any way whatsoever. The Teseniar and Twelve Oaks Plaintiffs have not assigned, secured, hypothecated or transferred their interests in any way or manner.

6. The Teseniar and Twelve Oaks Plaintiffs represent and warrant that the Teseniar and Twelve Oaks Plaintiffs are not the owners, assignees or real-party-in-interest of any rights, claims or remedies, arising out of or related in any way to the Twelve Oaks at Fenwick Plantation community and/or buildings, not identified in the Release, that may be brought or prosecuted against National Fire or PP&S. To the extent there are any rights, claims or remedies, known or unknown, such rights, claims or remedies are hereby null and void as to National Fire and PP&S or released and discharged as to National Fire and PP&S to the same extent as written above in the discharge and release paragraphs that are in favor of National Fire and PP&S.

7. The Teseniar and Twelve Oaks Plaintiffs represent and warrant that the Teseniar and Twelve Oaks Plaintiffs are not the owners, assignees or real-party-in-interest of any rights, claims or remedies, arising out of or related in any way to Civil Action No.: 2:11-cv-02371-CWH or Civil Action No.: 2:12-cv-03104-CWH that may be brought or prosecuted against National Fire or PP&S. To the extent there are any rights, claims or remedies, known or unknown, such rights, claims or remedies are hereby null and void as to National Fire and PP&S or released and discharged as to National Fire and PP&S to the same extent as written above in the discharge and release paragraphs that are in favor of National Fire and PP&S.

8. The undersigned parties of the Release declare and represent that they have read the Release and acknowledge that they have obtained the advice of their respective counsel and

that no promise, inducement, or agreement not herein expressed has been made to them and that the Release contains the entire agreement between the parties hereto and that the terms of the Release are contractual and not a mere recital.

9. The Release shall be binding on all the parties' successors in interest, heirs, purchasers and assignees.

10. The Release shall be construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the undersigned have executed this document on the respective dates noted.

Mark F. Teseniar, individually and on behalf of
himself and others similarly situated

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I _____, Notary Public for the State of _____ do
hereby certify that _____, as _____ of
_____, personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2015.

Signature of Notary
My Commission Expires _____

Nan M. Teseniar, individually and on behalf of
herself and others similarly situated

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I _____, Notary Public for the State of _____ do
hereby certify that _____, as _____ of
_____, personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2015.

Signature of Notary
My Commission Expires _____

Twelve Oaks at Fenwick Plantation Property
Owners Association, Inc.

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I _____, Notary Public for the State of _____ do
hereby certify that _____, as _____ of
_____, personally appeared before me this day and acknowledged
the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2015.

Signature of Notary
My Commission Expires _____

Professional Plastering & Stucco, Inc.

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I _____, Notary Public for the State of _____ do hereby certify that _____, as _____ of _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2015.

Signature of Notary
My Commission Expires _____

National Fire and Marine Insurance Company

By: _____

Its: _____

STATE OF _____)
COUNTY OF _____)

ACKNOWLEDGMENT

I _____, Notary Public for the State of _____ do hereby certify that _____, as _____ of _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this _____ day of _____, 2015.

Signature of Notary
My Commission Expires _____

**RESOLUTION, RATIFICATION AND APPROVAL OF FULL, FINAL
AND COMPLETE RELEASE AGREEMENT**

WHEREAS, the undersigned are the duly elected members of the Board of Directors of the Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. ("Twelve Oaks at Fenwick Plantation POA").

WHEREAS, a properly noticed and called meeting of the Board of Directors for Twelve Oaks at Fenwick Plantation POA, pursuant to the Master Deed and By-Laws for the Twelve Oaks Horizontal Property Regime, was held on _____ at _____.

WHEREAS, the members of the Board of Directors for Twelve Oaks at Fenwick Plantation POA were advised and counseled by _____ Esq., who recommended the resolution herein, approval and ratification of this Full, Final and Complete Release Agreement.

WHEREAS, each member of the Board of Directors for Twelve Oaks at Fenwick Plantation POA has reviewed the Full, Final and Complete Release Agreement, fully understand its terms and conditions and believes that the Full, Final and Complete Release Agreement is reasonable and fair. Accordingly,

IT IS FULLY RESOLVED THAT the duly elected members of the Board of Directors for Twelve Oaks at Fenwick Plantation POA do hereby approve and ratify the Full, Final and Complete Release Agreement.

We each hereby approve and ratify the Full, Final
and Complete Release Agreement

(Print Name)

(Print Name)

(Print Name)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049
Appellate Case No. 2016-000185

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., (from December 16, 2008 to present),.....Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick Tarragon Apartments, LLC, a South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development, Compliance & Inspectors, Inc., H2L Consulting Engineers, Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 6, 2006 to December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc., d/b/a Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply, Inc., as successor in interest to Manga Wall Inc., All South Vinyl Products, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mikey Mason d/b/a Mason Contractors KMAC of the Carolinas, Inc., NEO Corporation and Vava Guzman Construction Company, Inc.,.....Defendants,

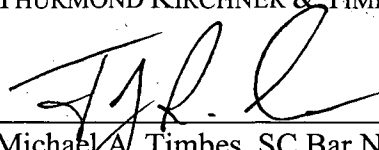
And Mt. Hawley Insurance Company.....is the Appellant/Proposed Intervenor.

CERTIFICATE OF COUNSEL

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

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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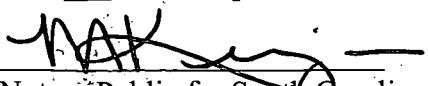
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-and-

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Attorneys for Respondents

Sworn to and subscribed before me
This 11 day of April, 2017.



Notary Public for South Carolina
My Commission Expires 11/16/2020.