

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2011196386

Mark F. Teseniar and Nan M. Teseniar, on
behalf of themselves and others similarly
situated, and Twelve Oaks at Fenwick
Property Owners Association, Inc.,
Respondents,

v.

Professional Plastering & Stucco, Inc., Maria
Arias, and Miquel Rosales,
Defendants,

Of whom Professional Plastering & Stucco, Inc. is the Appellant.

Professional Plastering & Stucco, Inc., Appellant

v.

Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., Third-Party
Plaintiffs,

Of whom APS Enterprises Unlimited, Inc. is the Respondent.

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

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,

Defendants.

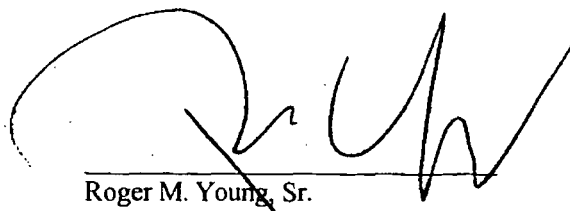
**ORDER OF
CONSOLIDATION AND
AMENDMENT**

FILED
2008 OCT 20 PM 3:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I. CLASS CERTIFICATION

Pursuant to Motion and Oral Argument before the Court on September 8, 2008, it appears to the Court that two separate matters dealing with the same subject matter appear currently on the Court's docket, and attorneys for the Plaintiffs in both matters have agreed to a consolidation of these cases and to the amendment of the pleadings.

Accordingly, it is ORDERED, ADJUDGED AND DECREED that Civil Action 08-CP-10-1758 is consolidated with the instant case, C. A. 08-CP-10-49, and that an amended Complaint attached hereto as Exhibit A is permitted.



Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

Dated: 10/16/8

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	<u>2008-CP-10- 49</u>
	)	
MARK F. TESENIAR AND NAN M. TESENIAR,	)	
on behalf of themselves and others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
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 CONTRACTORS GROUP,	)	
INC., FUGLEBERG KOCH ARCHITECTS, INC.,	)	
DEVELOPMENT, COMPLIANCE & INSPECTIONS,	)	
INC., H2L CONSULTING ENGINEERS, TWELVE	)	
OAKS AT FENWICK PROPERTY OWNERS	)	
ASSOCIATION, INC., and PROFESSIONAL	)	
PLASTERING & STUCCO, INC.,	)	
	)	
Defendants.	)	

AMENDED CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, by and through their undersigned counsel, bring this class action on behalf of themselves and all others similarly situated, as a voluntary class action under Rule 23 (a) of the South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, are owners of Unit Number 224 in the Twelve Oaks at

Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina. Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. Defendant Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is a limited liability company organized under the laws of the State of South Carolina and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units in December of 2001 and converted the apartments to condominiums in August of 2006. Defendant, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is the agent and/or alter ego of Defendants, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development

Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

3. Defendant Charleston Tarragon Manager, LLC, is a limited liability company organized under the laws of the State of Delaware and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property in December of 2001 consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Charleston Tarragon Manager, LLC is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Construction are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

4. Defendant Tarragon Development Corporation, upon information and belief, is a Nevada corporation and is the

developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Tarragon Development Corporation is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC and Charleston Tarragon Manager, LLC. Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation (hereinafter "Developer Defendants") are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

5. Defendant Summit Contractors Group, Inc., constructed the buildings at Twelve Oaks for and in conjunction with the developers, and is a Florida Corporation.

6. Defendant Fugleberg Koch Architects, Inc. is a Florida architectural corporation, upon information and belief, which designed the buildings, and additionally later designed certain repairs to the buildings prior to the incorporation into a Horizontal Property Regime.

7. Defendant Development, Compliance & Inspections, Inc. is a Florida corporation which performed the code compliance required inspection to the buildings at the time of condominium conversion.

8. Defendant H2L Consulting Engineers is a South Carolina engineering firm which performed inspections on two occasions prior to condominium conversion and which partially designed certain repairs to the buildings.

9. Defendant Twelve Oaks at Fenwick Property Owners Association, Inc. (herein after the "POA Inc."), is a South Carolina non-profit corporation having its principal place of business in Charleston County and created pursuant to the Master Deed of the Condominium project at issue.

10. Defendant Professional Plastering & Stucco, Inc. is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit. in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

11. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

12. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

13. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

14. As described in Paragraph 11 above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in

the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

15. The Class does not include any former owner of a unit in the Regime.

16. The Class is sufficiently numerous that joinder of all members is impractical.

17. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with, and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

18. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

19. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and

disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

20. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

21. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

22. The Developers are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the useful life of its common elements and the cost to remedy and code violations.

23. The Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation purchased the

buildings and units in December of 2001, and converted the rental units to condominiums in August of 2006.

24. Defendant Professional Plastering & Stucco, Inc. upon information and belief, was hired as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

25. In violation of its contractual and common law duties, Defendant Professional Plastering did not install the stucco and components in a competent and workmanlike fashion and in conformity to the requirements of the building code, but rather constructed the exterior building envelopes of the buildings at Fenwick in a defective condition causing or contributing to the leaks into the buildings and in a manner which will require significant repair in order to maintain a water resistant or water management exterior as required by code and by good building practices.

26. H2L Consulting Engineers is an Engineering firm located in Greenville, SC and was employed as an engineering consultant by the Developers in 2003 and again in 2005 prior to the conversion of the apartment complex into a condominium regime.

27. H2L was engaged by Tarragon Management in 2003 to investigate water intrusion at breezeways resulting in moldy odors in some apartments. H2L worked with the defendants Summit and FKA and developed a breezeway repair. During this activity, H2L discovered, among other things, that the breezeway design and construction was incorrect and allowed water intrusion, entrapment, and consequential mold development. H2L recommended a remediation of the "hard coat stucco wall system" to allow drainage of the system. This was accomplished, partially, in the breezeway areas of the building only, with no attention paid to the overall stucco system of the buildings, having the identical design and construction deficiencies.

28. Defendant FKA was also retained in 2003, it investigated, determined that its original wall section design was erroneous, participated in the breezeway re-design, but made no further recommendations concerning overall repair of the apartment complex.

29. H2L was again called back by the Developer Defendants in the spring of 2005, prior to conversion into condominiums, as many apartments were again complaining of mold, and musky odors. Instead of utilizing the knowledge developed during its investigation in 2003, that the stucco system was likely defective and was entrapping moisture, H2L instead

retained a mold-sampling consultant, what resulted in a cosmetic mold remediation of some of the units.

30. Prior to condominium conversion, a proposed lender, Barclay's Bank engaged EMG of Maryland to perform a Building System Analysis. This study, among other things, demonstrated high moisture readings behind stucco exteriors, commented on a number of building envelope deficiencies, and recommended a repair protocol on the buildings and HVAC systems which would cost close to \$1 million. Again, rather than utilizing the knowledge it had concerning the moisture intrusion and the non-drainable stucco system, H2L engaged in a commentary on the EMG report and came to the conclusion that EMG did not have "substantial evidence to support their conclusions". This opinion was issued in writing and had no basis in any destructive testing or other behind the wall analysis performed by H2L, nor did H2L engage an HVAC consultant in its written refutation of the EMG analysis.

31. As a direct and proximate result of the H2L "clearance opinion letter" of May 23, 2005 to the Developer Defendants, the Developer Defendants took no action to investigate or repair water intrusion problems at the project, created a horizontal property regime, marketed it to the public, and did not reveal the contents of the EMG study to any purchaser.

32. The buildings contained construction defects that resulted in water intrusions and conditions conducive to mold growth and the Defendants made repairs prior to converting the apartments to condominiums and such repairs were ineffective and known to or should have known to be ineffective to Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. These Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, breach of warranties, fraud, misrepresentation, bad faith, mismanagement, unconscionable conduct and waste with respect to their developing, repair, and selling of the buildings and units at issue. These wrongful acts and omissions by all Defendants have caused and will cause the Plaintiffs and the Class members to incur and continue to incur substantial money damages.

33. The design and construction defects have resulted in repeated water intrusion into the residences, failure of the components of the exterior envelope, failure of the structural system(s), and other consequential damages to the common elements of the Association and to the interior of the units. Upon information and belief, these adverse events have occurred

each and every year since construction; and constitute "occurrences" and "property damage" and compensable damages under the standard and/or typically generally liability and/or completed operations insurance policies maintained by the defendants herein; further the negligence of each defendant herein has resulted in damage to the work of the others.

34. On or about 2006, the Developers converted the apartments to condominiums.

35. Developers created the Association and Regime and owed the Association and Regime fiduciary and fiduciary-like duties.

36. The Developers owed a duty to the Association to insure that the common elements were in good condition at the time they were transferred to the Association.

37. The current condition of the buildings evidences that at the time the common areas were transferred to the Association, they were not suitably weather resistant and were suffering from water intrusion which has resulted in damage to the common elements and units.

38. Investigations have revealed that the Defendants knew of these construction deficiencies since shortly after construction; and that they have failed to remedy the deficiencies or disclose the same to purchasers, thereby exposing the Association to further liability.

39. The South Carolina Horizontal Property Act, South Carolina Code Ann. § 27-31-430 requires that the condition of the building be set forth in an engineer's report at the time of conversion.

40. Upon information and belief, Defendant DCI performed the conversion inspection and issued the Conversion Condition report.

41. Defendant DCI failed to properly investigate the condition of the buildings and failed to observe or disclose the defective conditions of the residences.

42. As a result of the above described, the Association has chosen an action against Summit, Architect, DCI, H2L, and Developers.

43. That in 2003, prior to conversion, defendants Tarragon became aware of significant mold and mildew problems all over the apartment complex, and retained the original Architect FKA, the original builder, Summit, and engineers H2L, to identify and remedy the problems.

44. That following inspections and testing, those Defendants determined that the stucco system did not drain, was trapping water, the original design of the system was uncovered, and so, limited repairs were made - only to the breezeway areas of the buildings, leaving the remaining majority of the building in their original, defective condition.

45. Thereafter, Developers decided upon a condominium conversion, and a financing bank, Barclay's Bank commissioned a building condition survey by EMG, a Maryland based expert which issued a report. This report put the Developers on notice of significant moisture within walls of the buildings, and consequent mold and mildew and recommended repairs with approved \$1 million for construction.

46. Rather than effecting any repairs, Defendant Developers and H2L certified the EMG report, and elected superficial mold and mildew cleanup to improve the odor, look, and feel of the condos which were to be marketed, created and Horizontal Property Regime, and began selling the condos to the public. Defendant DCI was hired by the Developers to perform and inspection pre-sale of the buildings as required by the S.C. Code of Laws, and, upon information and belief, Developers failed to provide Defendant DCI with any disclosures of past problems with the units, past repair efforts and experts reports, or the EMG report. Defendant DCI only performed a "walk through" and issued its report.

47. That the POA Inc. has numerous duties both pursuant to the Master Deed and By-Laws as well as under the Common Law of South Carolina, and it is governed by a Board of Directors which has fiduciary duties to the homeowners. At all times both now and in the past, the Board of Directors of the

POA Inc. and indeed the POA Inc. is composed of Tarragon employees, and acts as the Agent and Servant of Tarragon, and is essentially the alter ego of Tarragon.

48. That in its capacity as a fiduciary for the homeowners, POA Inc. has the duty to take action against Tarragon when required and to insure that the common elements of the project are in good repair. In that capacity, the POA Inc. was and is in possession of all of the information known to Tarragon regarding the problems with the common elements of the property, the partial repair, the expert reports detailing problems, the fact that building problems were not addressed by Tarragon pre-sale, and of the significant manifestation of water intrusion into the buildings by the constant complaints of mold and mildew stated by the homeowners.

49. That rather than taking actions as required of a fiduciary, the POA Inc. through its developer-controlled board has not only failed to act properly, but has neglected all of its duties toward the homeowners as required by the Master Deed and By Laws to ensure that the Common Elements of the property are in good repair, and has instead acted in the best interests of Tarragon, to the detriment of the homeowners to whom it owes duties as a fiduciary.

FOR A FIRST CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Developer Defendants, Fugleberg Koch Architects, Inc., Development, Compliance & Inspections, Inc., H2L Consulting Engineers, and Twelve Oaks At Fenwick Property Owners Association, Inc.)

50. Plaintiffs repeat and re-allege Paragraphs 1 through 51 above as if fully set forth verbatim.

51. The Defendants, Summit Contractors Group, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L Consulting Engineers, by and through their agents, servants, and employees undertook the original construction of The Vintage at Fenwick Plantation Apartments in 2002.

52. The Defendants, Summit Contractors Group, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L, owed a duty to Plaintiffs to design, construct and inspect the residences in a workmanlike fashion, using suitable supplies and details, and in accordance with good design, the architect's design, and the applicable building codes.

53. Upon information and belief, the buildings were acquired by the Developers Tarragon South Development Corporation and Tarragon Corporation through various affiliated and then converted the apartments into Twelve Oaks at Fenwick Plantation, a condominium community.

54. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, by and through their agents, servants and employees undertook and were under a duty to develop, design, repair and sell the buildings and units that should have been constructed and /or repaired in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

55. The Defendants were negligent, grossly negligent, careless, reckless, willful and wanton, in developing, building, repairing and selling the buildings and units at issue. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain, and effect permanent repairs to the property;
- d. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- e. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- f. In designing, developing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate

- avenue for exit of water that gets into the system resulting in water damage to the units;
- g. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
 - h. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - i. In violating SC Code Section 27-31-430.
 - j. In violating SC Code Section 33-31-830.
 - k. Other deficiencies or failures as will be proven at trial.

56. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, the Plaintiffs and similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. Additionally, the Plaintiffs and the Class have been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of

which will be required to corrected and repaired and result in the loss of use of the units during said repairs.

FOR A SECOND CAUSE OF ACTION
**(Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness as to Professional
Plastering & Stucco, Inc.)**

57. Each and every allegation contained in Paragraphs 1 through 54 above are incorporated herein by express reference as though fully set forth.

58. The Defendant, Professional Plastering & Stucco, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings and apply the stucco cladding and related flashings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies to the buildings and condominiums, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject buildings and condominiums;
- b. In failing to adequately supervise the work and

construction, repair and remodeling of the buildings and condominiums;

- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- f. In failing to properly install the stucco cladding and related flashings;
- g. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter subject residence;
- h. In constructing and repairing the subject buildings in such a manner that water entered the buildings;
- i. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter into the wall systems and subject buildings without having an adequate avenue for water to escape and/or drain.

59.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to Developer Defendants)

60. Each and every allegation contained in Paragraphs 1 through 58 above are incorporated herein by express reference as though fully set forth.

61. That at all times herein, the Plaintiffs, entered into a contract with the Defendants for the purchase of their

condominium known as Unit 224 at Twelve Oaks at Fenwick Plantation located in Johns Island, South Carolina.

62. That at all relevant times herein, the Defendants, by and through their agents, servants and employees had an obligation and duty to sell, design, develop and/or repair the buildings and to provide materials and services in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications and in complying with the disclosures laws and statues of the State of South Carolina.

63. That the Defendants breached the contract with the Plaintiffs by failing to develop, sell and repair said buildings and units in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications, and in compliance with the disclosure laws and statutes of this State all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contracts. Such breaches includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- e. In designing, developing, preparing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
- h. In violating SC Code Section 27-31-430.
- i. In violating SC Code Section 33-31-830.
- j. Other deficiencies or failures as will be proven at trial.

64. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having

to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A FOURTH CAUSE OF ACTION

(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose and Breach of Warranty of Merchantability and Serviceability as to All Defendants)

65. Each and every allegation contained in Paragraphs 1 through 63 above are incorporated herein by express reference as though fully set forth.

66. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable

building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

67. That Defendants breached said warranties by designing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in such manner as to be in violation of applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

68. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and

units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation as to Developer Defendants)

69. Each and every allegation contained in Paragraphs 1 through 67 above are incorporated herein by express reference as though fully set forth.

70. The Defendant Developers, through their agents and/or employers, advertisements, literature and other written materials, made representations and non-disclosures to the Plaintiffs and the public, including the Plaintiffs, about the quality of the construction of the subject buildings and units suitability for habitation and low maintenance.

71. Defendant Developers made the above-described representations and non-disclosures in a business or commercial capacity.

72. As set forth above, the above-described representations and non-disclosures made by the Defendant Developers and their agents to Plaintiffs were untrue and were misrepresentations or non-disclosures of material facts and were

made in such a manner that, by the exercise of reasonable and ordinary care, the Defendant Developers knew or should have known that they were false and that the Plaintiffs could and would reasonably and justifiably rely on such representations and/or non-disclosures in purchasing, making and/or authorizing payment and accepting the subject residences.

73. The Plaintiffs relied on this false information supplied by the Defendant Developers when they purchased their condominium units at Twelve Oaks at Fenwick Plantation.

74. Such reliance by the Plaintiffs was reasonable and justifiable based on the knowledge available to them and the circumstances at the time.

75. Defendant Developers breached their duties by failing to exercise due care when making these representations.

76. The Plaintiffs reasonably and justifiably relied on these Defendants' representations, to their detriment.

77. The Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute a violation of South Carolina Code §§ 27-31-43 and 33-31-830.

78. As a direct, foreseeable and proximate result of Defendants' negligent misrepresentations and non-disclosures, and failing to disclose that the residences were not constructed in accordance with applicable building codes, not in conformance

with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and that the buildings and units leaked and had conditions conducive to the growth of mold, the Plaintiffs have relied on such representations and nondisclosures and have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SIXTH CAUSE OF ACTION

**(Breach of Fiduciary Duty as to Developer Defendants and
Twelve Oaks at Fenwick Plantation, POA, Inc.)**

79. Each and every allegation contained in Paragraphs 1 through 77 above are incorporated herein by express reference as though fully set forth.

80. In their capacity as developers and governing body of the condominium project at Twelve Oaks at Fenwick Plantation, the Defendant Developers and POA Inc. as a matter of law, undertook a fiduciary duty towards the Plaintiffs.

81. The Defendant Developers and POA Inc., in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs in failing to act in a reasonable prudent manner, and in placing their interests ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects failed to disclose these construction defects to new homeowners, and failed to take proper measures to remedy the same.

82. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices as to Developer Defendants)

83. Each and every allegation contained in Paragraphs 1 through 81 above are incorporated herein by express reference as though fully set forth.

84. The Developer Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

85. The Developer Defendants, by their actions in developing, designing, selling, repairing, supervising and overseeing construction and/or repair activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

86. The Developer Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

87. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

88. The Developer Defendants' conduct affects the public interest of the people of South Carolina.

89. The Developer Defendants knew or should have reasonably known, that their conduct violated the Unfair Trade Practices Act.

90. As a direct, foreseeable and proximate result of the Developer Defendants' unfair and deceptive practices, the

Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the building and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) of the South Carolina Rules of Civil Procedure, hold the Defendants liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

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AND

LEATH BOUCH & CRAWFORD, LLP

By: _____
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(843) 937-8811
Attorneys for Plaintiffs
jl@leathbouchlaw.com

Charleston, South Carolina

Dated: _____, 2008

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT
2007-CP-10- 0049**

2007-CP-10-0049

AFFIDAVIT OF
ROBERT G. SISNROY, P.E.

vs.

Defendants.

5. The remediation plan addressed remediating the hard coat stucco wall system at the breezeways to allow drainage of the system.

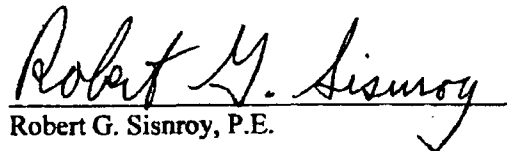
6. This remediation occurred at the breezeway areas and did not include other areas of stucco locations at the buildings.

7. James Robert Burrige, vice president for Tarragon testified to this limited remediation in his deposition dated June 16, 2008.

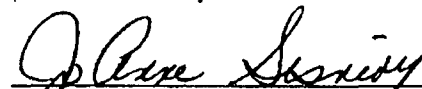
8. Specifying and recommending a remediation plan that does not provide for drainage at all areas of stucco locations is a breach of the standard of care for an engineer.

9. This is my opinion to a reasonable degree of engineering certainty.

FURTHER AFFIANT SAYETH NOT.


Robert G. Sisnroy, P.E.

SWORN to before me this
18 day of September, 2008.


Notary Public For South Carolina
My Commission Expires: 4-24-13

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10- ~~1750~~

49

ROBERT KOENIG,
derivatively, on behalf of,
TWELVE OAKS AT FENWICK
PLANTATION PROPERTY OWNERS
ASSOCIATION, INC., and TWELVE
OAKS AT FENWICK PLANTATION
HORIZONTAL PROPERTY REGIME,

Plaintiff,

vs.

SUMMIT CONTRACTORS GROUP,
INC., FUGLEBERG KOCH
ARCHITECTS, INC., DEVELOPMENT
COMPLIANCE & INSPECTIONS, INC.,
TARRAGON CORPORATION, and
TARRAGON SOUTH DEVELOPMENT
CORPORATION,

Defendants.

SUMMONS

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2008 MAR 28 PM 4:36

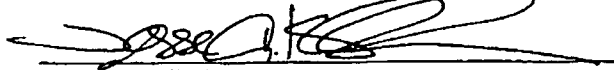
FILED

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

(signature page to follow)

THURMOND KIRCHNER & TIMBES, P.A.



Jesse A. Kirchner
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
843-937-8000

JUSTIN O'TOOLE LUCEY, P.A.

 , FOR

Justin Lucey
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465

Attorneys for Plaintiff

March 28, 2008

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 08-CP-10- 1958

49

ROBERT KOENIG,
derivatively, on behalf of,
TWELVE OAKS AT FENWICK
PLANTATION PROPERTY OWNERS
ASSOCIATION, INC., and TWELVE
OAKS AT FENWICK PLANTATION
HORIZONTAL PROPERTY REGIME,

Plaintiff,

vs.

SUMMIT CONTRACTORS GROUP,
INC., FUGLEBERG KOCH
ARCHITECTS, INC., DEVELOPMENT
COMPLIANCE & INSPECTIONS, INC.,
TARRAGON CORPORATION, and
TARRAGON SOUTH DEVELOPMENT
CORPORATION,

Defendants.

COMPLAINT

(Re: Defective Construction and Building
Code Violations)

(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG,
CLERK OF COURT

2008 MAR 28 PM 4:36

FILED

COMES NOW THE PLAINTIFF, Robert Koenig, by and through his undersigned counsel, on behalf of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc., and Twelve Oaks At Fenwick Plantation Horizontal Property Regime (collectively, the "Association") complaining of the Defendants named herein, would respectfully allege and show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Twelve Oaks at Fenwick Plantation Horizontal Property Regime is a residential condominium community of 216 residential units in 10 buildings on Johns Island in Charleston County, South Carolina.

2. Plaintiff owns a residence in Twelve Oaks and is, pursuant to the Master

Deed and/or ByLaws, a member of the Twelve Oaks at Fenwick Plantation Property Owners Association, which is charged with the management of the Regime, including maintenance and repair of the common elements.

3. Upon information and belief, Defendant Summit Contractors Group, Inc. ("Summit" or "Builder") constructed the buildings at Twelve Oaks for and in conjunction with the Developers.

4. Defendants have publicly identified Tarragon South Development Corporation and Tarragon Corporation as the Developers ("Developers").

5. Upon information and belief, Defendant Fugleberg Koch Architects, Inc. is an architecture firm that designed the buildings (the "Architect").

6. Upon information and belief, Defendant Development Compliance & Inspections, Inc. ("DCI") inspected the buildings at the time they were converted to condominiums.

7. Upon information and belief, Defendants Summit, Fugleberg Koch, and DCI are incorporated pursuant to the laws of the State of Florida. Defendants Tarragon South Development Corporation and Tarragon Corporation are believed to be Nevada corporations.

8. At all times relevant hereto, the Defendants were conducting business in Charleston County, South Carolina.

9. Upon information and belief, the Developers acquired the property in 2001 in conjunction with various affiliates. The buildings were originally constructed in 2002 as The Vintage at Fenwick Plantation Apartments.

10. Defendants owed a duty to the Plaintiff to design, construct, and inspect

the residences in a workmanlike fashion, using suitable supplies and details, and in accordance with good design, the architect's design, and the applicable building code.

11. As of the date of the filing of this suit, and prior hereto, the buildings are not suitably weather resistant and are suffering from water intrusion and resulting damage.

12. The construction defects have resulted in repeated water intrusion into the residences, failure of the components of the exterior envelope, failure of the structural system(s), and other consequential damages to the common elements of the Association and to the interior of the units. Upon information and belief, these adverse events have occurred each and every year since construction; and constitute "occurrences" and compensable damage under the standard and/or typical generally liability and/or completed operations insurance policies maintained by the defendants herein; further, the negligence of each defendant herein has resulted in damage to the work of the others.

13. The condition of the buildings, the water intrusion and resulting damage evidences that Defendants breached their design, construction, and inspection duties.

14. On or about 2005, the Developers converted the apartments to condominiums.

15. Developers created the Association and Regime and owed the Association and Regime fiduciary and fiduciary-like duties.

16. The Developers owed a duty to the Association to insure that the common elements were in good condition at the time they were transferred to the Association.

17. The current condition of the buildings evidences that at the time the

common areas were transferred to the Association, they were not suitably weather resistant and were suffering from water intrusion which has resulted in damage to the common elements and units.

18. Investigations have revealed that the Defendants knew of these construction deficiencies since shortly after construction; and that they have failed to remedy the deficiencies or disclose the same to purchasers, thereby exposing the Association to further liability.

19. The South Carolina Horizontal Property Act, South Carolina Code Ann. §27-31-430 requires that the condition of the building be set forth in an engineer's report at the time of conversation.

20. Upon information and belief, Defendant DCI performed the conversion inspection and issued the Conversion Condition report.

21. Defendant DCI failed to properly investigate the condition of the buildings and failed to observe or disclose the defective conditions of the residences.

22. As a result of the above described, the Association has chosen an action against Summit, Architect, DCI, and Developers.

23. One or more Twelve Oaks' homeowners have brought the water intrusion and other issues to the attention of the Association, the Developers, their managers, and their agents; and have demanded that action be taken against the at fault parties and/or that the deficiencies be corrected.

24. The homeowners' demands have been ignored or rejected.

25. Further or additional demands upon the Association to bring an action against Summit, Architect, DCI, and the Developers would be futile and would serve no

purpose as the Association remains controlled by the Developers; and does not have an independent or homeowner-elected board.

26. When the homeowners requested that the Association's issues be addressed by the Association or the Developers, the Developers' agent responded in part by conducting a partial regime future cost study ("The Replacement Reserve Report").

27. The Replacement Reserve cost study indicated that the Developers had inadequately funded the Association and that the Association faced a continued funding shortfall based upon the reserve collections set by the Developers.

28. The shortfall is anticipated to potentially reach \$2.9 million before one takes into account the work required to correct the current water intrusion and repair the damage caused thereby.

29. Remedying the current water intrusion and other construction deficiencies, and repairing the resulting damage, will increase the funding shortfall.

30. Plaintiff homeowner, Robert Koenig, brings this action derivatively on behalf of the Association against the Defendants.

FOR A FIRST CAUSE OF ACTION
Negligence
(Derivatively Against All Defendants)

31. The preceding paragraphs are hereby incorporated by reference.

32. The above described failures by the Defendants constitute a breach of legal duties owed to the Plaintiff.

33. The Defendants' negligence has jointly, severally, and proximately damaged the Association in an amount to be determined by the trier of fact.

34. Said failures constitute gross negligence and recklessness which entitles the Association to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
Breach of Warranty
(Derivatively Against All Defendants)

35. The preceding paragraphs are hereby incorporated by reference.

36. The design, construction, and inspection of the residences, and their placement into the stream of commerce, and the certification of their condition, came with express and implied warranties that the work would be performed in a careful, diligent, and workmanlike manner.

37. The design, construction, and inspection of the residences and materials supplied came with implied warranties of fitness, merchantability, workmanship, and habitability.

38. Defendants breached their express and implied warranties by their actions as set forth above.

39. Defendants failed to perform their work in a careful, diligent, and workmanlike service and fashion, failed to provide materials that were suitable for construction, and failed to design and construct free of defects, failed to properly inspect the buildings and disclose and correct defects, and therefore, breached their implied warranties of workmanlike service.

40. Said breaches have proximately damaged Plaintiff in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
Breach of Fiduciary Duty
(Derivatively Against Developers)

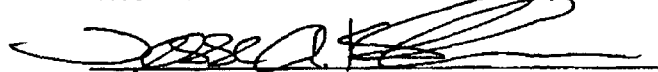
41. The preceding paragraphs are hereby incorporated by reference.

42. The Developers owed the Association duties of good faith, loyalty, fair dealing, full disclosure, a fiduciary duty, and a duty not to cause or facilitate, or negligently or knowingly permit harm to the Association.

43. By participating in the aforescribed activities, the Developers breached their fiduciary and fiduciary-like duties owed to the Association, which breach proximately damaged the Association.

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, on behalf of the Association for its actual, consequential, and punitive damages, attorneys' fees and costs, and all other relief as is just and proper under the circumstances.

THURMOND KIRCHNER & TIMBES, P.A.



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15 Middle Atlantic Wharf, Suite 101
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843-937-8000

JUSTIN O'TOOLE LUCEY, P.A.



Justin Lucey
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Post Office Box 806
Mount Pleasant, SC 29465

Attorneys for Plaintiff

March 28, 2008
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

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,

Defendants.

**ORDER
CERTIFYING CLASS**

FILED
2008 OCT 20 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I. CLASS CERTIFICATION

This matter came before the Court pursuant to Plaintiffs' Motion to Certify a-Class under Rule 23, SCRCF, either as a derivative class pursuant to Rule 23 (b)(1), or as a Rule 23(a) Class.

At the hearing on September 8, 2008, it was developed that Plaintiffs' Complaint sought Class Action status, that the Defendants (hereinafter "Tarragon") or some of them, were developers of the subject 214 unit condominium complex, and had converted an existing apartment complex into a condominium regime in 2006, by the creation of a Horizontal Property Regime, Master Deed and By-Laws, which documents control the Horizontal Property Regime incorporated as 12 Oaks at Fenwick Plantation POA, Inc.

R

The Master Deed created by Tarragon contains provisions which compel Tarragon's control over the Board of Directors of the HPR corporation during the period of "Development Rights Period" which does not expire until all of the condominium units are sold. Tarragon furnished an affidavit demonstrating that the "Development Rights Period" has not expired, so that Tarragon remains in control of the Board, and therefore of the HPR, Inc.

In creating the Master Deed, Tarragon inserted certain provisions designed to restrict the Board's ability to institute actions on behalf of the owners. The By-Laws require the Board to bring required legal claims on behalf of the homeowners. Such restrictions impose significant voting and procedural restrictions on the Association's ability to carry out its responsibilities under the By-Laws and the common law of this state. Additionally, given the fact of Tarragon's control of the Association, an inherent conflict of interest exists, which would preclude the Association's presently instituting an action against that entity which controls it. For this reason, among others, Rule 23, SCRCF is an approved mechanism to effect redress for homeowners who otherwise might be powerless to effectively seek remedies for damages to the common elements of the HPR.

After hearing arguments of counsel and reviewing the pleadings and exhibits submitted, it appears to the Court that certification of a class under 23(a) SCRCF in the preferable manner of permitting the Association's common elements claims to proceed, and such class is Hereby Certified.

Rule 23(a), SCRCF requires five elements: 1) that the class is so numerous that joinder of all members is impracticable; 2) that there are common questions of law or facts to class; 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4) the representative parties will fairly and adequately protect the interests of the class; 5)

in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds \$100.00 for each member of the class. At the outset, it is important to understand one thing about South Carolina Rule of Civil Procedure 23 which makes it different from virtually all other class action rules, and specifically makes it different from the class action Rule 23 in the Federal system from which it was particularly drawn. That is the following:

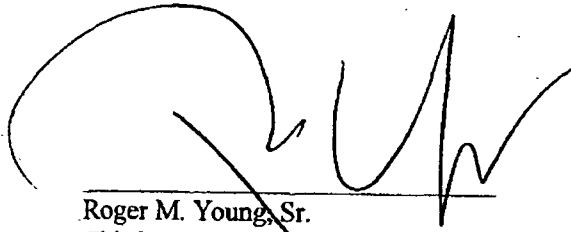
The drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our State Rule the additional requirements found in Rule 23(b), Federal Rules of Civil Procedure. By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its Federal counterpart. *Littlefield v. S. C. Forestry Commission*, 523 S.E.2d 781 (S.Ct. 1999) (emphasis supplied).

Thus, our Class Action Rule of Civil Procedure endorses an expansive view of class action availability, which this claim clearly meets.

The Teseniar Class meets all of the Rule 23 SCRCP tests. 1) The class consists of roughly 216 homeowners of condominiums, so that joinder is impracticable; 2) all of the questions of law are fact or common to the class; 3) the claims of the representative parties are typical of the claims of the class; 4) the representative parties will fairly and adequately protect the interests of the class, and 5) the amount in controversy exceeds \$100.00 for each member of the class.

Accordingly, the class is certified consisting of Mark F. Teseniar and Nan M. Teseniar as the class representatives for all homeowners, owning property within the 12 Oaks at Fenwick Plantation POA, Inc., for damage to the common elements of the POA.

The proposed Notice of Class Action and the proposed Exclusion Request form attached hereto as Exhibits A and B respectively are approved by the Court and made a part of this Order.



Roger M. Young, Sr.
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

Dated: 10/14/11

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

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
CONTRACTORS GROUP, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE
& INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., and
PROFESSIONAL PLASTERING &
STUCCO, INC.,

Defendants.

NOTICE OF CLASS ACTION

TO: ALL PERSONS OR ENTITIES AT FENWICK POA, INC. WHO OWN A
CONDOMINIUM AT TWELVE OAKS AT FENWICK PLANTATION:

THIS NOTICE MAY AFFECT YOUR RIGHTS.
PLEASE READ IT CAREFULLY.

1. WHY SHOULD I READ THIS NOTICE?

The purpose of this Notice is to inform you that there is now pending in the Court of Common Pleas of Charleston County, South Carolina, a Class Action on behalf of all persons or entities who own a condominium in Twelve Oaks at Fenwick Plantation. This action is pending in the Court of Common Pleas for Charleston County, South Carolina, in a lawsuit known as Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated vs. Fenwick Plantation Tarragon, LLC, et al., Civil Action No. 08-CP-10-49.

If you own a condominium in Twelve Oaks at Fenwick Plantation, your rights may be affected by this action. You should read this Notice to determine whether your rights are affected, the steps necessary to pursue your rights as a member of the Class, or whether to opt-out of the proposed Class. In a Class Action, one or more people, called named Plaintiffs (in this case Mark F. Teseniar and Nan M. Teseniar), sue on behalf of people who have similar claims. All these similarly situated people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

2. WHAT IS THE LAWSUIT ABOUT?

Please take notice of this important development which directly deals with your ownership interests at Twelve Oaks at Fenwick Plantation. The Honorable Roger M. Young, Sr., Judge, Ninth Judicial Circuit, granted the motion of Mark F. Teseniar and Nan M. Teseniar, to make the lawsuit, Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated vs. Fenwick Plantation Tarragon, LLC, et al., Civil Action No. 08-CP-10-49, a **CLASS ACTION**. The suit alleges breach of implied warranty of habitability and other claims.

The attorneys for the Class are W. Jefferson Leath, Jr., Jesse A. Kirchner, John T. Chakeris, and Phillip W. Segui, Jr., whose telephone numbers and addresses appear below. Any questions regarding the suit and their representation should be directed to them.

The court has appointed Mark F. Teseniar and Nan M. Teseniar as the representatives of the Class. The Class claims involve deficiencies with the exterior building envelopes, stucco, window intersection, roof to wall terminations, and other issues yet to be fully investigated which are allowing moisture into the buildings. It is anticipated that Defendants will allege a number of Defenses to these claims. Testing which will involve at least test cuts and moisture readings will be preformed on the buildings.

3. WHAT DO I NEED TO DO TO JOIN THE CLASS?

If you wish to join the Class, you do not need to take any further action and your interest as a member of the Class will be represented by Class Counsel without individual charge to you. (See Paragraph 5 for Class Counsel's fees and costs.) You are not required to hire your own attorney but may do so at your own expense. You will be bound by the result in the case.

4. HOW DO I EXCLUDE MYSELF FROM THE CLASS?

To opt-out of the Class, you must complete, sign and submit the Exclusion Request Form which is included with this Notice. Please send your completed form to:

Christine Petit
John T. Chakeris, Esq.
The Chakeris Law Firm
231 Calhoun Street
P. O. Box 397
Charleston, SC 29402
Telephone: (843) 853-5678

You should submit a separate Exclusion Request Form for each property you own. If you do not receive a form or if you desire additional copies, you may obtain such copies by writing or calling the address above.

AN OWNER OR OWNERS OF A UNIT WHO FAILS TO SUBMIT AN EXCLUSION REQUEST FORM WITHIN THIRTY (30) DAYS OF RECEIPT OF THIS NOTICE WILL AUTOMATICALLY BE INCLUDED IN THE CLASS. IF YOU DO NOT OPT-OUT OF THE CLASS, YOU WILL BE BOUND BY ALL ORDERS AND JUDGMENTS ENTERED BY THE COURT.

IF YOU ARE A PUTATIVE CLASS MEMBER AND PROPERLY AND TIMELY REQUEST EXCLUSION FROM THE CLASS, YOU WILL NOT RECEIVE ANY BENEFITS OF THIS ACTION AND YOU WILL NOT BE BOUND BY ANY FURTHER ORDERS OR JUDGMENTS ENTERED FOR OR AGAINST THE CLASS. YOU MAY PURSUE AT YOUR OWN EXPENSE WHATEVER RIGHTS YOU MAY HAVE AGAINST THE DEFENDANTS, IF ANY.

5. WHO REPRESENTS THE PARTIES:

Class Counsel for the Plaintiffs is as follows:

W. Jefferson Leath, Jr., Esq.
Leath, Bouch, Crawford & von Keller, LLP
92 Broad Street
P.O. Box 59
Charleston, SC 29402
Telephone: (843) 937-8811

Jesse A. Kirchner, Esq.
Thurmond, Kirchner & Timbes, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
Telephone: (843) 937-8000

John T. Chakeris, Esq.
The Chakeris Law Firm
231 Calhoun Street
P.O. Box 397
Charleston, SC 29402
Telephone: (843) 853-5678

Phillip W. Segui, Jr., Esq.
Segui Law Firm, LLC
864 Lowcountry Blvd, Suite A
Mt. Pleasant, SC 29465
Telephone: (843) 884-1865

Counsel for the Defendants is as follows:

Marvin D. Infinger, Esq.
Bachman S. Smith, IV, Esq.
Lydia Blessing Applegate, Esq.
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, Third Floor
P.O. Box 340
Charleston, SC 29402
Telephone: (843) 722-3366

6. HOW WILL CLASS COUNSELS' FEES AND EXPENSES BE PAID?

Class Counsel will petition the Court for an award no greater than 40% of the Settlement Fund for attorneys fees for all services rendered to the Class, plus their costs and expenses. The attorneys fees and costs awarded by the Court shall be paid from any funds generated as a result of the Class. All payments to Class Counsel must be approved by the Court, and will be considered at a Fairness Hearing or at other hearings to be scheduled by the Court.

7. WHERE DO I GET ADDITIONAL INFORMATION?

If you wish to obtain additional information, you may do so by writing or calling counsel at one of the addresses listed above. **DO NOT CONTACT THE COURT.**

This Notice provides only a summary of matters regarding the case. You may seek the advice and guidance of your own private attorney, at your own expense, if you wish.

AN OWNER OF A CONDOMINIUM IN TWELVE OAKS AT FENWICK PLANTATION WHO FAILS TO SUBMIT A COMPLETE, VALID AND TIMELY EXCLUSION REQUEST WILL BE AUTOMATICALLY INCLUDED IN THE CLASS. IF YOU DO NOT OPT-OUT OF THE CLASS AND FAIL TO COMPLETE A VALID AND TIMELY EXCLUSION REQUEST, YOU WILL BE A MEMBER OF THE CLASS AND BOUND BY ALL ORDERS AND JUDGMENTS BY THE COURT.

LEATH, BOUCH, CRAWFORD & von KELLER, LLP

By: _____
W. Jefferson Leath, Jr., Esq.
Michael S. Seekings, Esq.
92 Broad Street
P.O. Box 59
Charleston, SC 29402
(843) 937-8811

THURMOND, KIRCHNER & TIMBES, P.A.

By: _____
Jesse A. Kirchner, Esq.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
(843) 937-8000

THE CHAKERIS LAW FIRM

By: _____
John T. Chakeris, Esq.
231 Calhoun Street
P.O. Box 397
Charleston, SC 29402
(843) 853-5678

SEGUI LAW FIRM, LLC

By: _____
Phillip W. Segui, Jr., Esq.
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29465
(843) 884-1865

Charleston, South Carolina

_____, 2008

ATTORNEYS FOR CLASS PLAINTIFFS

EXHIBIT B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.)
TESENIAR, on behalf of themselves)
and others similarly situated,)

Plaintiffs,)

vs.)

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)
CONTRACTORS GROUP, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE)
& INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., and)
PROFESSIONAL PLASTERING &)
STUCCO, INC.,)

Defendants.)

EXCLUSION REQUEST FORM

I/We _____, the record title holder(s)

and owner(s) of condominium unit number _____ at Twelve Oaks at Fenwick Plantation;

hereby declare(s) my/our decision to be excluded as a Class Member in the above-referenced
action from the Class.

The undersigned acknowledges that by so doing, I/we will not receive any further benefits of the action and will not be bound by any further orders or judgments entered for against the Class.

Dated: _____, 2008

signature

print full name and address

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON,
LLC, ET AL

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 08-CP-10-49

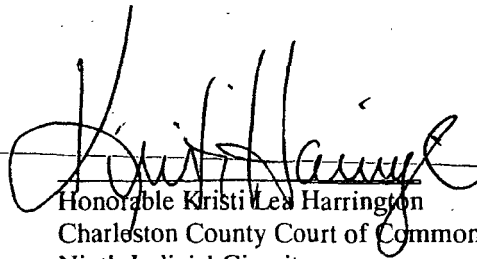
**ORDER GRANTING APS
ENTERPRISES, INC.'S MOTION FOR
SUMMARY JUDGMENT**

FILED
2011 MAY 11 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on May 3, 2011, on APS Enterprises, Inc.'s Motion for Summary Judgment on the cross-claims asserted against it by Professional Plastering & Stucco. APS asserts that because Professional is not a licensed contractor, it cannot maintain an action in law or in equity on the contract pursuant to Section 40-11-370(C) of the South Carolina Code. This Court agrees. Section 40-11-370(C) states, in pertinent part: "[a]n entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of a contract." S.C. Code. Ann. § 40-11-370(C) (2010). Because Professional does not have a valid license it cannot maintain its claims against APS and Summary Judgment is appropriate. Accordingly, APS Enterprises, Inc.'s Motion Summary Judgment is GRANTED.

AND IT IS SO ORDERED

May 9, 2011


Honorable Kristi Lea Harrington
Charleston County Court of Common Pleas
Ninth Judicial Circuit

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2008-CP-10-0049

VERDICT FORM

VS.

Defendants.

- ____ Defendant

- Defendant

1

DAMAGES

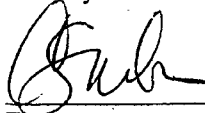
4. If you found in favor of Plaintiffs on either cause of action, please state the amount of damages sustained by the plaintiff.

\$ 7,723,225 Actual Damages

5. If you awarded any Actual Damages to the Plaintiffs, please state the amount of Punitive Damages, if any, to be awarded against the Defendant.

\$ 0 Punitive Damages

I certify that this decision is the unanimous decision of the jury.



Foreperson

May 13, 2011

CHRIS S NELSON

STATE OF SOUTH CAROLINA

FORM 4

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-0049

Mark F. Teseniar, et al

versus

Professional Plastering & Stucco, Inc.

PLAINTIFFS

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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):**

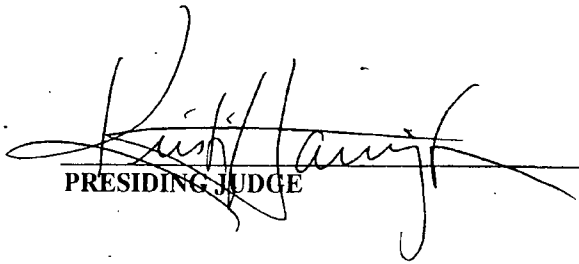
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE 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:

-By Unanimous Decision, Jury found in favor of Plaintiff on both counts, awarding Plaintiff \$7,723,225.00 actual damages.

Dated at Charleston, South Carolina, this 13th day of May, 2011.


PRESIDING JUDGE

SCCA SCR Form 4 Revised 6/2008

Clerk of Court
Julie J. Armstrong

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-0049

Mark Teseniar, et al,

versus

Fenwick Plantation Tarragon, LLC, et
al

PLAINTIFF

DEFENDANT(S)

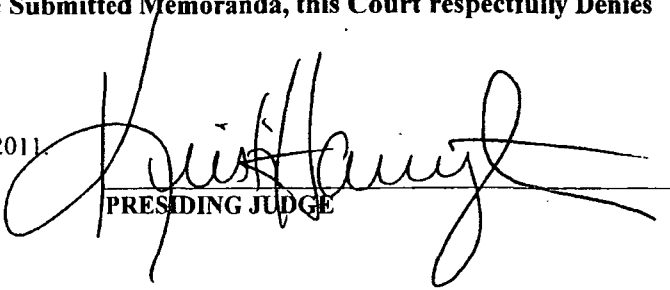
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 THE 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:

After the Jury returned a verdict in favor of Plaintiff, Defendant Professional Plastering & Stucco, Inc. timely moved for 1) New Trial Absolute, 2) New Trial Nisi Remittitur, 3) Judgment Notwithstanding the Verdict, and 4) Set-off. After reviewing these Motions and the Submitted Memoranda, this Court respectfully Denies all of the Defendant's Post-Trial Motions.

Dated at Charleston, South Carolina, this 5th day of June, 2011.


 PRESIDING JUDGE

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-0049

Mark Teseniar, et al

2011 JUN 19 AM 10:00
versus
JULIE J. ARMSTRONG
CLERK OF COURT

Fenwick Plantation Tarragon, LLC, et al

PLAINTIFF(S)

DEFENDANT(S)

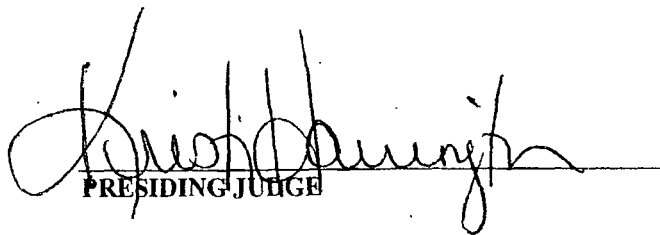
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 THE LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

Defendant Professional Plastering and Stucco, Inc.'s Motion to Alter or Amend is respectfully denied.

Dated at Charleston, South Carolina, this 13th day of July, 2011.


PRESIDING JUDGE

SCCA SCRCP Form 4 Revised 6/2008

Clerk of Court
Julie J. Armstrong

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),)

Plaintiffs,)

vs.)

ORDER OF DISMISSAL AS TO
CERTAIN DEFENDANTS
(WITH PREJUDICE)

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)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAK AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, 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,)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2011 AUG -8 PM 1:21

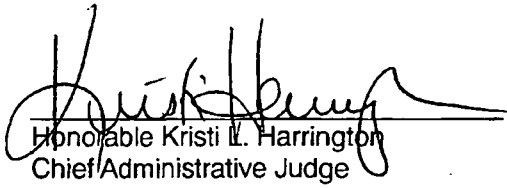
FILED

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 ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., NEO)
 CORPORATION, and NAVA GUZMAN)
 CONSTRUCTION COMPANY, INC.,)
)
 Defendants.)
)

IT APPEARING TO THE COURT that the Plaintiffs have reached a full, final and complete settlement with Best Masonry & Tool Supply, Inc., as a successor in interest to Magna Wall, Inc., Nava Guzman Construction Company, Inc., APS Enterprises Unlimited, Inc., JT Industries d/b/a General Aluminum Corporation, and General Aluminum Company of Texas, LP (hereinafter "Settling Defendants").

NOW, THEREFORE, PURSUANT TO RULE 41(a)(2) of the South Carolina Rules of Civil Procedure, the Court hereby dismisses, *with prejudice*, the above-caption matter as to the Settling Defendants, with all parties to bear their own costs. Notwithstanding the foregoing, this Order does not dismiss or otherwise affect the pending crossclaims or other claims not yet asserted that Best Masonry & Tool Supply, Inc. as a successor in interest to Magna Wall, Inc. may have against Professional Plastering & Stucco, Inc. Additionally, this Order does not dismiss or otherwise affect the pending crossclaims and third party claims or other claims not yet asserted that APS Enterprises Unlimited, Inc. may have against Professional Plastering & Stucco, Inc. and/or C&N Stucco and Plastering, Inc. Further, this Order does not affect any claims by and among any parties not dismissed herein.

IT IS SO ORDERED!



Honorable Kristi L. Harrington
Chief Administrative Judge
Ninth Judicial Circuit

Aug 1, 2011
Charleston, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

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, AND
TARRAGON DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,

Defendants.

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2008-CP-10-49

) SUMMONS
) (JURY TRIAL DEMANDED)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and are required to answer

501- the Complaint in this action, a copy of which is herewith
00- served upon you, and to serve a copy of your Answer upon the
00- subscribers, at Segui Law Firm, at 864 Lowcountry Blvd., Ste.
A, Mt. Pleasant, South Carolina 29465, within thirty (30) days
after the service thereof, exclusive of the day of such
service, and if you fail to answer the Complaint within the
time aforesaid, judgment by default will be rendered against
you for the relief demanded in the Complaint.

BY
JULIE M. GUNDS HONG
CLERK OF COURT

2008 JAN -4 PM 2:22

FILED

SEGUI LAW FIRM, LLC

By: *Philip W. Segui, Jr.*
Philip W. Segui, Jr.
864 Lowcountry Blvd., Ste.A
Mount Pleasant, SC 29465
(843) 576-2074
psegu@seguilawfirm.com

THE CHAKERIS LAW FIRM

By: *John T. Chakeris*
John T. Chakeris
P. O. Box 397
Charleston, SC 29402
(843) 853-5678
john@chakerislawfirm.com

LEATH BOUCH & CRAWFORD, LLP

By: *W. Jefferson Leath, Jr.*
W. Jefferson Leath, Jr.
P. O. Box 59
Charleston, SC 29402
(843) 937-8811
Attorneys for Plaintiffs

Charleston, South Carolina

Dated: 1/3, 2008

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

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, AND
TARRAGON DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,

Defendants.

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2008-CP-10-49

FILED
2008 JAN -4 PM 2:22
JULIE M. HARRIS
CLERK OF COURT
BY _____

CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, by and through their undersigned counsel, bring this class action on behalf of themselves and all others similarly situated, as a voluntary class action derivative class action under Rule 23 (a) and (b) (1) of the South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, are owners of Unit Number 224 in the Twelve Oaks at Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina.

Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. Defendant Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is a limited liability company organized under the laws of the State of South Carolina and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units in December of 2001 and converted the apartments to condominiums in August of 2006. Defendant, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is the agent and/or alter ego of Defendants, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property

Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

3. Defendant Charleston Tarragon Manager, LLC, is a limited liability company organized under the laws of the State of Delaware and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property in December of 2001 consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Charleston Tarragon Manager, LLC is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Construction are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

4. Defendant Tarragon Development Corporation, upon information and belief, is a Nevada corporation and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and

purchased the property consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Tarragon Development Corporation is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC and Charleston Tarragon Manager, LLC. Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

5. That the Plaintiffs have made requests to the developer, Board and management company of Twelve Oaks at Fenwick Property Owners Association, Inc. to investigate concerns of water intrusion and mold growth in the walls of the Plaintiffs unit and other common areas and to conduct a regime wide inspection to include cutting into the buildings to determine the conditions of the Plaintiffs unit and the other buildings as evidenced by the letter dated September 22, 2007, sent to Twelve Oaks at Fenwick Plantation Owners Association attached hereto as Exhibit A and allegations in Paragraphs 5-10 of this Complaint. Prior thereto the Plaintiffs have contacted

Tarragon regarding possible mold problems and Tarragon customer care wrote the Plaintiffs on May 31, 2007 indicating that the situation would be reviewed. The Plaintiffs also provided Tarragon with a report from Environmental Services and Testing regarding mold problems that were investigated in 2003. The Plaintiffs emailed Julie Sanchez at Jsanchez@tarragon.com seeking further assistance on June 1, 2007. On June 29, 2007, a representative from Tarragon and Skye-Tec, an inspection company hired by the Defendants, came to Plaintiffs unit for a visual inspection and stated that they would be back within one week to perform intrusive observations into the wall cavity and perform mold testing. On July 9, 2007, the Plaintiffs contacted the representative from Tarragon (Quentin) regarding the inspection and testing of the wall cavity and was told that he would check with his supervisor and get back with the Plaintiffs. The Plaintiff called Tarragon customer care to express frustration and was told by Desiree at the Risk Management Division that the management team was in the process of sending the Plaintiffs a letter. Desiree provided the Plaintiffs with the name and phone number of Apryl Matthews who is a Tarragon Risk Management Analyst. Apryl Matthews indicated that she had seen the Plaintiffs file and that the Plaintiffs unit had been previously remediated and that the development team makes the decisions and that they would be meeting in the next few days. The Plaintiff

called Quentin at Tarragon again who indicated at the pre-closing inspection and the visual inspection from Skye Tec just the week before showed no problems. On July 10, 2007, the Plaintiffs contacted Randy Still, P.E. of H2L who was involved in 2003 repairs prior to the Plaintiffs' purchase of Unit 224, and Mr. Still refused to provide the Plaintiffs with the engineering report. The Plaintiffs thereafter contacted Diane Wilson to inquire about the homeowners association performing an investigation and was informed that the homeowners association had yet to be formed and that Community Management Group was serving in that capacity. On August 13, 2007, the Plaintiffs received a letter from Jerry Watson of Community Management Group for Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. indicating that Skye Tec had inspected the Plaintiffs' unit and the unit above and adjacent to the Plaintiffs and found only a very faint odor, if actually any at all, and that no destructive or invasive inspections or testing is authorized by the developer.

6. Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. which is controlled by the developer, 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, and Tarragon

Development Corporation, A Nevada Corporation has refused to investigate or take further action as evidenced by the response from Community Management Group on behalf of Twelve Oaks at Fenwick Plantation Property Owners Association dated October 1, 2007 and attached hereto as Exhibit B.

7. The Plaintiff thereafter sent Twelve Oaks at Fenwick Plantation Property Owners Association a letter dated November 17, 2007 attached hereto as Exhibit C informing them that an engineer has identified construction deficiencies and that claims exist against the developer and contractors who built these buildings and demanded that the association file suit against the developer and contractors.

8. The Plaintiffs got no response to the November 17, 2007 letter, and on December 11, 2007 telephoned Jerry Watson at Community Management Group to inquire as to why there was no response and when the Property Owners Association was going to file suit against the developer and contractor who built the buildings.

9. The Plaintiff was informed by Jerry Watson in her December 11, 2007 telephone conversation that the developer was in control of the Board of the Property Owners Association and that the developer was not going to sue itself and that the developer and/or board had done everything it was going to do to investigate and pursue any claims.

10. The Plaintiff sent a letter dated December 12, 2007 to the Twelve Oaks at Fenwick Plantation Property Owners Association confirming his conversation with Jerry Watson and confirming that the homeowners association was not going to file suit against the developer and contractors. A copy of the December 13, 2007 letter from the Plaintiff to the Twelve Oaks at Fenwick Plantation Property Owners Association is attached hereto as Exhibit D.

11. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

12. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

13. The class action is brought by Plaintiffs as a derivative class action pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. since the board is controlled by the

Defendants, and the board refuses to investigate and/or maintain an action against itself and as representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, fraud, unfair trade practices, unconscionable conduct and waste with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

14. As described in Paragraph 11 above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

15. The Class does not include any former owner of a unit in the Regime.

16. The Class is sufficiently numerous that joinder of all members is impractical.

17. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with, and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

18. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

19. Plaintiffs', derivative claim is brought by the Plaintiffs, a shareholder in Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. as of the time the Plaintiffs purchased their unit because of the Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. being controlled by the Defendants for their failure to enforce rights which would be against the Defendants themselves and for claims of all other unit owners that are similarly situated.

20. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative

facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

21. For the reasons described above and further explained below, a class action is especially appropriate in this case to promote judicial efficiency and to protect Class members' interests and rights as common questions of law and fact clearly predominate over individual issues.

22. Moreover, class treatment is a superior method for the fair and efficient adjudication of the issues in dispute because it permits a large number of injured parties, a joinder of who is impracticable, to prosecute their common claims in a single forum simultaneously. Moreover, the class action provides an efficient method whereby the relative rights of the Class Members and Defendants can be fairly managed without unnecessary expense or duplication.

23. If Class members were to pursue individual litigation, it would be unduly burdensome to the South Carolina

courts within which the individual litigation would proceed. Individual litigation would magnify the delay and expense to all parties in the court system of resolving the controversy engendered by Defendants' course of conduct with respect to the development, sale of units, and/or repair of the buildings and units at issue and in safeguarding the rights of the Class. By contrast, the class action device presents far fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will aid judicial economy and efficiency, promote parity among the claims of the individual Class members, and result in judicial consistency. Notice for the pendency and any resolution of this action can be provided to all Class members by first class mail.

24. The expense and burden of individual litigation of a case of this magnitude makes it impractical for individual Class members to seek redress for the wrongs done to them and, therefore, requires consolidation of all such claims in one action.

25. Given the scope of harm inflicted by Defendants and the egregiousness of their misconduct, the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of

the interests of the other members who are not parties to the adjudication or substantially impair or impede their ability to protect their interests.

26. Prosecution of this matter as a class action will most likely eliminate the possibility of repetitious litigation and provide redress for Class members who would not or could not prosecute this complex litigation on an individual basis.

27. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, both for the derivative claim pursuant to Rule 23(b)(1) and the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

28. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

29. The Defendants are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the useful life of its common elements and the cost to remedy and code violations.

30. The Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon

Manager, LLC and Tarragon Development Corporation purchased the buildings in December of 2001, and units and converted the rental units to condominiums in August of 2006.

31. The buildings contained construction defects that resulted in water intrusions and conditions conducive to mold growth and the Defendants made repairs prior to converting the apartments to condominiums and such repairs were ineffective and known to or should have known to be ineffective to Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. These Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, breach of warranties, fraud, misrepresentation, bad faith, mismanagement, unconscionable conduct and waste with respect to their developing, repair, and selling of the buildings and units at issue. These wrongful acts and omissions by all Defendants have caused and will cause the Plaintiffs and the Class members to incur and continue to incur substantial money damages.

32. The Plaintiffs have repeatedly attempted to have the Board and management company of Twelve Oaks at Fenwick Plantation Owners Association, Inc. investigate and address

deficiencies but since the Defendants control the Board, the Defendants will not investigate or bring claims against themselves thereby failing to protect, assert and/or enforce rights which belong to the Property Owners Association.

**FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)
AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON
APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND
TARRAGON DEVELOPMENT CORPORATION**

33. Plaintiffs repeat and re-allege Paragraphs 1 through 32 above as if fully set forth verbatim.

34. The Defendants in converting the apartments to condominiums filed the Master Deed and By-laws of Twelve Oaks at Fenwick Plantation Horizontal Property Regime in the Charleston County RMC office in Book E 594 page 684.

35. The Master Deed contains an arbitration provision, restrictions on a unit owners right to a jury trial, limitations on the Associations ability to file lawsuits, prohibitions and/or limitations of lawsuits brought by unit owners, the Defendants having the sole right to appoint directors and the Alternative Dispute Resolution Procedures attached as Exhibit G to the Master Deed and by-laws, none of these terms of which were contained in the contract for the sale of the unit and therefore not bargained for and lack consideration and are unconscionable and void.

36. The contract of sale for Unit 224 between the Plaintiffs and Defendants contains an "as-is" provision as well as a disclaimer of all warranties both "express and implied including but not limited to warranties of merchant ability, fitness for a particular purpose, habitability, design or condition or quality of the unit" and that the buyer "releases seller from any liability or consequential damages to any person, the unit or any other property resulting from a defect and (c) waives all other claims relating to the matters set forth above." The disclaimer of warranties and release language are unconscionable, were not conspicuous being contained on pages eight and nine of the contract, were not known to the buyer and were not specifically bargained for and therefore are unenforceable and void.

37. Plaintiffs believe that the unconscionable, oppressive, unknown and not bargained for terms and conditions of the Master Deed and by-laws including those terms set forth in Paragraphs 34 and 35 of this Complaint as set forth above should be declared unenforceable and/or void.

**FOR A SECOND CAUSE OF ACTION
(Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness)
AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON
APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND
TARRAGON DEVELOPMENT CORPORATION**

38. Plaintiffs repeat and re-allege Paragraphs 1 through 37 above as if fully set forth verbatim.

39. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, by and through their agents, servants and employees undertook and were under a duty to develop, design, repair and sell the buildings and units that should have been constructed and /or repaired in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

40. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, were negligent, grossly negligent, careless, reckless, willful and wanton, in developing, repairing and selling the buildings and units at issue. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;

- e. In designing, developing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
- h. In violating SC Code Section 27-31-430.
- i. In violating SC Code Section 33-31-830.
- j. Other deficiencies or failures as will be proven at trial.

41. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation, the Plaintiffs and similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. Additionally, the Plaintiffs and the Class have been

injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A THIRD CAUSE OF ACTION

(Breach of Contract)

(AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND TARRAGON DEVELOPMENT CORPORATION)

42. Each and every allegation contained in Paragraphs 1 through 41 above are incorporated herein by express reference as though fully set forth.

43. That at all times herein, the Plaintiffs, entered into a contract with the Defendants for the purchase of their condominium known as Unit 224 at Twelve Oaks at Fenwick Plantation located in Johns Island, South Carolina.

44. That at all relevant times herein, the Defendants, by and through their agents, servants and employees had an obligation and duty to sell, design, develop and/or repair the buildings and to provide materials and services in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and

specifications and in complying with the disclosures laws and statues of the State of South Carolina.

45. That the Defendants breached the contract with the Plaintiffs by failing to develop, sell and repair said buildings and units in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications, and in compliance with the disclosure laws and statutes of this State all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contracts. Such breaches includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- e. In designing, developing, preparing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of

- water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
 - g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - h. In violating SC Code Section 27-31-430.
 - i. In violating SC Code Section 33-31-830.
 - j. Other deficiencies or failures as will be proven at trial.

46. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their

properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Warranty of Habitability, Breach of
Warranty Against Latent Defects, Breach of Warranty of
Workmanlike Services, Breach of Warranty for Fitness for a
Particular Purpose and Breach of Warranty of Merchantability
and Serviceability)
(AS TO FENWICK PLANTATION TARRAGON, LLC. F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

47. Each and every allegation contained in Paragraphs 1 through 46 above are incorporated herein by express reference as though fully set forth.

48. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

49. That Defendants breached said warranties by designing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in such manner as to be in violation of applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

50. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

**FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)
(AS TO FENWICK PLANTATION TARRAGON, LLC. F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

51. Each and every allegation contained in Paragraphs 1 through 50 above are incorporated herein by express reference as though fully set forth.

52. The Defendants, through their agents and/or employers, advertisements, literature and other written materials, made representations and non-disclosures to the Plaintiffs and the public, including the Plaintiffs about the quality of the construction of the subject buildings and units suitability for habitation and low maintenance.

53. As set forth above, the above-described representations and non-disclosures made by the Defendants and their agents to Plaintiffs were untrue and were misrepresentations or non-disclosures of material facts and were made in such a manner that, by the exercise of reasonable and ordinary care, the Defendants knew or should have known that they were false and that the Plaintiffs could and would reasonably and justifiably rely on such representations and/or non-disclosures in purchasing, making and/or authorizing payment and accepting the subject residences.

54. As a direct, foreseeable and proximate result of Defendants' negligent misrepresentations and non-disclosures, and failing to disclose that the residences were not constructed in accordance with applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and that the buildings and units leaked and had conditions conducive to the growth of mold, the Plaintiffs have relied on such representations and nondisclosures and have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN SIXTH CAUSE OF ACTION

(Fraud)

**(AS TO FENWICK PLANTATION TARRAGON, LLC, F/K/A FENWICK
TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC,
AND TARRAGON DEVELOPMENT CORPORATION)**

55. Each and every allegation contained in Paragraphs 1 through 54 above are incorporated herein by express reference as though fully set forth.

56. The Defendant(s), Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation and/or their agents or employees made material and false representations and nondisclosures, including the concealment and nondisclosure of latent and hidden damages and defective conditions to the Plaintiffs regarding the condition of the buildings and units, quality of construction, the compliance with building codes, the compliance with manufacturers recommendations and specification and compliance with industry standards and the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation and their agents and/or employees knew of the falsity of such representations and nondisclosures or these representations and nondisclosures were made with reckless disregard for the truth.

57. The Defendant(s), Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon

Manager, LLC, and Tarragon Development Corporation failed to disclose and/or concealed defective conditions that were known or should have been known, and induced the Plaintiffs to purchase the unit by concealing and/or failing to disclose latent defects and/or hidden conditions and damages to the buildings and units that were not apparent to a reasonable person.

58. These representations and nondisclosures made by the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation, and/or their agents or employees were made with the intention that the Plaintiffs act upon them and the Plaintiffs did not know these representations and nondisclosures were false.

59. The Plaintiffs relied on these representations and nondisclosures and had the right to rely thereon.

60. As a direct and proximate result of the Defendant(s), Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, and Tarragon Development Corporation's, misrepresentations, nondisclosures, concealment, fraud and/or constructive fraud, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to

investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make it safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that excessive water and moisture exists and has intruded and continues to intrude into the building and unit at issue causing damage and deterioration and to the finish and structural elements of the buildings and units, all of which will be required to be corrected and repaired and result in the loss of use of the unit during said repairs.

FOR A SEVENTH CAUSE OF ACTION

(Unfair Trade Practices)

(AS TO FENWICK PLANTATION TARRAGON, LLC F/K/A FENWICK TARRAGON APARTMENTS, LLC, CHARLESTON TARRAGON MANAGER, LLC, AND TARRAGON DEVELOPMENT CORPORATION)

61. Each and every allegation contained in Paragraphs 1 through 60 above are incorporated herein by express reference as though fully set forth.

62. The Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

63. The Defendants, by their actions in developing, designing, selling, repairing, supervising and overseeing construction and/or repair activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

64. The Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

65. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

66. The Defendants' conduct affects the public interest of the people of South Carolina.

67. The Defendants knew or should have reasonably known, that their conduct violated the Unfair Trade Practices Act.

68. As a direct, foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the building and units causing rot, deterioration and other damages to the finish and

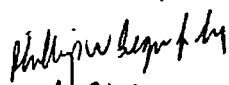
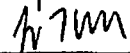
structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) and (b)(1) of the South Carolina Rules of Civil Procedure, hold the Defendants liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

SEGUI LAW FIRM, LLC

By: 

Phillip W. Segui, Jr.
864 Lowcountry Blvd., Ste. A
Charleston, SC 29413
(843) 576-2074
pseguilawfirm.com

THE CHAKERIS LAW FIRM

By: John T. Chakeris

John T. Chakeris

P. O. Box 397

Charleston, SC 29402

(843) 853-5678

john@chakerislawfirm.com

AND

LEATH BOUCH & CRAWFORD, LLP

By: W. Jefferson Leath, Jr.

W. Jefferson Leath, Jr.

P. O. Box 59

Charleston, SC 29402

(843) 937-8811

Attorneys for Plaintiffs

jl@leathbouchlaw.com

Charleston, South Carolina

Dated: 11/3, 2008

Exhibit A

September 22, 2007

Twelve Oaks at Fenwick Plantation
Property Owners Association
C/O Community Management Group, Inc.
349 Folly Road
Charleston, SC 29412

Dear Sirs:

I am the owner of unit 224, Twelve Oaks at Fenwick, and I am writing you, as I understand that the HOA Board has the ultimate responsibility under the Master Deed to investigate and repair problems with areas of the property which are common to the development.

I am concerned about what may be a significant mold condition in my walls, and other common areas of my property, and I also have concerns that these problems may be caused by water coming in behind the building exteriors. I think these problems are probably more extensive than just my unit, and feel that the Board should have a regime-wide inspection performed by a qualified independent inspector with authority to cut into the buildings if necessary to determine the condition of my unit and the buildings.

I have previously attempted to get this situation fully investigated and remedied through Tarragon Corporation Customer Care, but in spite of my repeated attempts, nothing significant has been done. I understand that the developer may still be in control of the overall property, and if indeed this is the situation, then this inspection is all the more critical in order to give the property owners a baseline assessment of the property condition prior to turnover to the homeowners.

I am asking for a written response to this letter within two weeks outlining the name of an inspector, background qualifications, and a date for commencement of the inspection of the property at Twelve Oaks at Fenwick. Please send response to Mark Teseniar, 1662 Back Creek Rd., Charleston, SC 29412.

Sincerely,

Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation



October 1, 2007

Mark Teseniar
1662 Back Creek Rd.
Charleston, SC 29412

Mr. Teseniar:

In response to your letter dated September 22, 2007, previous inspections have been conducted on your property, the unit above yours and the unit adjacent. Based upon those inspections conducted by SkyTec and overseen by Tarragon Development, no further testing will be done at this time. There was no evidence that there was any issue behind the walls and the Developer is not authorizing any invasive inspections or testing behind the walls.

The previous offer by Tarragon to provide a de-ionization of your unit still stands. Please let us know if you have any further questions.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jerry P. Watson".

Jerry P. Watson
Management Director for
Twelve Oaks at Fenwick Plantation

COMMUNITY MANAGEMENT GROUP
349 Folly Road, Suite 2B • Charleston, SC 29412
Telephone 843-795-8484 • Fax 843-795-8482 • www.cmgcharleston.com

Exhibit C

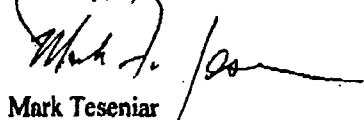
November 17, 2007

Twelve Oaks at Fenwick Plantation
Property Owners Associations
C/O Community Management Group
349 Folly Road
Charleston, Sc 29412

Dear Sirs:

I am the owner of Unit 224, Twelve Oaks at Fenwick, and I have written you before about problems that exist. I have hired an engineer to come and inspect my unit and have been informed that there are stucco installation problems, flashing problems, and other problems that are contributing to water intrusion and probable mold problems with my unit. Upon speaking with the engineer, I believe that these problems exist at other buildings as well. The Association is responsible for the upkeep of the exterior of my building and all other buildings at Twelve Oaks, therefore is also responsible for pursuing this claim. The claim exists against the developer that has previously refused to investigate my concerns regarding mine and the other buildings. I request that you immediately file suit against the developer of the condominiums and contractors that built the property. Please notify me within ten days that you will be doing this. Please send the lawsuit papers to 1662 Back Creek Rd., Charleston, SC 29412.

Sincerely,



Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation

December 13, 2007

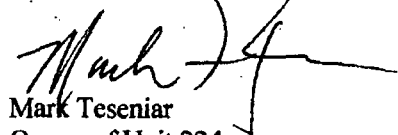
Twelve Oaks at Fenwick Plantation
Property Owners Association, Inc.
Attn: Jeri Watson
c/o Community Management Group, Inc.
349 Folly Road
Charleston, SC 29412

Dear Ms. Watson,

I appreciate your speaking with me on Tuesday, December 11, 2007 about my prior correspondence to the Property Owners Association dated November 17, 2007. As you know, I contacted you because I did not receive a response from you or the Property Owners Association regarding my November 17 letter. When I asked you on the phone about the homeowners association filing suit against the developer, you indicated that the developer was in control of the homeowners association and essentially was not going to sue itself. You also indicated that the developer had already told you that it (as a corporate entity) had already done all that it intended to do with regard to my complaints. When I asked you who on the Board I should speak to regarding this, you indicated that there was no one else for me to speak to because everything comes back to you anyway.

As you also indicated, it will be necessary for me to proceed with an attorney.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Teseniar', with a large, stylized flourish extending to the right.

Mark Teseniar
Owner of Unit 224
Twelve Oaks at Fenwick Plantation

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR AND NAN M. TESENIAR,
on behalf of themselves and others
similarly situated,

Plaintiffs,

vs.

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, AND
TARRAGON DEVELOPMENT CORPORATION, A
NEVADA CORPORATION,

Defendants.

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2007-CP-10-49

) VERIFICATION OF COMPLAINT

BY

JULIE J. STRONG
CLERK OF COURT

2008 JAN -4 PM 2:22

FILED

I HEREBY CERTIFY that the foregoing is a true and
correct Verification of the Complaint in connection with
this lawsuit.

BY:

Mark F. Teseniar
MARK F. TESENIAR

BY:

Nan M. Teseniar
NAN M. TESENIAR

SWORN to before me this
27 day of December, 2007.

Ch. Potts
Notary Public For South Carolina
My Commission Expires: 11-15-2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

THE NINTH JUDICIAL CIRCUIT

Mark F. Teseniar & 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,

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 Contractors,
Inc., Fugleberg Koch Architects, Inc.,
Development, Compliance & Inspections, Inc.,
H2L Consulting Engineers, Twelve Oaks at
Fenwick Property Owners Association, Inc.,
(from August 8, 2006 to December 15, 2008),
Professional Plastering & Stucco, Inc.,
Johnson Companies, Inc., d/b/a Johnson
Roofing, Inc., Los Campos, Inc., North Florida
Framing, Inc., Best Masonry & Tool Supply,
L.P. as successor in interest to Best Masonry
& Tool Supply, Inc., as successor in interest to
Magna 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 and JR
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,

Defendants.

Professional Plastering & Stucco, Inc.,

Third-Party Plaintiffs,

v.

Maria Arias, Miquel Rosales, and APS
Enterprises Unlimited, Inc.,

Civil Action No.: 2008-CP-10-0049

FILED
2010 FEB 19 AM 11:53
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

AMENDED ANSWER OF
PROFESSIONAL PLASTERING AND
STUCCO, INC. TO PLAINTIFFS'
THIRD AMENDED COMPLAINT
AND THIRD-PARTY COMPLAINT
(Jury Trial Demanded)

COMES NOW, Defendant, Professional Plastering & Stucco, Inc., answering the Third Amended Summons and Complaint of the Plaintiffs and bringing a Third-Party Complaint, would allege and show unto the Court:

1. Each and every allegation of Plaintiffs' Third Amended Complaint not specifically admitted herein is denied.
2. Defendant is without sufficient information to form a belief as to the allegations of paragraphs 1 through 144 and, therefore, denies same.

FOR A FIRST DEFENSE

3. The allegations contained in paragraph 2 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
4. The Defendant would show that the Third Amended Summons and Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

5. The allegations contained in paragraphs 1 through 4 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
6. The Defendant would show that this action is barred by the applicable Statute of Limitations and/or applicable Statute of Repose.

FOR A THIRD DEFENSE

7. The allegations contained in paragraphs 1 through 6 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
8. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiffs, combining, concurring and contributing with the

negligence, if any, which is expressly denied, on the part of this Defendant, to such a degree that Plaintiffs' recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

9. The allegations contained in paragraphs 1 through 8 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

10. The Defendant would show that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

11. The allegations contained in paragraphs 1 through 10 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

12. The Defendant would show that Plaintiffs' Third Amended Summons and Complaint is barred by the doctrine of *waiver*.

FOR A SIXTH DEFENSE

13. The allegations contained in paragraphs 1 through 12 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to provide this answering Defendant with any notice of any alleged failure to conform to the Contract Documents or any alleged substitution and failed to provide this answering Defendant with any opportunity to remedy any such alleged failure or alleged substitution, and, thereby prejudiced this answering Defendant.

FOR A SEVENTH DEFENSE

15. The allegations contained in paragraphs 1 through 14 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

16. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, were proximately caused and occasioned by the sole negligence, gross negligence,

willfulness, wantonness, carelessness and recklessness of Plaintiffs in failing to exercise due care and reasonable care, which was the direct and proximate cause of any injuries or losses suffered by Plaintiffs, if any, without which the alleged injuries or losses would not have occurred. The Defendant pleads the sole negligence, gross negligence, willfulness, wantonness, carelessness, recklessness and negligence of Plaintiffs as a complete bar to this action against it.

FOR AN EIGHTH DEFENSE

17. The allegations contained in paragraphs 1 through 16 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

18. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, as alleged in the Third Amended Summons and Complaint, was not due to or caused by the negligence on the part of the Defendant, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A NINTH DEFENSE

19. The allegations contained in paragraphs 1 through 18 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

20. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, as alleged in the Third Amended Summons and Complaint, were not due to or caused by any negligence on the part of the Defendant, but was rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which this Defendant had no control.

FOR A TENTH DEFENSE

21. The allegations contained in paragraphs 1 through 20 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

22. The Defendant would show that Plaintiffs' claim for punitive damages violate the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States

of America in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, Plaintiffs' claim for punitive damages should be dismissed.

FOR AN ELEVENTH DEFENSE

23. The allegations contained in paragraphs 1 through 22 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

24. Plaintiffs' claims are barred by the Economic Loss Doctrine.

FOR A TWELFTH DEFENSE

25. The allegations contained in paragraphs 1 through 24 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. The Defendant would show, upon information and belief, that Plaintiffs failed to mitigate damages, if any, as required by law.

FOR A THIRTEENTH DEFENSE

27. The allegations contained in paragraphs 1 through 26 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. The Defendant would show, upon information and belief, that Plaintiffs' claims are barred by the doctrines of equitable estoppel.

FOR A FOURTEENTH DEFENSE

29. The allegations contained in paragraphs 1 through 28 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

30. The Defendant would show that Plaintiffs' Third Amended Summons and Complaint is barred by the doctrine of *waiver and estoppel*.

FOR A FIFTEENTH DEFENSE

31. The allegations contained in paragraphs 1 through 30 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

32. Plaintiffs failed to give Defendant reasonable notice of the existence of any alleged defects and failed to provide Defendant a reasonable opportunity to correct any such alleged defects which constitutes a bar to this action.

FOR A SIXTEENTH DEFENSE

33. The allegations contained in paragraphs 1 through 32 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

34. The Plaintiffs' claims fail as a matter of law to state a class action, because Plaintiffs have not met the elements of Rule 23, SCRCP.

FOR A SEVENTEENTH DEFENSE

35. The allegations contained in paragraphs 1 through 34 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

36. The Plaintiffs' claims are barred because of settlement, satisfaction, and/or release.

FOR AN EIGHTEENTH DEFENSE

37. The allegations contained in paragraphs 1 through 36 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

38. The Plaintiffs' claims are barred by payment.

FOR A NINETEENTH DEFENSE

39. The allegations contained in paragraphs 1 through 38 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

40. The Defendant would show that the Plaintiffs failed to give notice of defect and opportunity to cure pursuant to **South Carolina Code Ann. § 40-59-810 et seq.**

FOR A TWENTIETH DEFENSE

41. The allegations contained in paragraphs 1 through 40 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

42. The Defendant pleads lack of standing for any and all damages alleged by Plaintiff and claims raised by Plaintiff.

FOR A TWENTY-FIRST DEFENSE

43. The allegations contained in paragraphs 1 through 42 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

44. Defendant pleads the Statute of Frauds.

FOR A TWENTY-SECOND DEFENSE

45. The allegations contained in paragraphs 1 through 44 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

46. This Court lacks jurisdiction of the subject matter of the class action alleged by Plaintiffs because no such class exists and because the amount in controversy for any member of such class does not exceed \$100.00.

FOR A TWENTY-THIRD DEFENSE

47. The allegations contained in paragraphs 1 through 46 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

48. Plaintiffs have not alleged with specificity that they have fulfilled all actions precedent to bring this suit as a class action, and therefore the class action aspect of this suit should be dismissed.

FOR A TWENTY-FOURTH DEFENSE

49. The allegations contained in paragraphs 1 through 48 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

50. Plaintiffs' purported class claims are barred because the members of the class are not so numerous that it would be impractical and uneconomical for each class member.

FOR A TWENTY-FIFTH DEFENSE

51. The allegations contained in paragraphs 1 through 50 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

52. Plaintiffs' purported class claims are barred because Plaintiffs' claims are not typical of the claims of the purported class.

FOR A TWENTY-SIXTH DEFENSE

53. The allegations contained in paragraphs 1 through 52 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

54. Plaintiffs' purported class claims are barred because the named plaintiffs and class representatives do not adequately represent the interests of the members of the class.

FOR A TWENTY-SEVENTH DEFENSE

55. The allegations contained in paragraphs 1 through 54 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

56. Plaintiffs' purported class claims are barred because class action litigation is not

superior to other available methods for fair and efficient adjudication of the controversy.

FOR A TWENTY-EIGHTH DEFENSE

57. The allegations contained in paragraphs 1 through 56 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

58. Plaintiffs' purported class claims are barred because Plaintiffs' definition of the class is vague, ambiguous and overly broad.

FOR A TWENTY-NINTH DEFENSE

59. The allegations contained in paragraphs 1 through 58 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

60. Plaintiffs' purported class claims are barred because Plaintiffs have failed to meet the requirements of applicable law, including the requirements of due process.

FOR A THIRTIETH DEFENSE

61. The allegations contained in paragraphs 1 through 60 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

62. The Defendant does not waive and reserves the right to raise any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FURTHER ANSWERING THE COMPLAINT AND AS A THIRD-PARTY COMPLAINT
AGAINST MARIA ARIAS, MIQUEL ROSALES, AND APS
ENTERPRISES UNLIMITED, INC.**

63. Upon information and belief, Third-Party Plaintiff, Professional Plastering & Stucco, was at all relevant times a Florida Corporation.

64. Upon information and belief, Third-Party Defendant, Maria Arias, is a resident of the State of Florida and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

65. Upon information and belief, Third-Party Defendant, Miquel Rosales, is a resident of the State of Florida and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

66. Upon information and belief, Third-Party Defendant, APS Enterprises Unlimited, Inc. ("APS" throughout), is a Florida Corporation and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

FACTUAL ALLEGATIONS

67. Professional Plastering & Stucco is a Defendant in the action ("The Action") situated and Twelve Oaks at Fenwick Property Owners Association, Inc. regarding the Premises, Twelve Oaks at Fenwick Plantation ("The Premises").

68. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Maria Arias to perform as a subcontractor with respect to the work on The Premises.

69. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Miquel Rosales to perform as a subcontractor with respect to the work on The Premises.

70. Upon information and belief, Professional Plastering & Stucco entered into an agreement with APS to perform as a subcontractor with respect to the work on The Premises.

FOR A FIRST CAUSE OF ACTION AGAINST THIRD-PARTY DEFENDANTS MARIA ARIAS, MIQUEL ROSALES AND APS ENTERPRISES UNLIMITED, INC.

71. The above paragraphs are incorporated herein as if repeated verbatim.

72. The Plaintiffs in The Action have alleged that The Premises were constructed and repaired defectively along with other allegations.

73. Upon information and belief, Professional Plastering & Stucco subcontracted with Maria Arias, Miquel Rosales and APS to perform the work at The Premises.

74. If The Plaintiffs' allegations, which Professional Plastering & Stucco denies, are proven true, then Maria Arias, Miquel Rosales and APS were careless, negligent, and grossly negligent in the work they performed, and in other respects as may become known through the course of discovery.

75. As a result of the alleged negligence of Maria Arias, Miquel Rosales and APS, Professional Plastering & Stucco has been sued and has incurred costs and expenses and may incur damages as a result of the alleged negligence of Maria Arias, Miquel Rosales and APS.

76. As a result of the alleged negligence of Maria Arias, Miquel Rosales and APS, they are liable to Professional Plastering & Stucco for all damages, costs, and expenses Professional Plastering & Stucco incurs or may incur as a result of The Plaintiffs' allegations.

FOR A SECOND CAUSE OF ACTION
AGAINST THIRD-PARTY DEFENDANTS MARIA ARIAS, MIQUEL ROSALES
AND APS ENTERPRISES UNLIMITED, INC.

77. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

78. If the Plaintiffs' allegations regarding the damage to The Premises are true, and if Professional Plastering & Stucco is found liable for any such damage, which is specifically denied, the damages were caused by the sole acts or omissions of the Third-Party Defendants.

79. The damages alleged by The Plaintiffs were due to the active or primary fault of the Third-Party Defendants and/or their authorized agents, servants, or employees, and to the extent liability or damages are imposed against Professional Plastering & Stucco, Professional Plastering & Stucco alleges its liability to The Plaintiffs, if any at all, is only secondary or passive based on the Third-Party Defendants' conduct in their respective duties in the construction and/or repair of The Premises and The Plaintiffs' alleged damages were solely and proximately caused by the active or primary fault of the Third-Party Defendants.

80. Professional Plastering & Stucco pleads that the right of full legal and equitable indemnity exists in its favor against the Third-Party Defendants because Professional Plastering & Stucco is exposed to liability in this case, if at all, because of the primary wrongful acts and/or omissions of the Third-Party Defendants, in which Professional Plastering & Stucco did not join; that to the extent The Plaintiffs recover against Professional Plastering & Stucco, Professional Plastering & Stucco alleges that the Third-Party Defendants are liable to Professional Plastering & Stucco as to all or part of The Plaintiffs' claims and the Third-Party Defendants must indemnify Professional Plastering & Stucco, including all attorney fees and costs incurred in defending the Plaintiffs' claims, and all damages incurred or which may be incurred.

FOR A THIRD CAUSE OF ACTION
AGAINST THIRD-PARTY DEFENDANTS MARIA ARIAS, MIQUEL ROSALES AND
APS ENTERPRISES UNLIMITED, INC.

81. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

82. Upon information and belief, pursuant to the agreements, implied and express warranties were provided by Third-Party Defendants to Professional Plastering & Stucco that the product and work would be merchantable and fit for its particular purpose. At the time of the contracts, the Third-Party Defendants had reason to know the particular purpose that their work and product were required and that Professional Plastering & Stucco was relying on the Third-Party Defendants for their skill and judgment in applying and doing their work within Code, industry standards, and manufacturer's specifications. In addition, the Third-Party Defendants made implied warranties and express warranties that all work would be performed in a good and workmanlike fashion and in accordance with all applicable building codes, manufacturers' specifications, and the industry standards prevailing at the time and place of construction and repair as alleged.

83. Upon information and belief, if the Plaintiffs' allegations are proven, the Third-Party Defendants breached these warranties to Professional Plastering & Stucco. As a result of the Third-Party Defendants' alleged breach of their express, implied warranties of proper workmanship, merchantability, and fit for its particular purpose, Professional Plastering & Stucco has incurred costs and expenses and may incur damages.

84. As a result the Third-Party Defendants' alleged breach of their warranties, Professional Plastering & Stucco is entitled to recover from the Third-Party Defendants all of its costs, expenses, and damages as a result of The Plaintiffs' allegations.

FOR A FOURTH CAUSE OF ACTION
AGAINST THE THIRD-PARTY DEFENDANTS MARIA ARIAS, MIQUEL ROSALES
AND APS ENTERPRISES UNLIMITED, INC.

85. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

86. Upon information and belief, during the construction and repair of The Premises, Professional Plastering & Stucco entered into agreements with the Third-Party Defendants in which the Third-Party Defendants agreed to provide their service and work in the construction and repair of The Premises.

87. Upon information and belief, among other things that may come to light during the discovery process, the Third-Party Defendants held themselves out as experienced in their respective fields and warranted their work would be done in a proper and workmanlike manner.

88. If The Premises are damaged and the Plaintiffs' alleged damages are true, as alleged, then the Third-Party Defendants breached their contracts with Professional Plastering & Stucco.

89. In the event that Professional Plastering & Stucco is liable to The Plaintiffs in any respect, which is denied, then such liability arose from the acts of the Third-Party Defendants and breach of contract with Professional Plastering & Stucco, and therefore Professional

Plastering & Stucco is entitled to indemnity, in whole or in part, from these Third-Party Defendants, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' claims and other damages.

FOR A FIFTH CAUSE OF ACTION
AGAINST THE THIRD-PARTY DEFENDANTS MARIA ARIAS, MIQUEL ROSALES
AND APS ENTERPRISES UNLIMITED, INC.

90. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

91. Maria Arias, Miquel Rosales, and APS entered into agreements with Professional Plastering & Stucco wherein Maria Arias, Miquel Rosales and APS agreed to indemnify, hold harmless and defend Professional Plastering & Stucco for any claim, liability, demand, suit, judgment, loss, and costs and expenses related thereto.

92. Plaintiffs have made certain allegations in their Complaint and Amended Complaints relating to the work and actions of Maria Arias, Miquel Rosales and APS on or relating to the Premises.

93. Professional Plastering & Stucco has denied Plaintiffs' allegations directed against it.

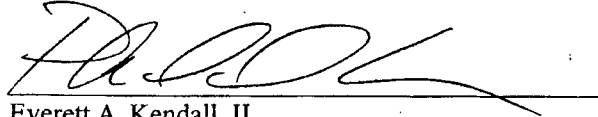
94. Therefore Professional Plastering & Stucco is entitled to indemnity, in whole or in part, from these Third-Party Defendants, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' claims and in this action.

WHEREFORE, having fully answered, Defendant/Third-Party Plaintiff prays that the Plaintiffs' Complaint be dismissed with costs; for attorney's fees; the Third-Party Plaintiff, Professional Plastering & Stucco, prays that this Honorable Court inquire into these matters and grant its judgment in favor of Professional Plastering & Stucco and against the Third-Party Defendants granting Professional Plastering & Stucco damages, costs, interest, attorney's fees, and such other relief as this Court deems to be just and proper.

This Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Everett A. Kendall, II



Christy E. Mahon

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Post Office Box 12129

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(803) 256-2233

**ATTORNEYS FOR PROFESSIONAL
PLASTERING & STUCCO, INC.**

Columbia, South Carolina

February 18, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP,
INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS, INC.,
DEVELOPMENT, COMPLIANCE & INSPECTIONS,
INC., H2L CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY OWNERS
ASSOCIATION, INC., (from August 8, 2006
to December 15, 2008), PROFESSIONAL
PLASTERING & STUCCO, INC., JOHNSON
COMPANIES, INC., D/B/A JOHNSON ROOFING,
INC., LOS CAMPOS, INC., NORTH FLORIDA
FRAMING, INC., BEST MASONRY & TOOL
SUPPLY, L.P. as successor in interest to
BEST MASONRY & TOOL SUPPLY, INC., as
successor in interest to MAGNA WALL,
INC., ALL SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., 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
ROSALES, APS ENTERPRISES UNLIMITED,
INC., HR ELECTRIC, A.M. JACOBS, INC.,
MICKEY MASON D/B/A MASON CONTRACTORS,
KMAC OF THE CAROLINAS, INC., AND NEO
CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10- 49

FOURTH AMENDED SUMMONS
(JURY TRIAL DEMANDED)

FILED
2010 MAR 15 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber, at 864 Lowcountry Blvd., Suite A, Mt. Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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Charleston, South Carolina

Dated: 3/15, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP,
INC., SUMMIT CONTRACTORS, INC., FUGLEBERG
KOCH ARCHITECTS, INC., DEVELOPMENT,
COMPLIANCE & INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE OAKS AT
FENWICK PROPERTY OWNERS ASSOCIATION, INC.,
(from August 8, 2006 to December 15,
2008), PROFESSIONAL PLASTERING & STUCCO,
INC., JOHNSON COMPANIES, INC., D/B/A
JOHNSON ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC., BEST MASONRY
& TOOL SUPPLY, L.P. as successor in
interest to BEST MASONRY & TOOL SUPPLY,
INC., as successor in interest to MAGNA
WALL, INC., ALL SOUTH VINYL PRODUCTS,
INC., MARQUEZ CONSTRUCTION, INC., 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 ROSALES, APS
ENTERPRISES UNLIMITED, INC., HR ELECTRIC,
A.M. JACOBS, INC., MICKEY MASON D/B/A
MASON CONTRACTORS, KMAC OF THE CAROLINAS,
INC., AND NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT
2008-CP-10- 49

FILED
2010 MAR 15 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FOURTH AMENDED CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, by and through their undersigned counsel, bring this class action on behalf of themselves and all others similarly situated, as a voluntary class action under Rule 23 (a) of the South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, are owners of Unit Number 224 in the Twelve Oaks at Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina. Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. The Plaintiff, Twelve Oaks at Fenwick Property Owners Association (from December 16, 2008 to present) is a South Carolina nonprofit corporation and by virtue of the Master Deed filed with the Register of Mesne and Conveyance for

Charleston County at Book E 594 Page G 684, is charged amongst other things with the duty to repair and maintain the common elements of the Project.

3. Defendant Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is a limited liability company organized under the laws of the State of South Carolina and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units in December of 2001 and converted the apartments to condominiums in August of 2006. Defendant, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is the agent and/or alter ego of Defendants, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

4. Defendant Charleston Tarragon Manager, LLC, is a limited liability company organized under the laws of the State of Delaware and is the developer of and performed repairs and

modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property in December of 2001 consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Charleston Tarragon Manager, LLC is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Construction are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

5. Defendant Tarragon Development Corporation, upon information and belief, is a Nevada corporation and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Tarragon Development Corporation is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon

Apartments, LLC and Charleston Tarragon Manager, LLC. Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation (hereinafter "Developer Defendants") are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

6. Defendant Summit Contractors Group, Inc., and Summit Contractors, Inc., constructed the buildings at Twelve Oaks for and in conjunction with the developers, and is a Florida Corporation.

7. Defendant Fugleberg Koch Architects, Inc. is a Florida architectural corporation; upon information and belief, which designed the buildings, performed contract administration and authorized payment draws, and additionally later designed certain repairs to the buildings prior to the incorporation into a Horizontal Property Regime.

8. Defendant Development, Compliance & Inspections, Inc. is a Florida corporation which performed the code compliance required inspection to the buildings at the time of condominium conversion.

9. Defendant H2L Consulting Engineers is a South Carolina engineering firm which performed inspections on two occasions prior to condominium conversion and which partially designed, and performed oversight of certain repairs to the buildings.

10. Defendant Twelve Oaks at Fenwick Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008) hereinafter the "POA Inc." (from August 8, 2006 to December 15, 2008), is a South Carolina non-profit corporation having its principal place of business in Charleston County and created pursuant to the Master Deed of the Condominium project at issue.

11. Defendants, Professional Plastering & Stucco, Inc. is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

12. Defendant, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., is upon information and belief, a Tennessee corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period, and at all relevant

times herein was engaged in the building and construction of Fenwick apartments and specifically installed the roof and related flashings on the buildings at Twelve Oaks.

13. Defendant, Los Campos, Inc., is upon information and belief, a North Carolina corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically installed the exterior paint, caulk and sealants on and to the buildings at Twelve Oaks.

14. Defendant, North Florida Framing, Inc., is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically framed the buildings and installed the secondary weather barrier windows and doors and related flashings and siding on and to the buildings at Twelve Oaks.

15. Defendant, Marquez Construction, Inc., is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002

time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically framed the buildings and installed the secondary weather barrier windows and doors and related flashings and siding on and to the buildings at Twelve Oaks.

16. That, upon information and belief, the Defendant, General Aluminum Company of Texas, LP, is an individual, sole proprietorships, partnerships, or corporations organized in the another state and/or conducting business in Charleston County is engaged in business in the State of South Carolina, and that General Aluminum Company of Texas, LP, manufactured, distributed, and sold the windows that were installed at the buildings at Twelve Oaks.

17. That, upon information and belief, the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., is a partnership or corporation organized and existing under the laws of the State of Texas and conducts and is engaged in business in the State of South Carolina, and that and at all relevant times herein was engaged in the design, manufacture, and sale of the stucco product that was used in the construction of the buildings at Twelve Oaks.

18. That, upon information and belief, the Defendant, All South Vinyl Products, Inc., is a partnership or corporation

organized and existing under the laws of another state and conducts business in Charleston County, and is engaged in business in the State of South Carolina, and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically installed the hand rails on and to the buildings at Twelve Oaks.

19. That upon information and belief, the Defendant, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, is a corporation organized and existing under the laws of the State of Georgia, and doing business in Charleston County, State of South Carolina, and at all relevant times herein was engaged in the building and construction of the buildings at Fenwick and specifically installed and provided the HVAC systems and materials in the buildings at Fenwick.

20. That upon information and belief, the Defendant, Jamie Helman, Individually is a resident of the state State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

21. That upon information and belief, the Defendant, Scott Ferguson, Individually is a resident of the State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly

administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

22. That upon information and belief, the Defendant, Chris Cobbs, Individually is a resident of the State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

23. That upon information and belief, the Defendant, Federal Insurance Company, is a corporation organized and existing under the laws of a state other than the State of South Carolina and is authorized to conduct business in this state. Federal Insurance Company did, as surety, issue a Performance Bond with the Defendant Summit Contractors, Inc. as principal and Fenwick Tarragon Apartments, LLC and its Successors as Owners/Obligees. The unit owners and the POA are the Successor Owners.

24. That upon information and belief, the Defendants, Maria Arias, Individually and Miquel Rosales, Individually are residents of the State of Florida, doing business in South Carolina as subcontractors to Professional Plastering & Stucco in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so

as to prevent water intrusion into the buildings in accordance with building code requirements.

25. Defendant, APS Enterprises Unlimited, is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Professional Plastering & Stucco, Inc., in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

26. Defendant, HR Electric, is upon information and belief, is an individual, sole proprietorship, corporation, business entity and/or resident of the State of Georgia and conducts business in Charleston County, State of South Carolina, and at all relevant times herein was engaged in the building and construction of the buildings at Fenwick and specifically installed and provided the electrical systems and materials in the buildings at Fenwick during the original construction.

27. Defendant, A.M. Jacobs, Inc., is upon information and belief, a corporation organized and existing under the laws of the State of South Carolina and conducts and is engaged in business in Charleston County, State of South Carolina, and at

all relevant times herein was engaged in the repair of the buildings at Fenwick and specifically improperly repaired flashings at breezeways and other locations at the buildings at Fenwick.

28. Defendant, Mickey Mason d/b/a Contractors, is an individual, sole proprietorship, corporation, business entity and/or resident of Charleston County, State of South Carolina and conduct business in Charleston County, and at all relevant times herein was engaged in the repair of the buildings and specifically repaired the roofs, on and to the buildings at Fenwick.

29. Defendant, KMAC of the Carolinas, Inc., is upon information and belief, a North Carolina corporation which was doing business in South Carolina, and at all relevant times herein was engaged in the building and construction of Fenwick and specifically improperly installed flashing at walls, breezeways, landings and locations on the buildings at Fenwick.

30. Defendant, NEO Corporation, is upon information and belief, a North Carolina corporation which was doing business in South Carolina, and at all relevant times herein was engaged in performing repairs to the buildings at Fenwick.

31. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

32. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

33. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

34. As described above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

35. The Class does not include any former owner of a unit in the Regime.

36. The Class is sufficiently numerous that joinder of all members is impractical.

37. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

38. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

39. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

40. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

41. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

42. The Developers are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the

useful life of its common elements and the cost to remedy and code violations.

43. The Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation purchased the buildings and units in December of 2001, and converted the rental units to condominiums in August of 2006.

44. Defendant Professional Plastering & Stucco, Inc. upon information and belief was hired as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. **Defendant, Professional Plastering & Stucco, Inc. subcontracted with Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., for the stucco installation. These subcontractors were** to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

45. In violation of its contractual and common law duties, Defendants Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.,** did not install the stucco and components in a competent and workmanlike fashion and in conformity to the requirements of the building code, but rather constructed the exterior building envelopes of the buildings at Fenwick in a defective condition

causing or contributing to the leaks into the buildings and in a manner which will require significant repair in order to maintain a water resistant or water management exterior as required by code, and by good building practices.

46. H2L Consulting Engineers is an Engineering firm located in Greenville, SC and was employed as an engineering consultant by the Developers in 2003 and again in 2005 prior to the conversion of the apartment complex into a condominium regime.

47. H2L was engaged by Tarragon Management in 2003 to investigate water intrusion at breezeways resulting in moldy odors in some apartments. H2L worked with the defendants Summit and FKA and developed a breezeway repair. During this activity, H2L discovered, among other things, that the breezeway design and construction was incorrect and allowed water intrusion, entrapment, and consequential mold development. H2L recommended a remediation of the "hard coat stucco wall system" to allow drainage of the system. This was accomplished, partially, in the breezeway areas of the building only, with no attention paid to the overall stucco system of the buildings; having the identical design and construction deficiencies.

48. Defendant FKA was also retained in 2003, it investigated, determined that its original wall section design was erroneous, participated in the breezeway re-design, but made

no further recommendations concerning overall repair of the apartment complex.

49. H2L was again called back by the Developer Defendants in the spring of 2005, prior to conversion into condominiums, as many apartments were again complaining of mold, and musky odors. Instead of utilizing the knowledge developed during its investigation in 2003, that the stucco system was likely defective and was entrapping moisture, H2L instead retained a mold-sampling consultant, what resulted in a cosmetic mold remediation of some of the units.

50. Prior to condominium conversion, a proposed lender, Barclay's Bank engaged EMG of Maryland to perform a Building System Analysis. This study, among other things, demonstrated high moisture readings behind stucco exteriors, commented on a number of building envelope deficiencies, and recommended a repair protocol on the buildings and HVAC systems which would cost close to \$1 million. Again, rather than utilizing the knowledge it had concerning the moisture intrusion and the non-drainable stucco system, H2L engaged in a commentary on the EMG report and came to the conclusion that EMG did not have "substantial evidence to support their conclusions". This opinion was issued in writing and had no basis in any destructive testing or other behind the wall analysis performed

by H2L, nor did H2L engage an HVAC consultant in its written refutation of the EMG analysis.

51. As a direct and proximate result of the H2L "clearance opinion letter" of May 23, 2005 to the Developer Defendants, the Developer Defendants took no action to investigate or repair water intrusion problems at the project, created a horizontal property regime, marketed it to the public, and did not reveal the contents of the EMG study to any purchaser.

52. The buildings contained construction defects that resulted in water intrusions and conditions conducive to mold growth and the Defendants made repairs prior to converting the apartments to condominiums and such repairs were ineffective and known to or should have known to be ineffective to Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. These Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, breach of warranties, fraud, misrepresentation, bad faith, mismanagement, unconscionable conduct and waste with respect to their developing, repair, and selling of the buildings and units at issue. These wrongful acts

and omissions by all Defendants have caused and will cause the Plaintiffs and the Class members to incur and continue to incur substantial money damages.

53. The design and construction defects have resulted in repeated water intrusion into the residences, failure of the components of the exterior envelope, failure of the structural system(s), and other consequential damages to the common elements of the Association and to the interior of the units. Upon information and belief, these adverse events have occurred each and every year since construction; and constitute "occurrences" and "property damage" and compensable damages under the standard and/or typically generally liability and/or completed operations insurance policies maintained by the defendants herein; further the negligence of each defendant herein has resulted in damage to the work of the others.

54. On or about 2006, the Developers converted the apartments to condominiums.

55. Developers created the Association and Regime and owed the Association and Regime fiduciary and fiduciary-like duties.

56. The Developers owed a duty to the Association to insure that the common elements were in good condition at the time they were transferred to the Association.

57. The current condition of the buildings evidences that at the time the common areas were transferred to the Association, they were not suitably weather resistant and were suffering from water intrusion which has resulted in damage to the common elements and units.

58. Investigations have revealed that the Defendants knew of these construction deficiencies since shortly after construction; and that they have failed to remedy the deficiencies or disclose the same to purchasers, thereby exposing the Association to further liability.

59. The South Carolina Horizontal Property Act, South Carolina Code Ann. § 27-31-430 requires that the condition of the building be set forth in an engineer's report at the time of conversion.

60. Upon information and belief, Defendant DCI performed the conversion inspection and issued the Conversion Condition report.

61. Defendant DCI failed to properly investigate the condition of the buildings and failed to observe or disclose the defective conditions of the residences.

62. As a result of the above described, the Association has chosen an action against Summit, Architect, DCI, H2L, and Developers.

63. That in 2003, prior to conversion, defendants Tarragon became aware of significant mold and mildew problems all over the apartment complex, and retained the original Architect FKA, the original builder, Summit, and engineers H2L, to identify and remedy the problems.

64. That following inspections and testing, those Defendants determined that the stucco system did not drain, was trapping water, the original design of the system was uncovered, and so, limited repairs were made - only to the breezeway areas of the buildings, leaving the remaining majority of the building in their original, defective condition.

65. Thereafter, Developers decided upon a condominium conversion, and a financing bank, Barclay's Bank commissioned a building condition survey by EMG, a Maryland based expert which issued a report. This report put the Developers on notice of significant moisture within walls of the buildings, and consequent mold and mildew and recommended repairs with approved \$1 million for construction.

66. Rather than effecting any repairs, Defendant Developers and H2L certified the EMG report, and elected superficial mold and mildew cleanup to improve the odor, look, and feel of the condos which were to be marketed, created and Horizontal Property Regime, and began selling the condos to the public. Defendant DCI was hired by the Developers to perform and

inspection pre-sale of the buildings as required by the S.C. Code of Laws, and, upon information and belief, Developers failed to provide Defendant DCI with any disclosures of past problems with the units, past repair efforts and experts reports, or the EMG report. Defendant DCI only performed a "walk through" and issued its report.

67. That the POA Inc. (from August 8, 2006 to December 15, 2008). has numerous duties both pursuant to the Master Deed and By-Laws as well as under the Common Law of South Carolina, and it is governed by a Board of Directors which has fiduciary duties to the homeowners. At all times both now and in the past, the Board of Directors of the POA Inc. (from August 8, 2006 to December 15, 2008) and indeed the POA Inc. (from August 8, 2006 to December 15, 2008) is composed of Tarragon employees, and acts as the Agent and Servant of Tarragon, and is essentially the alter ego of Tarragon.

68. That in its capacity as a fiduciary for the homeowners, POA Inc. (from August 8, 2006 to December 15, 2008) has the duty to take action against Tarragon when required and to insure that the common elements of the project are in good repair. In that capacity, the POA Inc. (from August 8, 2006 to December 15, 2008) was and is in possession of all of the information known to Tarragon regarding the problems with the common elements of the property, the partial repair, the expert reports detailing

problems, the fact that building problems were not addressed by Tarragon pre-sale, and of the significant manifestation of water intrusion into the buildings by the constant complaints of mold and mildew stated by the homeowners.

69. That rather than taking actions as required of a fiduciary, the POA Inc. (from August 8, 2006 to December 15, 2008) through its developer-controlled board has not only failed to act properly, but has neglected all of its duties toward the homeowners as required by the Master Deed and By Laws to ensure that the Common Elements of the property are in good repair, and has instead acted in the best interests of Tarragon, to the detriment of the homeowners to whom it owes duties as a fiduciary.

FOR A FIRST CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Developer Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., and Development, Compliance & Inspections, Inc., H2L Consulting Engineers)

70. Plaintiffs repeat and re-allege Paragraphs 1 through 69 above as if fully set forth verbatim.

71. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L Consulting Engineers, by and through their agents, servants, and employees undertook the original construction and repairs of The Vintage at Fenwick Plantation Apartments in 2002.

72. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L, owed a duty to Plaintiffs to design, construct, repair and inspect the residences in a workmanlike fashion, using suitable supplies and details, and in accordance with good design, the architect's design, and the applicable building codes.

73. Upon information and belief, the buildings were acquired by the Developers Tarragon South Development Corporation and Tarragon Corporation through various affiliated and then converted the apartments into Twelve Oaks at Fenwick Plantation, a condominium community.

74. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, Tarragon Development Corporation, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L Consulting Engineers, by and through their agents, servants and employees undertook and were under a duty to develop, design, repair, inspect and sell the buildings and units that should have been constructed and /or repaired in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

75. The Defendants were negligent, grossly negligent, careless, reckless, willful and wanton, in developing, building, repairing, inspecting and selling the buildings and units at issue and in performing contract administration during the construction of the project. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, construction, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain, and effect permanent repairs to the property;
- d. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- e. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- f. In designing, developing, constructing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- g. In designing, developing, constructing, and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- h. In failing to properly perform contract administration and approving pay applications to insure the buildings and the building components were constructed and/or installed in accordance with building codes, standard building practices,

- relevant product specifications and accepted construction industry standards and practices;
- i. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - j. In installing the siding, caulk, roofing, handrails, windows, secondary weather barrier and flashings and HVAC system in violation of the building codes, product specifications and accepted construction, industry standards and practices;
 - k. In violating SC Code Section 27-31-430.
 - l. In violating SC Code Section 33-31-830.
 - m. Other deficiencies or failures as will be proven at trial.

76. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, the Plaintiffs and similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiffs and the Class have been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously

intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A SECOND CAUSE OF ACTION

(Plaintiffs, **MARK F. TESENIAR AND NAN M. TESENIAR**, on behalf of themselves and others similarly situated claims of Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Defendants, **TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC.**, (from August 8, 2006 to December 15, 2008) **JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY**)

77. Plaintiffs repeat and re-allege Paragraphs 1 through 76 above as if fully set forth verbatim.

78. The Defendants Twelve Oaks Property Owners Association, Inc., (from August 8, 2006 to December 16, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, by and through their agents, servants and employees undertook a duty to maintain the project and properly administer the property owners association from August 8, 2006 through December 15, 2008.

79. These Defendants were negligent, grossly negligent, careless, willful in wanton in maintaining and administering and managing the Association from August 8, 2006 through December 15, 2008 including but not limited to the

following particulars:

- a. In failing to use due care in the maintenance, repair and sale of the buildings and units at issue;
- b. In maintaining and repairing the buildings and units in a manner which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain and adequately fund for future maintenance and repairs and effect permanent repairs to the property;
- d. In failing to properly administer the homeowners association;
- e. In failing to adequately fund the reserve account;
- f. In failing to sell units and turn over the common elements in good condition which met or exceeded the building code;
- g. In putting the defendant's interest before that of the unit owners or association;
- h. In violating SC Code Section 27-31-430;
- i. In violating SC Code Section 33-31-830;
- j. Other deficiencies or failures as will be proven at trial.

80. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, Twelve Oaks at Fenwick Property Owners Association, Inc. (August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, the Plaintiffs Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes

of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiffs Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated and the Class have been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A THIRD CAUSE OF ACTION

**The Plaintiff Twelve Oaks Fenwick Property Owners Association,
Inc. (from December 16, 2008 to present)
(Claims of Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness as to
Defendants, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON,
INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY)**

81. Twelve Oaks Fenwick Property Owners Association, Inc., (from December 16, 2008 to present) re-alleges Paragraphs 1 through 80 above as if fully set forth verbatim.

82. The Defendants, Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, by and through their agents, servants and employees undertook a duty to maintain the project and properly administer the property owners association from August 8, 2006 through December 15, 2008.

83. These Defendants were negligent, grossly negligent, careless, willful in wanton in maintaining and administering and managing the homeowners association from August 8, 2006 through December 15, 2008 including but not limited to the following particulars:

- a. In failing to use due care in the maintenance, repair and sale of the buildings and units at issue;
- b. In maintaining and repairing the buildings and units in a manner which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain and adequately fund for future maintenance and repairs and effect permanent repairs to the property;
- d. In failing to properly administer the homeowners association;
- e. In failing to adequately fund the reserve account;
- f. In failing to sell units and turn over the common elements in good condition which met or exceeded the building code;
- g. In putting the defendant's interest before that of the unit owners or association;
- h. In violating SC Code Section 27-31-430;
- i. In violating SC Code Section 33-31-830;
- j. Other deficiencies or failures as will be proven at trial.

84. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness,

wantonness of the Defendants, Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, the Plaintiff Twelve Oaks Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) has suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiff Twelve Oaks Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) has been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A FOURTH CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Professional Plastering & Stucco, Inc., Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, and J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation)

85. Each and every allegation contained in Paragraphs 1 through 84 above are incorporated herein by express reference as though fully set forth.

86. That the Defendants, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**, owed a duty to the Plaintiffs to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code,

industry, standards and accepted construction industry standards and practices.

87. That the Defendants, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**, breached their duties to the Plaintiffs by failing to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code, industry, standards and accepted construction industry standards and practices.

88. The Defendants, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.**, were negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings and apply the stucco cladding and related flashings in accordance with the applicable

building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies to the buildings and condominiums, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject buildings and condominiums;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the buildings and condominiums;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- f. In failing to properly install the stucco cladding and related flashings;
- g. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter subject residence;
- h. In constructing and repairing the subject buildings in such a manner that water entered the buildings;
- i. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter into the wall systems and subject buildings without having an adequate avenue for water to escape and/or drain.
- j. Other deficiencies or failures as will be proven at trial.

89. The Defendant, Johnson Companies, Inc., d/b/a Johnson Roofing, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, and in installing the roofs and roofing accessories and flashings on the subject buildings;
- b. In failing to adequately supervise the work and construction, and repair of the subject buildings;
- c. In failing to hire competent employees, subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing, and installing the roofs on subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- f. In failing to provide and install proper flashings.

- g. In other deficiencies as will be proven at trial.

90. That the Defendant, Los Campos, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in building, constructing, and supervising the work to the subject buildings in accordance with the applicable building codes and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the buildings, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless, reckless, willful and wantonness, includes but not limited to the following particulars:

- a. In failing to use due care in the building and construction of the subject buildings;
- b. In failing to adequately supervise the building and construction of the subject buildings;
- c. In failing to hire, supervise and train competent employees, subcontractors and specialty subcontractors;
- d. In building and constructing the subject buildings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. In improperly installing the sealants, caulks, and waterproofings in violation of the building code, standard building practices and accepted construction industry standards and practices;
- f. In failing to properly apply paint, sealants, and caulks at windows and doors and other areas of the buildings as required by the building code, standard building practices and accepted custom industry standards and practices; and
- g. Other deficiencies or failures will be proved at trial.

91. The Defendants, North Florida Framing, Inc., and Marquez Construction, Inc., were negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, framing, supervising and inspecting the subject buildings and in failing to construct, repair and/or remodel said buildings and specifically the framing, installation of flashings and the installation of the windows and doors, installation of secondary weather barrier and installation of siding in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and framing of the subject buildings;
- b. In failing to adequately construct and supervise the construction, repair, framing, installation of flashings, installation of a secondary weather barrier, windows and doors, and installation of siding of the subject buildings;
- c. In failing to hire competent subcontractors, specialty contractors, and/or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors and/or employees;

- e. In constructing, repairing and/or remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing windows and doors;
- g. In failing to properly frame the buildings;
- h. In failing to properly install flashings;
- i. In failing to properly install the siding;
- j. In failing to properly install a secondary weather barrier;
- k. In installing the framing, flashings and installation of windows and doors and secondary weather barrier to the buildings which failed to provide a sufficient barrier against the intrusion of water;
- l. In constructing, repairing and/or remodeling the subject buildings in such a manner that water entered the dwellings;
- m. In failing to use due care in constructing, repairing and/or remodeling the buildings in such a fashion as to permit excessive moisture to enter subject buildings;
- n. In other deficiencies as will be proven at trial.

92. The Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in providing, designing, manufacturing, marketing, selling and distributing a product which was potentially defective and/or provided deficient installation instructions that was not in accordance with the applicable building codes and accepted construction and product manufacturing and industry standards, all of which have directly and proximately caused defects and deficiencies in the building, which have been or will need to be corrected, repaired and/or replaced. Such negligence, gross

negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to warn all potential users, consumers, sellers and installers of potentials for defect in its products and in the installation instructions;
- b. In failing to design, manufacture, market, sell and distribute a product free from potential defects when put to its intended reasonable and foreseeable uses;
- c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractors or specialty contractors that sold, used and installed its products; and
- d. In failing to provide adequate installation instructions.
- e. In failing to warn;
- f. In failing to properly inspect the improper application of the stucco and notify the contractor and/or owner of the application deficiencies; and
- g. Other deficiencies or failures will be proved at trial.

93. That the Defendant, All South Vinyl Products, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in building, constructing, and supervising the work to the subject buildings in accordance with the applicable building codes and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the buildings, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless,

reckless, willful and wantonness, includes but not limited to the following particulars:

- a. In failing to use due care in the building and construction of the subject buildings;
- b. In failing to adequately supervise the building and construction of the subject buildings;
- c. In failing to hire, supervise and train competent employees, subcontractors and specialty subcontractors;
- d. In building and constructing the subject buildings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. In improperly installing the handrails;
- g. In installing handrails in a manner that allowed water to intrude into the buildings;
- h. Other deficiencies or failures will be proved at trial.

94. The Defendants, General Aluminum Company of Texas, LP, was negligent, grossly negligent, careless, reckless, willful and wanton in manufacturing and distributing windows which failed to meet the use for which they were sold, applicable building codes and windows manufacturers' industry standards which have directly and proximately caused defects, deficiencies and damages to the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to warn all potential users, consumers, sellers and installers of the defects or potentials for defect in its products and the inherent risks of using its products in the buildings at issue or other similarly situated

- buildings;
- b. In failing to design, manufacture, market, sell and distribute a product free from defects when put to its intended reasonable and foreseeable uses; and
- c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractors or specialty contractors that sold, used and installed its products; and
- d. In failing to provide proper installation requirements;
- e. Other deficiencies or failures will be proved at trial.

95. The Defendant, J. R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the heating and air systems;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence including but not limited to the installing of the heating and air systems;

- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- e. In failing to properly **design** and install the HVAC and duct system;
- f. In constructing, repairing, remodeling and installing the heating and air systems, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. Other deficiencies or failures as will be proven at trial.

96. The Defendant, HR Electric, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the electrical systems;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to

- the installing of the electrical systems;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- e. In failing to properly install the electrical systems;
- f. In constructing, repairing, remodeling and installing the systems, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. Other deficiencies or failures as will be proven at trial.

97. The Defendant, A.M. Jacobs, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in repairing the flashings at the breezeways and other areas of

- the buildings;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to the installing and/or repairing of the flashings at breezeways and other areas of the buildings;
 - c. In failing to hire competent subcontractors, specialty contractors or employees;
 - d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
 - e. In failing to properly repair flashings;
 - f. In repairing, and installing flashings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
 - g. Other deficiencies or failures as will be proven at trial.

98. The Defendant, Mickey Mason d/b/a Mason Contractors, was negligent, grossly negligent, careless, reckless, willful and wanton in repairing, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, of the roofs of the buildings;
- b. In failing to adequately supervise the work and construction and repair of the subject buildings including but not limited to the roofs;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- f. In constructing, repairing, and installing the roofing components in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
- g. Other deficiencies or failures as will be proven at trial.

99. The Defendant, KMAC of the Carolinas, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the flashing at walls, breezeways and landing locations;

- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to the flashing at walls, breezeways and landing locations;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- f. In improperly installing the flashings at walls,, breezeway and landing locations;
- g. In constructing, repairing, and installing flashings, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- h. Other deficiencies or failures as will be proven at trial.

100. The Defendant, Neo Corporation, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the repair, and remediation of the buildings;
- b. In failing to adequately perform and supervise the remediation work to repair building components, prevent water intrusion, eliminate musty odors and remediate mold;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- e. In failing to use due care in repairing and/or remodeling the buildings in such a fashion as to permit excessive moisture to continue to enter subject buildings and in failing to eliminate the musty odors and other construction defects for which it was hired; and
- f. Other deficiencies or failures as will be proven at trial.

101. That as a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into

the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract as to Developer Defendants)

102. Each and every allegation contained in Paragraphs 1 through 101 above are incorporated herein by express reference as though fully set forth.

103. That at all times herein, the Plaintiffs, entered into a contract with the Defendants for the purchase of their condominium known as Unit 224 at Twelve Oaks at Fenwick Plantation located in Johns Island, South Carolina.

104. That at all relevant times herein, the Defendants, by and through their agents, servants and employees had an obligation and duty to sell, design, develop and/or repair the buildings and to provide materials and services in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications and in complying with the disclosures laws and statutes of the State of South Carolina.

105. That the Defendants breached the contract with the Plaintiffs by failing to develop, sell and repair said buildings and units in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications, and in compliance with the disclosure laws and statutes of this State all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contracts. Such breaches includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- e. In designing, developing, preparing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes,

- standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - h. In violating SC Code Section 27-31-430.
 - i. In violating SC Code Section 33-31-830.
 - j. Other deficiencies or failures as will be proven at trial.

106. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and

repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SIXTH CAUSE OF ACTION

(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose and Breach of Warranty of Merchantability and Serviceability as to All Defendants)

107. Each and every allegation contained in Paragraphs 1 through 106 above are incorporated herein by express reference as though fully set forth.

108. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as apartments and/or condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

109. That Defendants breached said warranties by designing, constructing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in

such manner as to be in violation of applicable building codes, not in conformance with accepted construction and architectural industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

110. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation as to Developer Defendants)

111. Each and every allegation contained in Paragraphs 1 through 110 above are incorporated herein by express reference as though fully set forth.

112. The Defendant Developers, through their agents and/or employers, advertisements, literature and other written materials, made representations and non-disclosures to the Plaintiffs and the public, including the Plaintiffs, about the quality of the construction of the subject buildings and units suitability for habitation and low maintenance.

113. Defendant Developers made the above-described representations and non-disclosures in a business or commercial capacity.

114. As set forth above, the above-described representations and non-disclosures made by the Defendant Developers and their agents to Plaintiffs were untrue and were misrepresentations or non-disclosures of material facts and were made in such a manner that, by the exercise of reasonable and ordinary care, the Defendant Developers knew or should have known that they were false and that the Plaintiffs could and would reasonably and justifiably rely on such representations and/or non-disclosures in purchasing, making and/or authorizing payment and accepting the subject residences.

115. The Plaintiffs relied on this false information supplied by the Defendant Developers when they purchased their condominium units at Twelve Oaks at Fenwick Plantation.

116. Such reliance by the Plaintiffs was reasonable and justifiable based on the knowledge available to them and the circumstances at the time.

117. Defendant Developers breached their duties by failing to exercise due care when making these representations.

118. The Plaintiffs reasonably and justifiably relied on these Defendants' representations, to their detriment.

119. The Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute a violation of South Carolina Code §§ 27-31-43 and 33-31-830.

120. As a direct, foreseeable and proximate result of Defendants' negligent misrepresentations and non-disclosures, and failing to disclose that the residences were not constructed in accordance with applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and that the buildings and units leaked and had conditions conducive to the growth of mold, the Plaintiffs have relied on such representations and nondisclosures and have suffered actual, direct, incidental, consequential and special

damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN EIGHTH CAUSE OF ACTION

(PLAINTIFFS MARK F. TESENIAR AND NAN M. TESENIAR, on behalf of themselves and others similarly situated (Claims of Breach of Fiduciary Duty as to Developer Defendants, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from August 8, 2006 to December 15, 2008) JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY)

121. Each and every allegation contained in Paragraphs 1 through 120 above are incorporated herein by express reference as though fully set forth.

122. In their capacity as developers and governing body of the condominium project at Twelve Oaks at Fenwick Plantation, the Defendant Developers and Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, as a matter of law, undertook a fiduciary duty towards the Plaintiffs.

123. The Defendant Developers and Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs in failing to act in a reasonable prudent manner, and in placing their interests ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects failed to disclose these construction defects to new homeowners, and failed to take proper measures to remedy the same.

124. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A NINTH CAUSE OF ACTION

**Twelve Oaks Fenwick Property Owners Association, Inc. (from
December 16, 2008 to present)
(Claims of Breach of Fiduciary Duty as to Developer Defendants
JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND
CHRIS COBBS, INDIVIDUALLY)**

125. Each and every allegation contained in Paragraphs 1 through 124 above are incorporated herein by express reference as though fully set forth.

126. In their capacity as developers and governing body of the condominium project at Twelve Oaks at Fenwick Plantation, the Defendant Developers and Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, as a matter of law, undertook a fiduciary duty towards the Plaintiffs.

127. The Defendant Developers and Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs in failing to act in a reasonable prudent manner, and in placing their interests

ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects failed to disclose these construction defects to new homeowners, and failed to take proper measures to remedy the same.

128. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A TENTH CAUSE OF ACTION
(Unfair Trade Practices as to Developer Defendants)

129. Each and every allegation contained in Paragraphs 1 through 128 above are incorporated herein by express reference as though fully set forth.

130. The Developer Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

131. The Developer Defendants, by their actions in developing, designing, selling, repairing, supervising and

overseeing construction and/or repair activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

132. The Developer Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

133. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

134. The Developer Defendants' conduct affects the public interest of the people of South Carolina.

135. The Developer Defendants knew or should have reasonably known that their conduct violated the Unfair Trade Practices Act.

136. As a direct, foreseeable and proximate result of the Developer Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have

caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the building and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN ELEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

(AS TO Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., JT Walker Industries, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JEH Merger Co., LLC, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation)

137. The Plaintiffs re-allege the allegations contained in Paragraphs 1 through 136 of this Complaint and incorporates the same herein as if repeated verbatim.

138. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., 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, Chris Cobbs, Individually, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**, are persons "within the meaning of South Carolina Code §39-5-10(a) and by his actions in preparing, building, constructing, designing, drawing, overseeing the construction of the buildings and its components are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

139. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los

Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., 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, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**; by his action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

140. That the conduct of the Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.,** Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JEH Merger Co., LLC, Jamie Helman,

Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation,** affects the public interest of the people in South Carolina and the Defendant knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

141. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the cause of the defects and deficiencies set forth above and their having to spend substantial sums of money in order to renovate, correct, repair, restore and remediate their residence to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded into the subject buildings causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements of the buildings at Fenwick. The defects and deficiencies set forth above were not discoverable to or by the

Plaintiffs in the exercise of reasonable diligence and the damages were as a result of exposure to the elements. All of which will require the Plaintiffs to expend great amounts of money to correct and repair the deficiencies including the resulting in mold damage as set forth herein as well as to suffer the loss, use and enjoyment of their property as well as the loss of value and depreciation by virtue of the defect and damages aforesaid.

FOR A TWELFTH CAUSE OF ACTION

(Strict Liability)

(AS TO, BEST MASONRY & TOOL SUPPLY, L.P. as successor in interest to BEST MASONRY & TOOL SUPPLY, INC., as successor in interest to MAGNA WALL, INC., AND GENERAL ALUMINUM COMPANY OF TEXAS, LP,)

142. The Plaintiff re-alleges the allegations contained in Paragraphs 1 through 141 of this Complaint and incorporates the same herein as if repeated verbatim.

143. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., manufactured, and sold and distributed the stucco and coating that were defective and unreasonably dangerous and was installed into and onto the buildings at Fenwick.

144. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., are in the

business of manufacturing, marketing and selling stucco and other like products.

145. That the stucco and coating manufactured and sold by the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., when installed into and onto the buildings at Fenwick were in substantially the same condition as when sold.

146. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., is strictly liable to the Plaintiff pursuant to §15-73-10 of the South Carolina Code Annotated (1976, as amended).

147. That the Defendants, General Aluminum Company of Texas, LP, manufactured, and sold and distributed the windows that were defective and unreasonably dangerous and was installed into and onto the buildings at Fenwick.

148. That the Defendants, General Aluminum Company of Texas, LP, are in the business of manufacturing, marketing and selling windows and other like products.

149. That the windows manufactured and sold by the Defendant, General Aluminum Company of Texas, LP, when installed into and onto the buildings was in substantially the same condition as when sold.

150. That the Defendants, General Aluminum Company of Texas, LP, are strictly liable to the Plaintiff pursuant to §15-73-10 of the South Carolina Code Annotated (1976, as amended).

151. The Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and their having to spend substantial sums of money in order to renovate, correct, repair and restore his residence to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into their home causing rot, deterioration, and other damages to the finish and structure elements of the Plaintiffs' home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A THIRTEENTH CAUSE OF ACTION
(Suit on Bond/Defendant Federal Insurance Company)

152. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 151 of this Complaint and incorporate the same herein as if repeated verbatim.

153. The Defendant Federal Insurance Company issued a Performance Bond no. 8187-43-33 naming itself as Surety, Defendant Summit Contractors, Inc., as principal, and Fenwick Tarragon Apartments, L.L.C., and its Successors as Owners/Obligees. The unit owners and the POA are the Successor Owners.

154. The Performance Bond provides, inter alia, that the contractor and the surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for performance of the Owner/Contractor agreement. The Performance Bond further provides, inter alia, that in the event of default by the Contractor under the terms of the Owner/Contractor Agreement, the Surety is obligated for the responsibilities of the contractor for correction of defective work and completion of the construction contract.

155. In and by the terms of the Performance Bond, Defendant Federal Insurance Company is liable to the Plaintiff Owner POA should Summit breach its contract with the POA's predecessor. The unit owners and the POA and their predecessor Owner has performed all obligations required of them under the terms of the Performance Bond.

156. The Defendant, Summit Contractors, Inc., has breached its contract with the unit owners' and POA's predecessor and therefore with the POA, and is in default thereof within the meaning of the Performance Bond in the particulars set forth hereinabove, and as a result of said breach, the Plaintiff POA is entitled to judgment against the Defendant Federal Insurance Company in an amount to be determined by the trier of fact, together with attorneys' fees and costs.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) of the South Carolina Rules of Civil Procedure, hold the Defendants, jointly and severally liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

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Charleston, South Carolina

Dated: 3/15, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

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
CONTRACTORS GROUP, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE
& INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., and
PROFESSIONAL PLASTERING &
STUCCO, INC.,

Defendants.

AFFIDAVIT OF
MYLES I. GLICK, AIA

FILED
2009 APR 20 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY B.J.

Personally appeared before me Myles I. Glick, who being duly sworn on oath deposes

and says:

1. That he is a licensed architect in the state of South Carolina, he holds a national
board - NCARB - certificate in architecture, and a copy of his CV is attached hereto and made a
part hereof as exhibit "A."

2. That this affidavit is given in order to satisfy the requirements of SC Code §15-36-100.

3. That he has examined the buildings at issue in this litigation, the design documents, correspondence, and the Contract between Fugelberg Koch Architects, Inc. and the Owner of the Fenwick project, Tarragon Realty Investors, Inc., dated August 1, 2001.

4. That his review of the above material demonstrates that the original design intent for the exterior building envelopes was a drainable system, but what was actually installed was a "Magna-Wall" system installed as a barrier system, the effect of which was to entrap water, leading to mold, mildew, building components deterioration, and requiring extensive replacement.

5. That his review of the Contract documents demonstrates that the Architect, Fugelberg Koch, undertook the responsibilities: 1) to visit the site at appropriate intervals to determine in general that the Work when completed would be in accordance with the Contract Documents, 2) to review Product Data and samples to check for conformance with the design concept expressed in the Contract Documents, 3) to certify payment applications - which certifications constituted a representation to the Owner that the quality of the Work was in accordance with the Contract Documents.

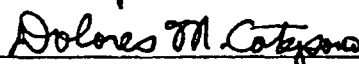
6. That the construction of the buildings at issue with a "Magna-Wall" system installed as a barrier system, and consequently causing the problems above stated was not in accordance with the Contract Documents, was not in conformance with the design concept, and any such certification to the Owner to the contrary contained in the architect-certified pay applications, was incorrect.

7. That in his opinion Fugelberg Koch was negligent in failing to exercise its duties to ensure that the actual construction of the buildings at issue met the design concept it had designed, in failing to ensure that such construction was in conformance with the Contract Documents, and in certifying to the Owner that in fact such construction was in conformity with the Construction Documents, when it was not. That as a result of this negligence, an improper exterior building envelope was installed on the subject buildings, requiring extensive demolition and repair.

FURTHER YOUR DEPONENT SAYETH NOT.

By: 
Myles L. Glick, AIA

SWORN to before me this 20th
day of April, 2009.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-1-13

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

THE NINTH JUDICIAL CIRCUIT

Mark F. Teseniar & 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,

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 Contractors,
Inc., Fugleberg Koch Architects, Inc.,
Development, Compliance & Inspections, Inc.,
H2L Consulting Engineers, Twelve Oaks at
Fenwick Property Owners Association, Inc.,
(from August 8, 2006 to December 15, 2008),
Professional Plastering & Stucco, Inc.,
Johnson Companies, Inc., d/b/a Johnson
Roofing, Inc., Los Campos, Inc., North Florida
Framing, Inc., Best Masonry & Tool Supply,
L.P. as successor in interest to Best Masonry
& Tool Supply, Inc., as successor in interest to
Magna 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 and JR
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 Rosales, and
APS Enterprises Unllimited, Inc.

Defendants.

Professional Plastering & Stucco, Inc.,

Third-Party Plaintiffs,

v.

Luis Martinez, Villagomez Painting, Inc.,
and D.M. Painting

Civil Action No.: 2008-CP-10-0049

FILED
2010 APR -1 PM 1:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**ANSWER OF PROFESSIONAL
PLASTERING AND STUCCO, INC. TO
PLAINTIFFS' FOURTH AMENDED
COMPLAINT, SECOND AMENDED
THIRD-PARTY COMPLAINT AND
CROSS-CLAIMS
(Jury Trial Demanded)**

COMES NOW, Defendant, Professional Plastering & Stucco, Inc., answering the Fourth Amended Summons and Complaint of the Plaintiffs and asserting Cross-Claims and a Second Amended Third-Party Complaint, would allege and show unto the Court:

1. Each and every allegation of Plaintiffs' Fourth Amended Complaint not specifically admitted herein is denied.
2. Defendant is without sufficient information to form a belief as to the allegations of paragraphs 1 through 156 and, therefore, denies same.

FOR A FIRST DEFENSE

3. The allegations contained in paragraph 2 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
4. The Defendant would show that the Fourth Amended Summons and Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12 of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

5. The allegations contained in paragraphs 1 through 4 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
6. The Defendant would show that this action is barred by the applicable Statute of Limitations and/or applicable Statute of Repose.

FOR A THIRD DEFENSE

7. The allegations contained in paragraphs 1 through 6 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.
8. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiffs, combining, concurring and contributing with the

negligence, if any, which is expressly denied, on the part of this Defendant, to such a degree that Plaintiffs' recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

9. The allegations contained in paragraphs 1 through 8 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

10. The Defendant would show that Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

11. The allegations contained in paragraphs 1 through 10 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

12. The Defendant would show that Plaintiffs' Fourth Amended Summons and Complaint is barred by the doctrine of *waiver*.

FOR A SIXTH DEFENSE

13. The allegations contained in paragraphs 1 through 12 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to provide this answering Defendant with any notice of any alleged failure to conform to the Contract Documents or any alleged substitution and failed to provide this answering Defendant with any opportunity to remedy any such alleged failure or alleged substitution, and, thereby prejudiced this answering Defendant.

FOR A SEVENTH DEFENSE

15. The allegations contained in paragraphs 1 through 14 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

16. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, were proximately caused and occasioned by the sole negligence, gross negligence,

willfulness, wantonness, carelessness and recklessness of Plaintiffs in failing to exercise due care and reasonable care, which was the direct and proximate cause of any injuries or losses suffered by Plaintiffs, if any, without which the alleged injuries or losses would not have occurred. The Defendant pleads the sole negligence, gross negligence, willfulness, wantonness, carelessness, recklessness and negligence of Plaintiffs as a complete bar to this action against it.

FOR AN EIGHTH DEFENSE

17. The allegations contained in paragraphs 1 through 16 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

18. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, as alleged in the Fourth Amended Summons and Complaint, was not due to or caused by the negligence on the part of the Defendant, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR A NINTH DEFENSE

19. The allegations contained in paragraphs 1 through 18 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

20. The Defendant would show that such injuries or losses that Plaintiffs sustained, if any, as alleged in the Fourth Amended Summons and Complaint, were not due to or caused by any negligence on the part of the Defendant, but was rather due to and caused by the contributing, concurring, intervening or superseding fault, breach of warranty or act or omission of a third party, over which this Defendant had no control.

FOR A TENTH DEFENSE

21. The allegations contained in paragraphs 1 through 20 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

22. The Defendant would show that Plaintiffs' claim for punitive damages violate the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States

of America in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiffs' claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Defendant's exercise of that right; Plaintiffs' claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; Plaintiffs' claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, Plaintiffs' claim for punitive damages should be dismissed.

FOR AN ELEVENTH DEFENSE

23. The allegations contained in paragraphs 1 through 22 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

24. Plaintiffs' claims are barred by the Economic Loss Doctrine.

FOR A TWELFTH DEFENSE

25. The allegations contained in paragraphs 1 through 24 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. The Defendant would show, upon information and belief, that Plaintiffs failed to mitigate damages, if any, as required by law.

FOR A THIRTEENTH DEFENSE

27. The allegations contained in paragraphs 1 through 26 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. The Defendant would show, upon information and belief, that Plaintiffs' claims are barred by the doctrines of equitable estoppel.

FOR A FOURTEENTH DEFENSE

29. The allegations contained in paragraphs 1 through 28 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

30. The Defendant would show that Plaintiffs' Fourth Amended Summons and Complaint is barred by the doctrine of *waiver and estoppel*.

FOR A FIFTEENTH DEFENSE

31. The allegations contained in paragraphs 1 through 30 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

32. Plaintiffs failed to give Defendant reasonable notice of the existence of any alleged defects and failed to provide Defendant a reasonable opportunity to correct any such alleged defects which constitutes a bar to this action.

FOR A SIXTEENTH DEFENSE

33. The allegations contained in paragraphs 1 through 32 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

34. The Plaintiffs' claims fail as a matter of law to state a class action, because Plaintiffs have not met the elements of Rule 23, SCRPC.

FOR A SEVENTEENTH DEFENSE

35. The allegations contained in paragraphs 1 through 34 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

36. The Plaintiffs' claims are barred because of settlement, satisfaction, and/or release.

FOR AN EIGHTEENTH DEFENSE

37. The allegations contained in paragraphs 1 through 36 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

38. The Plaintiffs' claims are barred by payment.

FOR A NINETEENTH DEFENSE

39. The allegations contained in paragraphs 1 through 38 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

40. The Defendant would show that the Plaintiffs failed to give notice of defect and opportunity to cure pursuant to **South Carolina Code Ann. § 40-59-810 et seq.**

FOR A TWENTIETH DEFENSE

41. The allegations contained in paragraphs 1 through 40 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

42. The Defendant pleads lack of standing for any and all damages alleged by Plaintiff and claims raised by Plaintiff.

FOR A TWENTY-FIRST DEFENSE

43. The allegations contained in paragraphs 1 through 42 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

44. Defendant pleads the Statute of Frauds.

FOR A TWENTY-SECOND DEFENSE

45. The allegations contained in paragraphs 1 through 44 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

46. This Court lacks jurisdiction of the subject matter of the class action alleged by Plaintiffs because no such class exists and because the amount in controversy for any member of such class does not exceed \$100.00.

FOR A TWENTY-THIRD DEFENSE

47. The allegations contained in paragraphs 1 through 46 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

48. Plaintiffs have not alleged with specificity that they have fulfilled all actions precedent to bring this suit as a class action, and therefore the class action aspect of this suit should be dismissed.

FOR A TWENTY-FOURTH DEFENSE

49. The allegations contained in paragraphs 1 through 48 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

50. Plaintiffs' purported class claims are barred because the members of the class are not so numerous that it would be impractical and uneconomical for each class member.

FOR A TWENTY-FIFTH DEFENSE

51. The allegations contained in paragraphs 1 through 50 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

52. Plaintiffs' purported class claims are barred because Plaintiffs' claims are not typical of the claims of the purported class.

FOR A TWENTY-SIXTH DEFENSE

53. The allegations contained in paragraphs 1 through 52 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

54. Plaintiffs' purported class claims are barred because the named plaintiffs and class representatives do not adequately represent the interests of the members of the class.

FOR A TWENTY-SEVENTH DEFENSE

55. The allegations contained in paragraphs 1 through 54 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

56. Plaintiffs' purported class claims are barred because class action litigation is not

superior to other available methods for fair and efficient adjudication of the controversy.

FOR A TWENTY-EIGHTH DEFENSE

57. The allegations contained in paragraphs 1 through 56 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

58. Plaintiffs' purported class claims are barred because Plaintiffs' definition of the class is vague, ambiguous and overly broad.

FOR A TWENTY-NINTH DEFENSE

59. The allegations contained in paragraphs 1 through 58 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

60. Plaintiffs' purported class claims are barred because Plaintiffs have failed to meet the requirements of applicable law, including the requirements of due process.

FOR A THIRTIETH DEFENSE

61. The allegations contained in paragraphs 1 through 60 above, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

62. The Defendant does not waive and reserves the right to raise any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**CROSS-CLAIMS AGAINST MARIA ARIAS, MIQUEL ROSALES, AND APS
ENTERPRISES UNLIMITED, INC.**

63. Upon information and belief, Defendant Professional Plastering & Stucco, was at all relevant times a Florida Corporation.

64. Upon information and belief, Defendant Maria Arias, is a resident of the State of Florida and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

65. Upon information and belief, Defendant Miquel Rosales, is a resident of the State of Florida and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

66. Upon information and belief, Defendant APS Enterprises Unlimited, Inc. ("APS" throughout), is a Florida Corporation and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

FACTUAL ALLEGATIONS

67. Professional Plastering & Stucco is a Defendant in the action ("The Action") situated and Twelve Oaks at Fenwick Property Owners Association, Inc. regarding the Premises, Twelve Oaks at Fenwick Plantation ("The Premises").

68. Best Masonry & Tool Supply, L.P., as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., allegedly improperly sued as Magna Walls, Inc., Summit Contractors Group, Inc., and Federal Insurance Company have asserted cross-claims against Professional Plastering & Stucco. In addition, additional cross-claims may be asserted against Professional Plastering & Stucco in this action (all cross-claims brought or may be brought collectively referred to herein as "Cross-Claims" or "Cross-Claimants."

69. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Maria Arias to perform as a subcontractor with respect to the work on The Premises.

70. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Miquel Rosales to perform as a subcontractor with respect to the work on The Premises.

71. Upon information and belief, Professional Plastering & Stucco entered into an agreement with APS to perform as a subcontractor with respect to the work on The Premises.

**FOR A FIRST CROSS-CLAIM
AGAINST MARIA ARIAS, MIQUEL ROSALES AND APS ENTERPRISES
UNLIMITED, INC.**

72. The above paragraphs are incorporated herein as if repeated verbatim.

73. The Plaintiffs in The Action have alleged that The Premises were constructed and repaired defectively along with other allegations. Best Masonry & Tool Supply, L.P., as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., allegedly improperly sued as Magna Walls, Inc., Summit Contractors Group, Inc., and Federal Insurance Company have asserted cross-claims against Professional Plastering & Stucco, and additional cross-claims may be brought.

74. Upon information and belief, Professional Plastering & Stucco subcontracted with Maria Arias, Miquel Rosales and APS to perform the work at The Premises.

75. If the allegations, which Professional Plastering & Stucco denies, are proven true, then Maria Arias, Miquel Rosales and APS were careless, negligent, and grossly negligent in the work they performed, and in other respects as may become known through the course of discovery.

76. As a result of the alleged negligence of Maria Arias, Miquel Rosales and APS, Professional Plastering & Stucco has been sued and has incurred costs and expenses and may incur damages as a result of the alleged negligence of Maria Arias, Miquel Rosales and APS.

77. As a result of the alleged negligence of Maria Arias, Miquel Rosales and APS, they are liable to Professional Plastering & Stucco for all damages, costs, and expenses Professional Plastering & Stucco incurs or may incur as a result of the allegations asserted.

**FOR A SECOND CROSS-CLAIM AGAINST MARIA ARIAS, MIQUEL ROSALES AND
APS ENTERPRISES UNLIMITED, INC.**

78. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

79. If the Plaintiffs' allegations regarding the damage to The Premises or the cross-claims are true, and if Professional Plastering & Stucco is found liable for any such damage, which is specifically denied, the damages were caused by the sole acts or omissions of Maria Arias, Miquel Rosales and APS.

80. The damages alleged by The Plaintiffs and Cross-Claimants were due to the active or primary fault of Maria Arias, Miquel Rosales and APS and/or their authorized agents, servants, or employees, and to the extent liability or damages are imposed against Professional Plastering & Stucco, Professional Plastering & Stucco alleges its liability to The Plaintiffs and Cross-Claimants, if any at all, is only secondary or passive based on the Maria Arias, Miquel Rosales and APS's conduct in their respective duties in the construction and/or repair of The Premises and The Plaintiffs' and Cross-Claimants alleged damages were solely and proximately caused by the active or primary fault of Maria Arias, Miquel Rosales and APS.

81. Professional Plastering & Stucco pleads that the right of full legal and equitable indemnity exists in its favor against Maria Arias, Miquel Rosales and APS because Professional Plastering & Stucco is exposed to liability in this case, if at all, because of the primary wrongful acts and/or omissions of Maria Arias, Miquel Rosales and APS, in which Professional Plastering & Stucco did not join; that to the extent The Plaintiffs and/or Cross-Claimants recover against Professional Plastering & Stucco, Professional Plastering & Stucco alleges that Maria Arias, Miquel Rosales and APS are liable to Professional Plastering & Stucco as to all or part of The Plaintiffs' claims and Cross-Claimants' claims, and Maria Arias, Miquel Rosales and APS must indemnify Professional Plastering & Stucco, including all attorney fees and costs incurred in defending the Plaintiffs' and Cross-Claimants' claims, and all damages incurred or which may be incurred.

FOR A THIRD CROSS-CLAIM
AGAINST MARIA ARIAS, MIQUEL ROSALES AND APS ENTERPRISES
UNLIMITED, INC.

82. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

83. Upon information and belief, pursuant to the agreements, implied and express warranties were provided by Maria Arias, Miquel Rosales and APS to Professional Plastering & Stucco that the product and work would be merchantable and fit for its particular purpose. At the time of the contracts, Maria Arias, Miquel Rosales and APS had reason to know the particular purpose that their work and product were required and that Professional Plastering & Stucco was relying on Maria Arias, Miquel Rosales and APS for their skill and judgment in applying and doing their work within Code, industry standards, and manufacturer's specifications. In addition, Maria Arias, Miquel Rosales and APS made implied warranties and express warranties that all work would be performed in a good and workmanlike fashion and in accordance with all applicable building codes, manufacturers' specifications, and the industry standards prevailing at the time and place of construction and repair as alleged.

84. Upon information and belief, if the Plaintiffs' and/or Cross-Claimants allegations are proven, Maria Arias, Miquel Rosales and APS breached these warranties to Professional Plastering & Stucco. As a result of Maria Arias, Miquel Rosales and APS's alleged breach of their express, implied warranties of proper workmanship, merchantability, and fit for its particular purpose, Professional Plastering & Stucco has incurred costs and expenses and may incur damages.

85. As a result Maria Arias, Miquel Rosales and APS's alleged breach of their warranties, Professional Plastering & Stucco is entitled to recover from Maria Arias, Miquel Rosales and APS all of its costs, expenses, and damages as a result of The Plaintiffs' allegations and Cross-Claimants' allegations.

**FOR A FOURTH CROSS-CLAIM AGAINST MARIA ARIAS, MIQUEL ROSALES AND
APS ENTERPRISES UNLIMITED, INC.**

86. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

87. Upon information and belief, during the construction and repair of The Premises, Professional Plastering & Stucco entered into agreements with Maria Arias, Miquel Rosales and APS in which Maria Arias, Miquel Rosales and APS agreed to provide their service and work in the construction and repair of The Premises.

88. Upon information and belief, among other things that may come to light during the discovery process, Maria Arias, Miquel Rosales and APS held themselves out as experienced in their respective fields and warranted their work would be done in a proper and workmanlike manner.

89. If the Premises are damaged and the Plaintiffs' alleged damages and/or Cross-Claimants' allegations are true, as alleged, then Maria Arias, Miquel Rosales and APS breached their contracts with Professional Plastering & Stucco.

90. In the event that Professional Plastering & Stucco is liable to The Plaintiffs in any respect and/or Cross-Claimants, in any respect, which is denied, then such liability arose from the acts of Maria Arias, Miquel Rosales and APS and breach of contract with Professional Plastering & Stucco, and therefore Professional Plastering & Stucco is entitled to indemnity, in whole or in part, from Maria Arias, Miquel Rosales and APS, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' claims and Cross-Claimants' claims and other damages.

FOR A FIFTH CROSS-CLAIM
AGAINST MARIA ARIAS, MIQUEL ROSALES AND APS ENTERPRISES
UNLIMITED, INC.

91. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

92. Maria Arias, Miquel Rosales, and APS entered into agreements with Professional Plastering & Stucco wherein Maria Arias, Miquel Rosales and APS agreed to indemnify, hold harmless and defend Professional Plastering & Stucco for any claim, liability, demand, suit, judgment, loss, and costs and expenses related thereto.

93. Plaintiffs and Cross-Claimants have made certain allegations in their Complaint and Amended Complaints and Cross-Claims relating to the work and actions of Maria Arias, Miquel Rosales and APS on or relating to the Premises.

94. Professional Plastering & Stucco has denied Plaintiffs' and Cross-Claimants' allegations directed against it.

95. Professional Plastering & Stucco is entitled to indemnity, in whole or in part, from Maria Arias, Miquel Rosales and APS, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' and Cross-Claimants' claims and in this action.

**SECOND AMENDED THIRD-PARTY AGAINST LUIS MARTINEZ, VILLAGOMEZ
PAINTING, INC., AND D.M. PAINTING**

96. Upon information and belief, Third-Party Plaintiff, Professional Plastering & Stucco, was at all relevant times a Florida Corporation.

97. Upon information and belief, Third-Party Defendant, Luis Martinez, was during the time pertinent to this action conducting business in Charleston County, South Carolina.

98. Upon information and belief, Third-Party Defendant, Villagomez Painting, Inc. ("Villagomez Painting" throughout) is a Florida Corporation and was during the time pertinent to this action conducting business in Charleston County, South Carolina.

99. Upon information and belief, Third-Party Defendant, D.M. Painting, was during the time pertinent to this action conducting business in Charleston County, South Carolina.

FACTUAL ALLEGATIONS

100. Professional Plastering & Stucco is a Defendant in the action ("The Action") situated and Twelve Oaks at Fenwick Property Owners Association, Inc. regarding the Premises, Twelve Oaks at Fenwick Plantation ("The Premises").

101. Best Masonry & Tool Supply, L.P., as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., allegedly improperly sued as Magna Walls, Inc., Summit Contractors Group, Inc., and Federal Insurance Company have asserted cross-claims against Professional Plastering & Stucco. In addition, additional cross-claims may be asserted against Professional Plastering & Stucco in this action (all cross-claims brought or may be brought collectively referred to herein as "Cross-Claims" or "Cross-Claimants."

102. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Luis Martinez to perform as a subcontractor with respect to the work on The Premises.

103. Upon information and belief, Professional Plastering & Stucco entered into an agreement with Villagomez Painting, Inc. to perform as a subcontractor with respect to the work on The Premises.

104. Upon information and belief, Professional Plastering & Stucco entered into an agreement with D.M. Painting to perform as a subcontractor with respect to the work on The Premises.

FOR A FIRST CAUSE OF ACTION
AGAINST THIRD-PARTY DEFENDANTS

105. The above paragraphs are incorporated herein as if repeated verbatim.

106. The Plaintiffs in The Action have alleged that The Premises were constructed and repaired defectively along with other allegations. Best Masonry & Tool Supply, L.P., as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna

Wall, Inc., allegedly improperly sued as Magna Walls, Inc., Summit Contractors Group, Inc., and Federal Insurance Company have asserted cross-claims against Professional Plastering & Stucco, and additional cross-claims may be brought.

107. Upon information and belief, Professional Plastering & Stucco subcontracted with Luis Martinez, Villagomez Painting, and D.M. Painting to perform work at The Premises.

108. If the allegations, which Professional Plastering & Stucco denies, are proven true, then Luis Martinez, Villagomez Painting, and D.M. Painting were careless, negligent, and grossly negligent in the work they performed, and in other respects as may become known through the course of discovery.

109. As a result of the alleged negligence of Luis Martinez, Villagomez Painting, and D.M. Painting, Professional Plastering & Stucco has been sued and has incurred costs and expenses and may incur damages as a result of the alleged negligence of Luis Martinez, Villagomez Painting, and D.M. Painting.

110. As a result of the alleged negligence of Luis Martinez, Villagomez Painting, and D.M. Painting, they are liable to Professional Plastering & Stucco for all damages, costs, and expenses Professional Plastering & Stucco incurs or may incur as a result of the allegations asserted.

FOR A SECOND CAUSE OF ACTION
AGAINST THIRD-PARTY DEFENDANTS LUIS MARTINEZ, VILLAGOMEZ
PAINTING, AND D.M. PAINTING

111. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

112. If the Plaintiffs' allegations regarding the damage to The Premises or the cross-claims are true, and if Professional Plastering & Stucco is found liable for any such damage, which is specifically denied, the damages were caused by the sole acts or omissions of the Third-Party Defendants.

113. The damages alleged by The Plaintiffs and Cross-Claimants were due to the active or primary fault of the Third-Party Defendants and/or their authorized agents, servants, or employees, and to the extent liability or damages are imposed against Professional Plastering & Stucco, Professional Plastering & Stucco alleges its liability to The Plaintiffs and Cross-Claimants, if any at all, is only secondary or passive based on the Third-Party Defendants' conduct in their respective duties in the construction and/or repair of The Premises and The Plaintiffs' and Cross-Claimants alleged damages were solely and proximately caused by the active or primary fault of the Third-Party Defendants.

114. Professional Plastering & Stucco pleads that the right of full legal and equitable indemnity exists in its favor against the Third-Party Defendants because Professional Plastering & Stucco is exposed to liability in this case, if at all, because of the primary wrongful acts and/or omissions of the Third-Party Defendants, in which Professional Plastering & Stucco did not join; that to the extent The Plaintiffs and/or Cross-Claimants recover against Professional Plastering & Stucco, Professional Plastering & Stucco alleges that the Third-Party Defendants are liable to Professional Plastering & Stucco as to all or part of The Plaintiffs' claims and Cross-Claimants' claims, and the Third-Party Defendants must indemnify Professional Plastering & Stucco, including all attorney fees and costs incurred in defending the Plaintiffs' and Cross-Claimants' claims, and all damages incurred or which may be incurred.

FOR A THIRD CAUSE OF ACTION
AGAINST THIRD-PARTY DEFENDANTS LUIS MARTINEZ, VILLAGOMEZ
PAINTING, AND D.M. PAINTING

115. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

116. Upon information and belief, pursuant to the agreements, implied and express warranties were provided by Third-Party Defendants to Professional Plastering & Stucco that the product and work would be merchantable and fit for its particular purpose. At the time of the

contracts, the Third-Party Defendants had reason to know the particular purpose that their work and product were required and that Professional Plastering & Stucco was relying on the Third-Party Defendants for their skill and judgment in applying and doing their work within Code, industry standards, and manufacturer's specifications. In addition, the Third-Party Defendants made implied warranties and express warranties that all work would be performed in a good and workmanlike fashion and in accordance with all applicable building codes, manufacturers' specifications, and the industry standards prevailing at the time and place of construction and repair as alleged.

117. Upon information and belief, if the Plaintiffs' and/or Cross-Claimants allegations are proven, the Third-Party Defendants breached these warranties to Professional Plastering & Stucco. As a result of the Third-Party Defendants' alleged breach of their express, implied warranties of proper workmanship, merchantability, and fit for its particular purpose, Professional Plastering & Stucco has incurred costs and expenses and may incur damages.

118. As a result the Third-Party Defendants' alleged breach of their warranties, Professional Plastering & Stucco is entitled to recover from the Third-Party Defendants all of its costs, expenses, and damages as a result of The Plaintiffs' allegations and Cross-Claimants' allegations.

FOR A FOURTH CAUSE OF ACTION
AGAINST THE THIRD-PARTY DEFENDANTS LUIS MARTINEZ,
VILLAGOMEZ PAINTING, AND D.M. PAINTING

119. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

120. Upon information and belief, during the construction and repair of The Premises, Professional Plastering & Stucco entered into agreements with the Third-Party Defendants in which the Third-Party Defendants agreed to provide their service and work in the construction and repair of The Premises.

121. Upon information and belief, among other things that may come to light during the discovery process, the Third-Party Defendants held themselves out as experienced in their respective fields and warranted their work would be done in a proper and workmanlike manner.

122. If the Premises are damaged and the Plaintiffs' alleged damages and/or Cross-Claimants' allegations are true, as alleged, then the Third-Party Defendants breached their contracts with Professional Plastering & Stucco.

123. In the event that Professional Plastering & Stucco is liable to The Plaintiffs in any respect and/or Cross-Claimants, in any respect, which is denied, then such liability arose from the acts of the Third-Party Defendants and breach of contract with Professional Plastering & Stucco, and therefore Professional Plastering & Stucco is entitled to indemnity, in whole or in part, from these Third-Party Defendants, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' claims and Cross-Claimants' claims and other damages.

FOR A FIFTH CAUSE OF ACTION
AGAINST THE THIRD-PARTY DEFENDANTS LUIS MARTINEZ,
VILLAGOMEZ PAINTING, AND D.M. PAINTING

124. The above paragraphs, not inconsistent herewith, are incorporated herein as if repeated verbatim.

125. Luis Martinez, Villagomez Painting, and D.M. Painting entered into agreements with Professional Plastering & Stucco wherein Luis Martinez, Villagomez Painting, and D.M. Painting agreed to indemnify, hold harmless and defend Professional Plastering & Stucco for any claim, liability, demand, suit, judgment, loss, and costs and expenses related thereto.

126. Plaintiffs and Cross-Claimants have made certain allegations in their Complaint and Amended Complaints and Cross-Claims relating to the work and actions of Luis Martinez, Villagomez Painting, and D.M. Painting on or relating to the Premises.

127. Professional Plastering & Stucco has denied Plaintiffs' and Cross-Claimants' allegations directed against it.

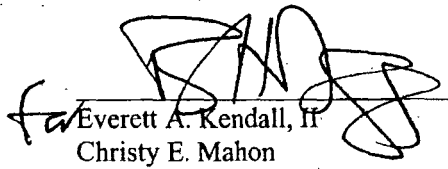
128. Professional Plastering & Stucco is entitled to indemnity, in whole or in part, from these Third-Party Defendants, and all attorney fees, expenses, and costs incurred in defending The Plaintiffs' and Cross-Claimants' claims and in this action.

WHEREFORE, having fully answered, Defendant/Third-Party Plaintiff prays that the Plaintiffs' Complaint be dismissed with costs; for attorney's fees; the Third-Party Plaintiff, Professional Plastering & Stucco, prays that this Honorable Court inquire into these matters and grant its judgment in favor of Professional Plastering & Stucco and against Maria Arias, Miquel Rosales and APS, Luis Martinez, Villagomez Painting, and D.M. Painting and granting Professional Plastering & Stucco damages, costs, interest, attorney's fees, and such other relief as this Court deems to be just and proper.

This Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



for Everett A. Kendall, II
Christy E. Mahon
1515 Lady Street
Post Office Box 12129
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(803) 256-2233

**ATTORNEYS FOR PROFESSIONAL
PLASTERING & STUCCO, INC.**

Columbia, South Carolina

March 31, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP, INC.,
SUMMIT CONTRACTORS, INC., FUGLEBERG
KOCH ARCHITECTS, INC., DEVELOPMENT,
COMPLIANCE & INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE OAKS
AT FENWICK PROPERTY OWNERS
ASSOCIATION, INC., (from August 8, 2006 to
December 15, 2008), PROFESSIONAL
PLASTERING & STUCCO, INC., JOHNSON
COMPANIES, INC., D/B/A JOHNSON
ROOFING, INC., LOS CAMPOS, INC., NORTH
FLORIDA FRAMING, INC., BEST MASONRY &
TOOL SUPPLY, L.P. as successor in interest to
BEST MASONRY & TOOL SUPPLY, INC., as
successor in interest to MAGNA WALL, INC.,
ALL SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., 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
ROSALES, APS ENTERPRISES UNLIMITED,

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10- 49

APS ENTERPRISES, INC.'S
MOTION FOR SUMMARY
JUDGMENT

2011 APR 15 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT
PY

FILED

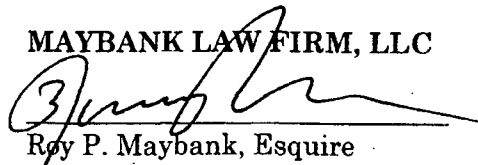
INC., HR ELECTRIC, A.M. JACOBS, INC.,	)
MICKEY MASON D/B/A MASON	)
CONTRACTORS, KMAC OF THE CAROLINAS,	)
INC., AND NEO CORPORATION,	)
Defendants.	)
	)
APS ENTERPRISES UNLIMITED, INC.	)
	)
Plaintiff	)
	)
	)
vs.	)
C&N STUCCO AND PLASTERING, INC.	)
	)
Third-Party Defendants,	)

YOU WILL PLEASE TAKE NOTICE that the Defendant APS Enterprises Unlimited, Inc. by and through its undersigned attorneys will, in ten (10) days, or as soon thereafter as may be heard, move for summary judgment on the cross-claims asserted against it by Professional Plastering & Stucco, Inc.

The basis for this motion is that Professional Plastering & Stucco, Inc. is not a licensed contractor and cannot maintain an action either in law or equity, and that the licensed contractor under which Professional Plastering & Stucco performed any work failed to properly supervise APS and is fully responsible for any alleged defective work or damages resulting therefrom. The motion is supported by S.C. Code Ann. §§ 40-11-270 and 40-11-370, case law, affidavits, memorandums and arguments of counsel as may be appropriate.

Respectfully submitted.

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Attorneys for the Defendants

and Third-Party Plaintiffs

APS Enterprises

Charleston, South Carolina

4/15, 2011

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 15 day of April, 2011.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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
Contractors Group, Inc., Summit Contractors, Inc.,
Fugleberg Koch Architects, Inc., Development,
Compliance & Inspections, Inc., H2I consulting
Engineers , Twelve Oaks At Fenwick Property
Owners Association, Inc., (From August 8, 2006
To December 15, 2008), Professional Plastering &
Stucco, Inc., Johnson Companies, Inc., D/B/A
Johnson Roofing, Inc., Los Campos, Inc., North
Florida Framing, Inc., Best Masonry & Tool
Supply, L.P. As Successor In Interest To Best
Masonry & Tool Supply, Inc., As Successor In
Interest To Magna 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 Jhrmerger Co., LLC.,
Jamie Helman, Individually, Scott Ferguson,
Individually, And Chris Cobbs, Individually, And
Federal Insurance Company

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.:2008-CP-10-0049

DEFENDANT PROFESSIONAL
PLASTERING & STUCCO, INC.'S
RETURN TO APS ENTERPRISES
UNLIMITED, INC.'S MOTION FOR
SUMMARY JUDGMENT

FILED
2011 APR 29 PM 4:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendant Professional Plastering & Stucco, Inc. (hereinafter "Pro Plastering"),
by and through its undersigned attorney, responds to the Motion for Summary Judgment
filed by APS Enterprises Unlimited, Inc. ("APS") as follows:

APS filed its Notice of Motion and Motion for Summary Judgment on April 15, 2011, without supporting memorandum or affidavits. In its Motion, APS states it is entitled to summary judgment based on its assertion that Pro Plastering is not a licensed contractor and therefore cannot maintain an action in law or in equity against APS. Counsel for APS makes reference to S.C. Code Ann. §§ 40-11-270 and 40-11-370 as the basis for its assertion. However, APS's motion should be denied, as Pro Plastering was not required to hold a contractor's license pursuant to S.C. Code Ann. § 40-11-270, and is therefore not barred from maintaining its action against APS.

Pro Plastering served as a stucco subcontractor for Summit Contractors, Inc. ("Summit") at the subject project. Pro Plastering, in turn, subsequently contracted with APS to perform repair work at the project's breezeways. *See* Deposition of Donnie King, 106:25 – 107:24, attached as Exhibit A.

The fact that Pro Plastering is not licensed in South Carolina does not bar it from bringing claims against APS. S.C. Code Ann. § 40-11-270(C) states:

Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or subclassification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.

S.C. Code Ann. § 40-11-370(C) states:

An entity which does not have a valid license **as required by this chapter** may not bring an action either at law or in equity to enforce the provisions of a contract. An entity that enters into a contract to engage in construction in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract. (Emphasis added).

Summit, acting as general contractor, was the license holder for the Twelve Oaks project. As such, any subcontractors on the project, including Pro Plastering and APS, performed work at the project as "unlicensed subcontractors" as permitted in S.C. Code Ann. § 40-11-270(C). APS was such a subcontractor that provided labor for work performed on the stucco in the breezeways. Tacy McGinty, an employee for Summit, admitted that Summit had agreed to provide material and supervision for work done in the breezeway, and to accept responsibility for obtaining engineering approval for the work. See Deposition of Tacy McGinty, taken on April 12, 2011, 29:17 – 30:11, attached as Exhibit B. Pro Plastering, lawfully operating under S.C. Code Ann. § 40-11-270(C), is therefore not barred from maintaining an action at law or in equity pursuant to S.C. Code Ann. § 40-11-370(C), as it is not required to hold a license.

For the reasons stated above, ADP's motion for summary judgment should be denied.

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April 27, 2011

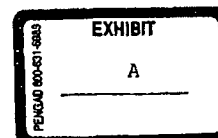
Charleston, South Carolina

Donnie M. King

January 20, 2011

Page 1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
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),)
Plaintiffs,)
vs.)
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,)
DEVELOPMENT, COMPLIANCE)
& INSPECTIONS, INC.,)
HENDRIX, LEBLANC, LEWIS,)
INC., d/b/a H2L)
CONSULTING ENGINEERS,)
PROFESSIONAL PLASTERING)
& STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a)
JOHNSON ROOFING, INC.,)
NORTH FLORIDA FRAMING,)
INC., BEST MASONRY &)
TOOL SUPPLY, L.P. as)
successor in interest)
to BEST MASONRY & TOOL)
SUPPLY, INC., as)
THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
2008-CP-10-0049
TELECONFERENCED AND TELEPHONIC
DEPOSITION OF DONNIE M. KING
Taken on Behalf of the
Plaintiffs
January 20, 2011
9:42 a.m. - 3:25 p.m.
Sclafani Williams-Orlando
20 North Orange Avenue
Suite 805
Orlando, Florida



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SCHEDULEDEPO.COM

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1 successor in interest to)
MAGNA WALL, INC.,)
2 MARQUEZ CONSTRUCTION,)
INC., GENERAL ALUMINUM)
3 COMPANY OF TEXAS, LP,)
MARIA ARIAS, MIGUEL)
4 ROSALES, APS ENTERPRISES)
UNLIMITED, INC., HR)
5 ELECTRIC, MICKEY MASON)
d/b/a MASON CONTRACTORS,)
6 KMAC OF THE CAROLINAS,)
INC. AND NEO CORPORATION,)
7)
Defendants.)

8
9 PROFESSIONAL PLASTERING)
& STUCCO, INC.,)
10)
Third-Party Plaintiffs,)
11)
vs.)
12)
MARIA ARIAS, MIGUEL)
13 ROSALES, and APS)
ENTERPRISES UNLIMITED,)
14 INC.,)
15 Third-Party Defendant.)

16)
APS ENTERPRISES)
17 UNLIMITED, INC.,)
18 Third-Party Plaintiff,)
19 vs.)
20 C&N STUCCO AND)
PLASTERING, INC.,)
21 Third-Party Defendant.)
22)
23
24
25

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1 NORTH FLORIDA FRAMING,)
INC.,)
2)
Third-Party Plaintiff,)
3)
vs.)
4)
NAVA GUZMAN CONSTRUCTION)
5 INC.,)
6 Third-Party Defendant.)
7)

8

9

10 TELECONFERENCED AND TELEPHONIC
DEPOSITION OF DONNIE M. KING

11

Taken on Behalf of the Plaintiffs

12

13

14

DATE TAKEN: January 20, 2011

15

TIME: 9:42 a.m. - 3:25 p.m.

16

PLACE: Sclafani Williams-Orlando
20 North Orange Avenue
Suite 805
Orlando, Florida

17

18

19

20

21

22

23

Stenographically Reported by:
Karen S. Rhine, FPR

24

25

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19 Marquez Construction, Inc.:

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Howell, Gibson & Hughes
25 25 Rue Du Bois
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I N D E X

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3	WITNESS	PAGE
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1 not any of the subcontractors utilized at Twelve Oaks
2 who performed your company's scope of work were
3 certified by Magna Wall?

4 A. No, I don't know that.

5 Q. And just so I have it for purpose of anything I
6 need to prove at trial, can you tell me the names of the
7 subcontractors that performed your scope of work in this
8 case and what they performed?

9 You can look at some paperwork if that will help you.
10 I give Ms. Mahon permission to feed those documents to
11 you.

12 MR. ANDERSON: Were those documents specified
13 in your e-mail, Phillip?

14 MR. SEGUI: J.J., I sure would hope you would
15 see the benefit of your client being able to prove
16 that --

17 MR. ANDERSON: No, I'm not arguing. You're
18 over interpreting my question. My question was if
19 they were in that group then it would make it easier
20 for us to find them. You're a little sensitive
21 today, Phillip.

22 MR. SEGUI: Course of conduct has made me so.
23 Let's take a lunch break. We'll come back at 1:30.

24 (Luncheon recess.)

25 Q. Mr. King, as soon as you start answering we can

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1 go back on the record.

2 A. Okay. So the question being is the subs on the
3 job?

4 Q. And what their scope of work was.

5 A. Maria Arias. She did the stucco work. Miguel
6 Rosales. He did the lathe. There was some different
7 guys that did some work on some of the repair work that
8 we did on the breezeways. Do you want those?

9 Q. If you would, please.

10 A. APS, Luis Martinez, Villagomez Painting and DM
11 Painting?

12 Q. Okay. Did they just collectively do all the
13 repair work on the breezeways or did they divide it up
14 and certain ones do certain buildings or certain ones do
15 certain trades?

16 A. No, sir. APS did the tear off I think and the
17 put back. I think Villagomez did the painting where we
18 tore off and put back.

19 Q. How many breezeways did APS do? Was it all of
20 them?

21 A. You know, I don't know if it was every one of
22 them, but it very well could have been.

23 Q. What do you suspect it was?

24 A. I would suspect it was probably all of them.

25 MR. SEGUI: Okay. Thank you, Mr. King. That's

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SCHEDULEDEPO.COM

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TACY MCGINTY

Page 1

State of South Carolina) Court of Common Pleas
County of Charleston) No.: 2008-CP-10-0049

Mark F. Teseniar & 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),)

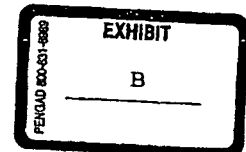
Plaintiffs,)

vs.)

Deposition of
TACY MCGINTY

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 Contractors, Inc.,)
Fugleberg Koch)
Architects, Inc.,)
Development, Compliance &)
Inspections, Inc., H2L)
Consulting Engineers,)
Twelve Oaks at Fenwick)
Property Owners)
Association, Inc., (from)
August 8, 2006 to)
December 15, 2008),)
Professional Plastering &)
Stucco, Inc., Johnson)
Companies, Inc., d/b/a)

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1 Johnson Roofing, Inc.,)
Los Campos, Inc., North)
2 Florida Framing, Inc.,)
Best Masonry & Tool)
3 Supply, L.P. as successor)
in interest to Best)
4 Masonry & Tool Supply,)
Inc., as successor in)
5 interest to Magna Wall,)
Inc., All South Vinyl)
6 Products, Inc., Marquez)
Construction, Inc., J.T.)
7 Walker Industries, Inc.,)
J.T. Industries d/b/a)
8 General Aluminum)
Corporation and General)
9 Aluminum Company of)
Texas, LP and JR Hobbs,)
10 Co.-Atlanta, LLC f/k/a)
JRH Merger Co., LLC,)
11 Jamie Helman,)
individually, Scott)
12 Ferguson, individually,)
and Chris Cobbs,)
13 individually, and Federal)
Insurance Company, Maria)
14 Arias, Miquel Rosales,)
and APS Enterprises)
15 Unlimited, Inc.,)

April 12, 2011

16 Defendants.)
17)
Professional Plastering &)
18 Stucco, Inc.,)
19 Third-Party Plaintiffs,)
20 vs.)
21 Luis Martinez, Villagomez)
Painting, Inc., and D.M.)
22 Painting,)
23 Third-Party Defendants.)

24
25

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TACY MCGINTY

Page 3

1 Deposition on oral examination of TACY MCGINTY,
2 reported by Brad H. Thomas, Certified Realtime
3 Reporter and Notary Public in and for the State of
4 South Carolina; said deposition taken pursuant to
5 agreement and in accordance with the South Carolina
6 Rules of Civil Procedure, at the Offices of Wicker,
7 Smith, Ohara, McCoy & Ford, 50 North Laura Street,
8 Suite 2700, Jacksonville, Florida, on April 12,
9 2011, at the hour of 10:07 a.m.

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GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
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(803) 256-4500

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803-256-4500

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Page 4

2 Representing the Plaintiffs:

5 -AND-

8

10 CHRISTY E. MAHON, ESQUIRE
Sweeny, Wingate & Barrow, P.A.
11 1515 Lady Street
P.O. Box 12129
12 Columbia, South Carolina 29211

-AND-

15

17

20

22

25

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1 Representing the Defendants North Florida Framing
2 and Marquez Construction, Inc.:

3 BARBARA J. WAGNER, ESQUIRE
4 Barnwell, Whaley, Patterson & Helms, LLC
5 885 Island Park Drive
6 P.O. Drawer H
7 Charleston, South Carolina 29402

8 Representing the Defendant APS Enterprises, Inc.:

9 JASON A. DAIGLE, ESQUIRE
10 Maybank Law Firm, LLC
11 P.O. Box 12579
12 Charleston, South Carolina 29422

13 Representing Nava Guzman:

14 BRITT TRAVIS, ESQUIRE (Telephonically)
15 Young, Clement, Rivers, LLP
16 28 Broad Street
17 P.O. Box 993
18 Charleston, South Carolina 29402-0993
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TACY MCGINTY

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Deposition of TACY MCGINTY

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* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page

(Copy of exhibits attached to each copy of transcript.)

183	Bates Summit 09547	24
184	Bates Summit 27992-27994	28
185	Bates Summit 28006-28007	60
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1 A. Correct.

2 Q. Okay. And it has in the Re: line is
3 flashing at breezeways under the Magna Wall,
4 correct?

5 A. Correct.

6 Q. Now, in this letter you apparently had a
7 discussion with Donny King in regard to the
8 installation of the flashing -- installation of the
9 flashing under the Magna Wall stucco and paper
10 backed lath at the breezeway bottom edges?

11 A. Correct.

12 Q. Okay. We're going to go over the actual
13 document that you wrote, but do you remember
14 anything about the discussion with Donny King that
15 is not embodied in this fax?

16 A. No.

17 Q. Okay. Now, in the fax that you wrote you
18 have that the installation of flashing under the
19 Magna Wall stucco and paper backed lath at the
20 breezeway bottom edges will be the responsibility of
21 Summit Contractors, Inc., correct?

22 A. Correct.

23 Q. And then go on to state that you are
24 requesting the use of labor only from your company,
25 Professional Plastering, correct?

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1 A. Correct.

2 Q. And that Summit will supply all material,
3 supervision, and will be responsible for obtaining
4 all engineering approval of the underlying flashing
5 system; is that correct?

6 A. Correct.

7 Q. And then Professional Plastering will
8 install under Summit Contractors, Inc. direction and
9 is not liable for this flashing or the installation
10 of this flashing, correct?

11 A. Correct.

12 Q. Now, let me ask you just a very few other
13 questions and I want to look through one other
14 document I may ask you about at the end, but we took
15 your deposition before in this very room for two
16 days. Do you have any changes to the testimony that
17 you provided before?

18 A. I don't believe so.

19 Q. Okay. And have you -- setting aside any
20 attorneys that may represent Summit, have you had
21 any discussions -- well, let me ask you this. I
22 know you talked to -- you did talk to Edmund Willis,
23 correct, about the Fenwick project?

24 A. Not really.

25 Q. Did he call you about his deposition?

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP, INC.,
SUMMIT CONTRACTORS, INC., FUGLEBERG
KOCH ARCHITECTS, INC., DEVELOPMENT,
COMPLIANCE & INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE OAKS
AT FENWICK PROPERTY OWNERS
ASSOCIATION, INC., (from August 8, 2006 to
December 15, 2008), PROFESSIONAL
PLASTERING & STUCCO, INC., JOHNSON
COMPANIES, INC., D/B/A JOHNSON
ROOFING, INC., LOS CAMPOS, INC., NORTH
FLORIDA FRAMING, INC., BEST MASONRY &
TOOL SUPPLY, L.P. as successor in interest to
BEST MASONRY & TOOL SUPPLY, INC., as
successor in interest to MAGNA WALL, INC.,
ALL SOUTH VINYL PRODUCTS, INC.,
MARQUEZ CONSTRUCTION, INC., 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
ROSALES, APS ENTERPRISES UNLIMITED,

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10-49

FILED
J. ARMSTRONG
CLERK OF COURT
-4 PM 12:36

AMENDED ANSWER OF APS
ENTERPRISES UNLIMITED,
INC. TO PROFESSIONAL
PLASTERING AND STUCCO,
INC.'S ANSWER AND CROSS-
CLAIMS TO MAGNA WALL,
INC.'S ANSWER AND CROSS
CLAIMS, CROSS-CLAIMS AND
THIRD-PARTY COMPLAINT
AGAINST C&N STUCCO AND
PLASTERING, INC.

INC., HR ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON D/B/A MASON)
 CONTRACTORS, KMAC OF THE CAROLINAS,)
 INC., AND NEO CORPORATION,)
 Defendants.)
)
 APS ENTERPRISES UNLIMITED, INC.)
)
 Defendant/Third-Party)
 Plaintiff)
)
 vs.)
 C&N STUCCO AND PLASTERING, INC.)
)
 Third-Party Defendants,)

COMES NOW Defendant/Third-Party Plaintiff APS Enterprises Unlimited, Inc. ("Defendant") answering the Answer and Cross-Claims of Professional Plastering and Stucco, Inc. to Magna Wall, Inc.'s Answer and Cross-Claims.

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. Each and every allegation contained in the Answer and Cross-Claims which is not hereinafter specifically admitted, denied, modified or explained, is hereby denied

2. Paragraphs 1 through 37, inclusive, contain statements relating to a party or parties other than this Defendant such that no response is required of this Defendant. To the extent that the statements contained in Paragraphs 1 through 37, inclusive, may be interpreted to require a response of this Defendant, this Defendant denies those allegations and demands strict proof thereof.

3. Upon information and belief, Defendant admits Paragraph 1 of the Cross-Claim.

4. The Defendant lacks sufficient information to form a belief as to the

allegations set forth in Paragraphs 2 and 3 of the Cross-Claim and therefore denies the same and demands strict proof thereof.

5. Upon information and belief, Defendant admits Paragraph 4, 5 and 6 of the Cross-Claim.

6. The Defendant lacks sufficient information to form a belief as to the allegations set forth in Paragraphs 7 and 8 of the Cross-Claim and therefore denies the same and demands strict proof thereof.

7. Responding to Paragraph 9 of the Cross-Claim, upon information and belief, Defendant admits that it entered a subcontract with Professional Plastering & Stucco to perform certain work at the premises.

8. Responding to Paragraph 10 of the Cross-Claim, the Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 7 as if set forth verbatim herein.

9. Paragraph 11 of the Cross-Claim states conclusions of law to which no response is required. To the extent the allegations contained in Paragraph 11 requires a response, Defendant denies those allegations and demands strict proof thereof.

10. Responding to Paragraph 12 of the Cross-Claim, upon information and belief, Defendant admits that it entered a subcontract with Professional Plastering & Stucco to perform certain work at the premises. The Defendant lacks sufficient information to form a belief as to the remaining allegations set forth in Paragraph 12 of the Cross-Claim and therefore denies the same and demands strict proof

thereof.

11. Upon information and belief, Defendant denies the allegations contained in Paragraphs 13, 14 and 15 of the Cross-Claim and demands strict proof thereof.

12. Responding to Paragraph 16 of the Cross-Claim, the Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 11 as if set forth verbatim herein.

13. Upon information and belief, Defendant denies the allegations contained in Paragraphs 17, 18 and 19 of the Cross-Claim and demands strict proof thereof.

14. Responding to Paragraph 20 of the Cross-Claim, the Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 13 as if set forth verbatim herein.

15. Upon information and belief, Defendant denies the allegations contained in Paragraphs 21, 22 and 23 of the Cross-Claim and demands strict proof thereof.

16. Responding to Paragraph 24 of the Cross-Claim, the Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 15 as if set forth verbatim herein.

17. Upon information and belief, Defendant denies the allegations contained in Paragraphs 25, 26, 27 and 28 of the Cross-Claim and demands strict proof thereof.

18. Responding to Paragraph 29 of the Cross-Claim, the Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 17 as if set forth verbatim herein.

19. Upon information and belief, Defendant denies the allegations contained in Paragraphs 30, 31, 32 and 33 of the Cross-Claim and demands strict proof thereof.

20. Defendant denies that Professional Plastering & Stucco is entitled to the relief requested in the unnumbered Paragraphs following Paragraph 33.

FURTHER ANSWERING
AND FOR A SECOND AFFIRMATIVE DEFENSE

21. Professional Plastering & Stucco has failed to state facts sufficient to constitute a cause of action upon which relief may be granted as against this Defendant pursuant to Rule 12(b)(6) SCRPC.

FURTHER ANSWERING
AND FOR A THIRD AFFIRMATIVE DEFENSE

22. Some or all of Professional Plastering & Stucco's claims may fail for failure to join a necessary party under SCRPC Rule 12(b)(7) and/or SCRPC Rule 19.

FURTHER ANSWERING
AND FOR A FOURTH AFFIRMATIVE DEFENSE

23. Professional Plastering & Stucco's claims are or may be barred by the applicable Statute of Limitations and/or Statutes of Repose.

FURTHER ANSWERING
AND FOR A FIFTH AFFIRMATIVE DEFENSE

24. Some or all of Professional Plastering & Stucco's claims are or may be

barred by the doctrines of release, waiver, laches, estoppel and/or unclean hands.

FURTHER ANSWERING
AND FOR A SIXTH AFFIRMATIVE DEFENSE

25. Some or all of Professional Plastering & Stucco's claims are or may be barred or, in the alternative, reduced, to the extent of Professional Plastering & Stucco's contributory negligence.

FURTHER ANSWERING
AND FOR A SEVENTH AFFIRMATIVE DEFENSE

26. Any damages allegedly sustained by Professional Plastering & Stucco are or may be the result of negligent acts and/or omissions of a third-party and/or the result of concurrent acts and omissions of a third-party and/or the Plaintiffs.

FURTHER ANSWERING
AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

27. To the extent Professional Plastering & Stucco failed to mitigate any alleged damages, their claims should be barred.

FURTHER ANSWERING
AND FOR A NINTH AFFIRMATIVE DEFENSE

28. Professional Plastering & Stucco's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with this Defendants and not under this Defendant's dominion or control.

FURTHER ANSWERING
AND FOR A TENTH AFFIRMATIVE DEFENSE

29. Professional Plastering & Stucco's claims are or may be barred by the statute of frauds.

FURTHER ANSWERING
AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

30. Professional Plastering & Stucco's claims are or may be barred by Professional Plastering & Stucco's failure to exercise due diligence or otherwise satisfy a good faith inquiry as to whether there are good grounds to support this action as required under the Rules of Civil Procedure.

FURTHER ANSWERING
AND FOR A TWELFTH AFFIRMATIVE DEFENSE

31. Professional Plastering & Stucco's claims should be barred to the extent Professional Plastering & Stucco's claims for damages are merely speculative in nature.

FURTHER ANSWERING
AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

32. Professional Plastering & Stucco's claims should be barred because Professional Plastering & Stucco, Inc. is not a licensed contractor and cannot maintain an action either in law or equity pursuant to S.C. Code Ann. §§ 40-11-270 and 40-11-370.

FURTHER ANSWERING
AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

33. This Defendant hereby gives notice that it reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and it reserves the right to amend this Answer to assert any such defenses.

FURTHER ANSWERING AND ASSERTING CROSS CLAIMS AGAINST THE
FOLLOWING:

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 Contractors Group, Inc., Summit Contractors, Inc., H2L Consulting Engineers and/or Professional Plastering & Stucco, Inc.
(Equitable/Contractual Indemnity and Contribution)

34. The Defendant re-states and re-alleges its responses to the allegations contained in Paragraphs 1 through 33 as if set forth verbatim herein.

35. If this Defendant is compelled to pay damages for any reason in this matter, this Defendant would allege that any liability this Defendant has for the damages would be an imputation of liability upon this Defendant as a result of wrongful acts or omissions committed by 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 Contractors Group, Inc., Summit Contractors, Inc., H2L Consulting Engineers and/or Professional Plastering & Stucco, Inc.

36. This Defendant is entitled to full indemnification and/or contribution from 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 Contractors Group, Inc., Summit Contractors, Inc., H2L Consulting Engineers and/or Professional Plastering & Stucco, Inc. for any liability this

Defendant is found to have to the Plaintiffs or Professional Plastering & Stucco in this action and this Defendant is entitled to recover from 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 Contractors Group, Inc., Summit Contractors, Inc., H2L Consulting Engineers and/or Professional Plastering & Stucco, Inc. the amount of any monies this Defendant is adjudged to owe the Plaintiffs or Professional Plastering & Stucco or which it pays the Plaintiffs or Professional Plastering & Stucco in settlement of Professional Plastering & Stucco's claims, Plaintiffs' claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

37. This Defendant is informed and believes that it is entitled to a judgment against 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 Contractors Group, Inc., Summit Contractors, Inc., H2L Consulting Engineers and/or Professional Plastering & Stucco, Inc. for the full amount of any judgment the Plaintiffs or Professional Plastering & Stucco obtain against this Defendant in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees for these Defendants'

attorneys.

FURTHER ANSWERING AND BY WAY OF THIRD-PARTY COMPLAINT
AGASINT C&N STUCCO AND PLASTERING, INC.

38. APS Enterprises Unlimited, Inc. re-states and re-alleges Paragraphs 1 through 37 as if set forth verbatim herein.

39. Defendant/Third-Party Plaintiff APS Enterprises Unlimited, Inc. ("APS") is a corporation organized and existing under the laws of the State of Florida.

40. Upon information and belief, Third-Party Defendant C&N Stucco and Plastering, Inc. ("C&N") is a corporation organized and existing under the laws of the State of Florida.

41. The Parties, matters and all things hereinafter alleged are within the jurisdiction of this Court.

42. Upon information and belief APS entered into a subcontract with Defendant Professional Plastering & Stucco, Inc. to perform certain work at the structure which is the subject of this lawsuit.

43. Upon information and belief C&N entered into a subcontract with APS to perform that certain work at the structure which is the subject of this lawsuit.

44. If APS is compelled to pay damages for any reason in this matter, APS would allege that any liability APS has for the damages would be an imputation of liability upon APS as a result of wrongful acts or omissions committed C&N

45. APS is entitled to full indemnification and/or contribution from C&N for any liability APS is found to have to the Plaintiffs or Professional Plastering &

Stucco in this action and APS is entitled to recover from C&N the amount of any monies APS is adjudged to owe the Plaintiffs or Professional Plastering & Stucco or which it pays the Plaintiffs or Professional Plastering & Stucco in settlement of Professional Plastering & Stucco's claims, Plaintiffs' claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

46. APS is informed and believes that it is entitled to a judgment against C&N for the full amount of any judgment the Plaintiffs or Professional Plastering & Stucco obtains against APS in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees for these Defendants' attorneys.

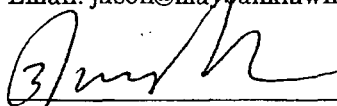
WHEREFORE, having responded fully to the allegations contained in the Answer and Cross-Claims of Professional Plastering and Stucco, Inc. to Magna Wall, Inc.'s Answer and Cross-Claims, Defendant/Third-Party Plaintiff APS Enterprises Unlimited, Inc. respectfully prays that the Court render judgment in favor of APS Enterprises Unlimited, Inc., for costs of defending this action to be cast upon the Professional Plastering and Stucco, Inc., and for such other and further relief as this Court deems just and appropriate in this matter.

WHEREFORE, having responded fully to the allegations contained in the Answer and Cross-Claims of Professional Plastering and Stucco, Inc. to Magna Wall, Inc.'s Answer and Cross-Claims, Defendant/Third-Party Plaintiff APS Enterprises Unlimited, Inc. respectfully prays that the Court render judgment in favor of APS Enterprises Unlimited, Inc. on its Cross Claims, for attorney's fees and

costs of defending this action to be cast upon Professional Plastering and Stucco, Inc., and for such other and further relief as this Court deems just and appropriate in this matter.

WHEREFORE, having responded fully to the allegations contained in the Answer and Cross-Claims of Professional Plastering and Stucco, Inc. to Magna Wall, Inc.'s Answer and Cross-Claims, Defendant APS Enterprises Unlimited, Inc. prays for a trial by jury and for judgment against Third-Party Defendant C&N Stucco and Plastering, Inc., for costs of this action, and for such other and further relief as this Court deems just and appropriate in this matter.

MAYBANK LAW FIRM, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29407
P: (843) 766-8101
F: (843) 766-8103
Email: jason@maybanklawfirm.com



Roy P. Maybank (S.C. #69643)
Jason A. Daigle (S.C. #73308)
Attorneys for Defendant/Third-Party Plaintiff
APS Enterprises Unlimited, Inc.

Charleston, South Carolina
5/4, 2011

CERTIFICATE OF SERVICE

08-CP-10-49

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 4 day of May, 2010.

Jennifer Jurr

2011 MAY -4 PM 12:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

PROFESSIONAL PLASTERING & STUCCO, INC.,
MARIA ARIAS, AND MIQUEL ROSALES,

Defendants.

PROFESSIONAL PLASTERING & STUCCO, INC.,
Third-Party Plaintiffs,

v.

MARIA ARIASM, MIQUEL ROSALES, and APS
ENTERPRISES UNLIMITED, INC.,

Third-Party Plaintiffs,

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2008-CP-10- 49

) FIFTH AMENDED SUMMONS
) (JURY TRIAL DEMANDED)

FILED
2011 MAY -9 AM 9:13
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in
this action, a copy of which is herewith served upon you, and to serve
a copy of your Answer upon the subscriber, at 864 Lowcountry Blvd.,
Suite A, Mt. Pleasant, South Carolina 29464, within thirty (30) days
after the service thereof, exclusive of the day of such service, and
if you fail to answer the Complaint within the time aforesaid,
judgment by default will be rendered against you for the relief
demanded in the Complaint.

SEGUI LAW FIRM, LLC

By: *Phillip W. Segui, Jr.*
Phillip W. Segui, Jr.
864 Lowcountry Blvd., Ste. A
Charleston, SC 29464
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pseguilawfirm.com

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john@chakerislawfirm.com

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and

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YELVERTSON, P.A.

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Jesse A. Kirchner
15 Middle Atlantic Wharf,
Suite 101
Charleston, SC 29401
(843) 937-8000
jkirchner@tktlawfirm.com

Charleston, South Carolina

Dated: 5/8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

PROFESSIONAL PLASTERING & STUCCO, INC.,
MARIA ARIAS, AND MIQUEL ROSALES,

Defendants.

PROFESSIONAL PLASTERING & STUCCO, INC.,

Third-Party Plaintiffs,

v.

MARIA ARIASM, MIQUEL ROSALES, and APS
ENTERPRISES UNLIMITED, INC.,

Third-Party Plaintiffs,

) IN THE CIRCUIT COURT FOR THE
) NINTH JUDICIAL CIRCUIT
) 2008-CP-10- 49

FILED
2011 MAY -9 AM 9:13
JULIE J. ARMSTRONG
CLERK OF COURT

FIFTH AMENDED CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar,
by and through their undersigned counsel, bring this class
action on behalf of themselves and all others similarly
situated, as a voluntary class action under Rule 23 (a) of the
South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M.
Teseniar, are owners of Unit Number 224 in the Twelve Oaks at

Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina. Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. The Plaintiff, Twelve Oaks at Fenwick Property Owners Association (from December 16, 2008 to present) is a South Carolina nonprofit corporation and by virtue of the Master Deed filed with the Register of Mesne and Conveyance for Charleston County at Book E 594 Page G 684, is charged amongst other things with the duty to repair and maintain the common elements of the Project.

3. Defendants, Professional Plastering & Stucco, Inc. is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and

components so as to prevent water intrusion into the buildings in accordance with building code requirements.

4. That upon information and belief; the Defendants, Maria Arias, Individually and Miquel Rosales, Individually are residents of the State of Florida, doing business in South Carolina as subcontractors to Professional Plastering & Stucco in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

5. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

6. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

7. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil

Procedure, to recover monetary damages from the Defendants, for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

8. As described above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

9. The Class does not include any former owner of a unit in the Regime.

10. The Class is sufficiently numerous that joinder of all members is impractical.

11. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

12. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

13. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

14. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

15. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

16. The Developers are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the useful life of its common elements and the cost to remedy and code violations.

17. Defendant Professional Plastering & Stucco, Inc. upon information and belief was hired as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. Defendant, Professional Plastering & Stucco, Inc. subcontracted with Maria Arias, and Miquel Rosales, for the stucco installation. These subcontractors were to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

18. In violation of its contractual and common law duties, Defendants Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, did not install the stucco and components in a competent and workmanlike fashion and in conformity to the requirements of the building code, but rather

constructed the exterior building envelopes of the buildings at Fenwick in a defective condition causing or contributing to the leaks into the buildings and in a manner which will require significant repair in order to maintain a water resistant or water management exterior as required by code and by good building practices.

19. The design and construction defects have resulted in repeated water intrusion into the residences, failure of the components of the exterior envelope, failure of the structural system(s), and other consequential damages to the common elements of the Association and to the interior of the units. Upon information and belief, these adverse events have occurred each and every year since construction; and constitute "occurrences" and "property damage" and compensable damages under the standard and/or typically generally liability and/or completed operations insurance policies maintained by the defendants herein; further the negligence of each defendant herein has resulted in damage to the work of the others.

20. On or about 2006, the Developers converted the apartments to condominiums.

21 Developers created the Association and Regime and owed the Association and Regime fiduciary and fiduciary-like duties.

22. The Developers owed a duty to the Association to insure that the common elements were in good condition at the time they were transferred to the Association.

23. The current condition of the buildings evidences that at the time the common areas were transferred to the Association, they were not suitably weather resistant and were suffering from water intrusion which has resulted in damage to the common elements and units.

24. Investigations have revealed that the Defendants knew of these construction deficiencies since shortly after construction; and that they have failed to remedy the deficiencies or disclose the same to purchasers, thereby exposing the Association to further liability.

48. The South Carolina Horizontal Property Act, South Carolina Code Ann. § 27-31-430 requires that the condition of the building be set forth in an engineer's report at the time of conversion.

25. That the POA Inc. (from August 8, 2006 to December 15, 2008). has numerous duties both pursuant to the Master Deed and By-Laws as well as under the Common Law of South Carolina, and it is governed by a Board of Directors which has fiduciary duties to the homeowners. At all times both now and in the past, the Board of Directors of the POA Inc. (from August 8, 2006 to December 15, 2008) and indeed the POA Inc. (from August

8, 2006 to December 15, 2008) is composed of Tarragon employees, and acts as the Agent and Servant of Tarragon, and is essentially the alter ego of Tarragon.

26. That in its capacity as a fiduciary for the homeowners, POA Inc. (from August 8, 2006 to December 15, 2008) has the duty to take action against Tarragon when required and to insure that the common elements of the project are in good repair. In that capacity, the POA Inc. (from August 8, 2006 to December 15, 2008) was and is in possession of all of the information known to Tarragon regarding the problems with the common elements of the property, the partial repair, the expert reports detailing problems, the fact that building problems were not addressed by Tarragon pre-sale, and of the significant manifestation of water intrusion into the buildings by the constant complaints of mold and mildew stated by the homeowners.

27. That rather than taking actions as required of a fiduciary, the POA Inc. (from August 8, 2006 to December 15, 2008) through its developer-controlled board has not only failed to act properly, but has neglected all of its duties toward the homeowners as required by the Master Deed and By Laws to ensure that the Common Elements of the property are in good repair, and has instead acted in the best interests of Tarragon, to the detriment of the homeowners to whom it owes duties as a fiduciary.

FOR A FIRST CAUSE OF ACTION
**(Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness as to Professional
Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales,)**

28. Each and every allegation contained in Paragraphs 1 through 27 above are incorporated herein by express reference as though fully set forth.

29. That the Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, owed a duty to the Plaintiffs to design, construct, and/or repair the buildings and perform inspections in a workman like fashion and in accordance with the building code, industry, standards and accepted construction industry standards and practices.

30. That the Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, breached their duties to the Plaintiffs by failing to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code, industry, standards and accepted construction industry standards and practices and to perform the necessary inspections and accurate disclosures all in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

31. The Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, were negligent, grossly

negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings and apply the stucco cladding and related flashings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies to the buildings and condominiums, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject buildings and condominiums;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the buildings and condominiums;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- f. In failing to properly install the stucco cladding and related flashings;
- g. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter subject residence;
- h. In constructing and repairing the subject

buildings in such a manner that water entered the buildings;

- i. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter into the wall systems and subject buildings without having an adequate avenue for water to escape and/or drain.
- j. Other deficiencies or failures as will be proven at trial.

32. That as a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and

repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

33. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their

properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A THIRD CAUSE OF ACTION

(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose and Breach of Warranty of Merchantability and Serviceability as to All Defendants)

34. Each and every allegation contained in Paragraphs 1 through 33 above are incorporated herein by express reference as though fully set forth.

35. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as apartments and/or condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

36. That Defendants breached said warranties by designing, constructing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in

such manner as to be in violation of applicable building codes, not in conformance with accepted construction and architectural industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

37. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN SEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)
(AS TO Professional Plastering & Stucco, Inc., Maria Arias,
and Miquel Rosales,)

38. The Plaintiffs re-allege the allegations contained in Paragraphs 1 through 37 of this Complaint and incorporates the same herein as if repeated verbatim.

39. The Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, are persons "within the meaning of South Carolina Code §39-5-10(a) and by his actions in preparing, building, constructing, designing, drawing, overseeing the construction of the buildings and its components are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

40. The Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, by his action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

41. That the conduct of the Defendants, Professional Plastering & Stucco, Inc., Maria Arias, and Miquel Rosales, affects the public interest of the people in South Carolina and the Defendant knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

42. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the cause of the defects and deficiencies set forth above and their having to spend substantial sums of money in order to renovate, correct, repair, restore and remediate their residence to make is safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded into the subject buildings causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements of the buildings at Fenwick. The defects and deficiencies set forth above were not discoverable to or by the Plaintiffs in the exercise of reasonable diligence and the damages were as a result of exposure to the elements. All of which will require the Plaintiffs to expend great amounts of money to correct and repair the deficiencies including the resulting in mold damage as set forth herein as well as to suffer the loss, use and enjoyment of their property as well as

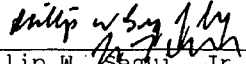
the loss of value and depreciation by virtue of the defect and damages aforesaid.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) of the South Carolina Rules of Civil Procedure, hold the Defendants, jointly and severally liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

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Dated: 5/8, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

THE NINTH JUDICIAL CIRCUIT

Mark F. Teseniar & 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,

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 Contractors,
Inc., Fugleberg Koch Architects, Inc.,
Development, Compliance & Inspections, Inc.,
H2L Consulting Engineers, Twelve Oaks at
Fenwick Property Owners Association, Inc.,
(from August 8, 2006 to December 15, 2008),
Professional Plastering & Stucco, Inc.,
Johnson Companies, Inc., d/b/a Johnson
Roofing, Inc., Los Campos, Inc., North Florida
Framing, Inc., Best Masonry & Tool Supply,
L.P. as successor in interest to Best Masonry
& Tool Supply, Inc., as successor in interest to
Magna 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 and JR
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 Rosales, and
APS Enterprises Unlimited, Inc.

Defendants.

Professional Plastering & Stucco, Inc.,

Third-Party Plaintiffs,

Civil Action No.: 2008-CP-10-0049

**DEFENDANT'S MOTION TO ALTER
OR AMEND UNDER RULE 59 (e),
SCRCP ORDER GRANTING APS'
MOTION FOR SUMMARY
JUDGMENT**

FILED
2011 MAY 20 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT

v.)
)
)
Luis Martinez, Villagomez Painting, Inc.,)
and D.M. Painting)
)
Third-Party Defendants.)

YOU WILL PLEASE TAKE NOTICE that the Defendant Professional Plastering & Stucco ("Pro Plastering" throughout) in the above-referenced case will move immediately before the Court, and does hereby move, for an Order altering or amending the Court's Order dated May 9, 2011 and filed on May 11, 2011. Defendant obtained a copy from the Charleston County Website on May 19, 2011 but has not received a copy of the Order or Notice of the Order from the Court or Clerk or any party to this action. This motion is timely and made under the provisions of Rule 59(e), SCRPC.

Pro Plastering brought cross-claims against APS. APS moved for summary judgment. The Court granted APS' motion for summary Judgment.

FACTS BEARING ON MOTION TO ALTER AND AMEND

APS filed its Notice of Motion and Motion for Summary Judgment on April 15, 2011. In its Motion, APS argued that is was entitled to summary judgment based on its assertion that Pro Plastering was not a licensed contractor and therefore could not maintain an action in law or in equity against APS. The Court's Order held that because Pro Plastering did not have a valid license it cannot maintain its claims against APS.

ARGUMENT

The Court incorrectly held that Pro Plastering cannot maintain an action, and the Order Granting Summary Judgment should be reversed.

Pro Plastering served as a stucco subcontractor for Summit Contractors, Inc. ("Summit") at the subject project. Pro Plastering, in turn, subsequently contracted with APS to perform

repair work at the project's breezeways. *See* Deposition of Donnie King, 106:25 – 107:24, attached as Exhibit A to Return.

The fact that Pro Plastering is not licensed in South Carolina does not bar it from bringing claims against APS.

The law at issue in the case is Chapter 11 of Title 40, South Carolina Code of Laws. S.C. Code Ann. § 40-11-20(4) (2011) defines "contractor" as "a general or mechanical contractor regulated under this chapter." S.C. Code Ann. § 40-11-20(9) defines "general contractor" as "an entity which performs or supervises or offers to perform or supervise general construction." S.C. Code Ann. § 40-11-20(8) defines "general construction" as "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." S.C. Code Ann. § 40-11-20 (13) defines "Licensed contractor" as "an entity that is licensed by the South Carolina Contractor's Licensing Board to engage in general or mechanical contracting within the State." S.C. Code Ann. § 40-11-20(14) defines "Mechanical contractor" as "an entity which performs or supervises, or offers to perform or supervise, mechanical construction." S.C. Code Ann. § 40-11-20(15) defines "Mechanical construction" as "the installation, replacement, or repair of plumbing, heating, air conditioning, process piping, refrigeration, lightning protection equipment, or electrical components, fixtures, or devices of any kind, excluding burglar alarm work." S.C. Code Ann. § 40-11-20(24) defines "unlicensed contractor" as "an entity performing or overseeing general or mechanical construction without a license."

S.C. Code Ann. § 40-11-270(C) states:

Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or subclassification; provided, the licensee provides supervision. The licensee is

fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee.

S.C. Code Ann. § 40-11-370(C) states:

An entity which does not have a valid license **as required by this chapter** may not bring an action either at law or in equity to enforce the provisions of a contract. ...

(Emphasis added).

Pro Plastering did not act as either a general or mechanical contractor. Summit, acting as general contractor, was the license holder for the Twelve Oaks project. As such, any subcontractors on the project, including Pro Plastering and APS, performed work at the project as “unlicensed subcontractors” as permitted in S.C. Code Ann. § 40-11-270(C). APS was such a subcontractor that provided labor for work performed on the stucco in the breezeways. Tacy McGinty, an employee for Summit, admitted that Summit had agreed to provide material and supervision for work done in the breezeway, and to accept responsibility for obtaining engineering approval for the work. *See* Deposition of Tacy McGinty, taken on April 12, 2011, 29:17 – 30:11, attached as Exhibit B to Return. Pro Plastering, lawfully operating under S.C. Code Ann. § 40-11-270(C), is therefore not barred from maintaining an action at law or in equity pursuant to S.C. Code Ann. § 40-11-370(C), as it is not required to hold a license.

In addition, S.C. Code Ann. Section 40-11-370(C) provides that “An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity **to enforce the provisions of a contract.**” (Emphasis added).

In addition to a breach of contract claim, Pro Plastering brought claims against APS for negligence, equitable indemnity, and breach of implied and express warranties. Although Pro Plastering does not believe that § 40-11-370(C) bars its claims, even assuming *arguendo* that its

contract claims are barred by § 40-11-370(C), clearly the negligence, equitable indemnity, and breach of implied and express warranties claims were not claims to “enforce the provisions of a contract” and therefore, the Court should not have dismissed those claims.

As this statute is penal in nature it must be strictly construed. See Lenz v. Walsh, 362 S.C. 603, 608 S.E.2d 471 (Ct. App. 2005) (stating it is well established that penal statutes must be strictly construed and holding that homeowner may not recover payments already made to an unlicensed contractor merely because the contractor did not hold a license when the contract was executed).

“With equitable indemnification, it does not matter that there is no contractual provision for indemnity. ‘The very nature of equitable indemnification is that a contract for indemnity is unnecessary.’” Jourdan v. Boggs/Vaughn Contracting, Inc., 324 S.C. 309, 312, 476 S.E.2d 708, 710 (Ct. App. 1996). Courts have traditionally allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. Toomer v. Norfolk Southern Ry. Co., 344 S.C. 486, 544 S.E.2d 634 (Ct. App. 2001). According to the principles of equity, the right exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join. Id.

Pro Plastering’s equitable indemnity claims are not claims to enforce the provisions of any contract and arise separate and apart from any contract. They are claims in equity, not in contract. Therefore, Section 40-11-370(C) does not bar Pro Plastering’s claims for indemnity.

Pro Plastering brought claims for negligence against APS.

If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335,

384 S.E.2d 730 (1989). If he acts in a way as to violate a legal duty, however, his liability is also in tort. Id.

Pro Plastering was not seeking only to enforce the provisions of a contract but brought claims for negligence based in tort. Therefore, the statute does not apply, and APS' Motion for Summary Judgment should not have been granted on the negligence claims.

In addition, the statute does not bar Pro Plastering's claims for breach of express and implied warranties. See South Carolina Jurisprudence Construction Law § 5 (citing Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (S.C. 2008) (An implied warranty of workmanlike service extends not only to the original purchasers of the home, with whom the builder is in privity, but to subsequent purchasers who may pursue a cause of action in contract or tort against a builder for a reasonable period after the home's construction.); First State Sav. and Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (1989) (In order to show a breach of an express oral warranty, the Phelps must have shown the existence of the warranty, its breach by the failure of the goods to conform to the warranted description, and damages proximately caused by the breach.).

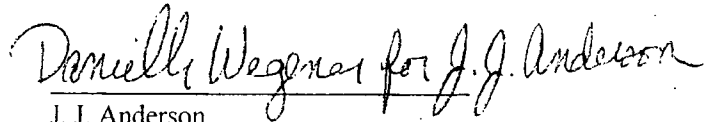
As these claims were not claims to enforce any provisions of any contract, the Court should not have dismissed these claims.

In addition, as APS was not licensed in the State of South Carolina, in equity they should not be allowed to argue Pro Plastering is barred from maintaining an action against them. Cf. Aaron v. Mahl, 381 S.C. 585, 594, 674 S.E.2d 482, 487 (2009).

For the reasons stated above, the Order Granting APS' Motion for Summary Judgment should be reversed.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC

Handwritten signature of Daniel W. Wegner for J.J. Anderson.

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Professional Plastering & Stucco, Inc.

Charleston, South Carolina

May 20, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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
Contractors Group, Inc., Summit Contractors, Inc.,
Fugleberg Koch Architects, Inc., Development,
Compliance & Inspections, Inc., H2lconsulting
Engineers , Twelve Oaks At Fenwick Property
Owners Association, Inc., (From August 8, 2006
To December 15, 2008), Professional Plastering &
Stucco, Inc., Johnson Companies, Inc., D/B/A
Johnson Roofing, Inc., Los Campos, Inc., North
Florida Framing, Inc., Best Masonry & Tool
Supply, L.P. As Successor In Interest To Best
Masonry & Tool Supply, Inc., As Successor In
Interest To Magna 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

Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.:2008-CP-10-0049

**PROFESSIONAL PLASTERING &
STUCCO, INC.'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR NEW
TRIAL ABSOLUTE**

FILED
2011 MAY 23 PM 4:53
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant Professional Plastering & Stucco, Inc. (hereinafter "Professional
Plastering") respectfully submits this memorandum in support of its motion for new trial
absolute.

I. THE DEFENDANT IS ENTITLED TO A NEW TRIAL ASBOLUTE BASED ON THE INSTRUCTIONS GIVEN TO THE JURY.

A. The Charges on the Building Code, Builder Liability, and Negligence Per Se were incomplete and incorrect statements of the law requiring a new trial.

The jury instructions given by the Court on negligence per se and alleged building code violations were error.

The Plaintiffs' requested jury charges included:

(Builder Liability)

I charge you that a contractor may be liable to a homeowner in tort where: (1) the contractor has violated an applicable building code; (2) the contractor has deviated from industry standards; or (3) the contractor has performed construction work that he knows or should know will pose serious risks of physical harm.

Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 384 S.E.2d 730 (1989)

(Builder Liability)

I charge you that a cause of action in negligence will be available where a contractor has violated a legal duty, no matter the type of resulting damage. A contractor is no less blameworthy where physical harm to the building has not yet occurred.

Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 384 S.E.2d 730 (1989)

(Negligence)

Negligence, to render a person liable, need not be the sole cause of an injury. It is sufficient that a party's negligence, concurring with one or more efficient causes, is the proximate cause of the injury. Where several causes combined to produce injuries, a party is not relieved from liability because it is responsible for only one of them. It is sufficient that a party's negligence is an efficient cause, without which the injury would not have resulted, or to as great an extent.

Sanders v. Western Auto Supply Company, 183 S.E.2d 321, 324 (1971).

(Negligence)

I charge you that it is not necessary that the plaintiff prove each act of negligence charged against the other party in order to recover it is only necessary that it prove at least one.

Parker v. Boswell, 172 S.C. 411, 174 S.E. 234 (1934).

(Negligence Per Se)

I charge you that a violation of a statute constitutes negligence per se and is evidence of recklessness and willfulness.

Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993)

(Negligence Per Se)

I charge you that the violation of a Building Code that is adopted or implemented by a local authority is negligence per se.
Kincaid v. Landing Development Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986)

Each of these requested instructions is misleading and essential elements are missing. A defendant is not liable on these bases. Proximate cause must also be established.

The negligence per se doctrine is a concept whereby a statute creates a legal duty or standard of care to be observed in a particular situation. South Carolina Jurisprudence § 12. Negligence Per Se (citing Cooper v. County of Florence, 299 S.C. 386, 385 S.E.2d 44 (Ct. App. 1989), rev'd on other grounds, 306 S.C. 408, 412 S.E.2d 417 (1991)). Negligence per se is a form of ordinary negligence. Id.

Negligence per se simply means the jury need not decide if the defendant acted as would a reasonable man in the circumstances. The statute fixes the standard of conduct required of the defendant, leaving the jury merely to decide whether the defendant breached the statute. Id. The Plaintiff must prove that the alleged violation of the building code caused the damages. See Kincaid v. Landing Dev. Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986) (a violation of a building code violates a legal duty for which a builder can be held liable in tort for proximately caused losses).

Violation of a statute creating a special duty is not conclusive of liability. South Carolina Jurisprudence § 12. Negligence Per Se (citing Whitlaw v. The Kroger Co., 306 S. C. 51, 410 S. E. 2d 251 (1991)). Negligence per se will not support a recovery for damages unless the plaintiff can show that the violation of the statute proximately caused or contributed to the injury complained of by the plaintiff. Id. (citing Locklear v. Southeastern Stages, Inc., 193 S. C. 309, 8 S. E. 2d 321 (1940); Wright v. South Carolina

Power Co., 205 S. C. 327, 31 S. E. 2d 904 (1944); Scott v. Greenville Pharmacy, Inc., 212 S. C. 485, 48 S. E. 2d 324 (1948); Steele v. Rogers, 306 S.C. 546, 413 S.E.2d 329 (Ct. App. 1992); Wise v. Broadway, 315 S.C. 273, 433 S.E.2d 857 (1993) (limited Seals by Causey v. Winburn, 314 S.C. 416, 445 S.E.2d 94, 1 Wage & Hour Cas. 2d (BNA) 1597 (Ct. App. 1994)) (the injury must be the natural and probable consequence of the violation of the statute before the violation can be said to be the proximate cause of the injury)). See also Dropkin v. Beachwalk Villas Condominium Ass'n, Inc., 373 S.C. 360, 644 S.E.2d 808 (Ct. App. 2007) (the finding of a statutory violation in an action alleging negligence per se does not end the inquiry; causation of the injury must also be evaluated); Trivelas v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001) (Statute can establish duty to plaintiff, and breach of duty can be found with showing of violation of the statute, but finding of statutory violation does not automatically lead to recovery of damages; plaintiff must prove the violation proximately caused the injury complained of); Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997) (to recover in action based on negligence per se, plaintiff must prove that violation of statute was causally linked, both in fact and proximately, to injury) (violation of licensing statute will not ordinarily provide basis for negligence per se action); Gulledge v. McLaughlin, 328 S.C. 504, 492 S.E.2d 816 (Ct. App. 1997) (Negligence per se is established by proof that party violated statute which has essential purpose of protecting persons such as injured party from the kind of harm suffered); Seals by Causey v. Winburn, *supra* (after establishing negligence per se, plaintiff must prove that violation of statute was causally linked, both in fact and proximately, to injury) (injury must be natural and probable consequence of violation of statute before violation can be said to be proximate cause of injury, for purposes of claim of negligence per se) (It is not enough

for a plaintiff to show that the defendant neglected a duty imposed by statute and that he would not have been injured if the duty had been performed. He must also show that his injury was caused by exposure to a hazard which the statute was designed to prohibit) (violation of statute, while negligence per se, will not support recovery for damages unless such violation proximately caused or contributed to injury complained of); Norton v. Opening Break, 313 S.C. 508, 443 S.E.2d 406 (Ct. App. 1994), aff'd, 319 S.C. 469, 462 S.E.2d 861 (1995) (Violation of regulation may constitute negligence per se); Nguyen v. Uniflex Corp., 312 S.C. 417, 440 S.E.2d 887 (S.C. App. 1994) (whether violation of statute is proximate cause of injury for purposes of negligence action is ordinarily jury issue).

To show that the defendant owes him a duty of care arising from a statute, the plaintiff must show two things: (1) that the essential purpose of the statute is to protect from the kind of harm the plaintiff has suffered; and (2) that he is a member of the class of persons the statute is intended to protect. Norton v. Opening Break, *supra*.

It is not enough for the plaintiff to show that the defendant neglected a duty imposed by statute and that he would not have been injured if the duty had been performed. Seals by Causey v. Winburn, *supra*. He must also show that his injury was caused by exposure to a hazard which the statute was designed to prohibit. *Id.*

The charges were incorrect statements of the law. The alleged violation must be the proximate cause of the alleged damages. Proximate cause still must be proven. Also, the charges on the alleged building Code standard were error. An alleged building code violation may be evidence of negligence but it does not establish it.

In addition, the following requested charge is clearly not the law in South Carolina.

(Negligence Per Se)

I charge you that municipalities in South Carolina are charged by statute with adopting and implementing building codes promulgated by, among others, the International Building Code. Such statutes are designed to protect the innocent purchaser of a home from the negligence of a contractor.

SC Code Ann. §§ 6-9-40(A); 6-9-50(A); 6-9-5

This alleged reason for the design of the statutes referenced above is clearly not found in the statutes and is a misstatement of the law. See South Carolina Code Ann. §§ 6-9-40(A), 6-9-50(A), and 6-9-5. South Carolina Code Ann. § 6-9-5 provides that “the public policy of South Carolina is to maintain reasonable standards of construction in buildings and other structures in the State consistent with the public health, safety, and welfare of its citizens.” S.C. Code Ann. § 6-9-5. S.C. Code Ann § 6-9-40(a) provides

The council is authorized to review, adopt, modify, and promulgate the building codes referenced in Section 6-9-50, provided that: (1) a notice of intention to adopt a code, adopt a new edition of a code, or modify an existing code must be published in the State Register as a Notice of General Interest, on websites published by the Department of Labor, Licensing and Regulation, and must be provided to each local building department with instructions for its prominent display; (2) the notice must include: (a) the address to which interested persons may submit written comments; and (b) a period of not less than one hundred eighty days during which comments may be received; (3) comments must be assigned to a study committee appointed by the council which shall publish Notice of General Interest in the same manner as provided in item (1) setting out the committee's scope of review. The notice must give instructions for filing an intention to appear before or provide evidence or comments to the committee, or both. The committee must be comprised of at least three people with different technical backgrounds; and (4) the committee shall hold at least one public meeting, accept evidence and comments, and make a written recommendation to the council. Within one hundred eighty days from the end of the comment period, the council shall adopt, modify, or deny the recommendations from the committee. The council may modify or amend the code after a finding on the record that the modifications provide a reasonable degree of public health, safety, and welfare.

S.C. Code Ann § 6-9-40(a). S.C. Code Ann § 6-9-50(a) provides that

The council shall adopt by reference and amend only the latest editions of the following nationally recognized codes and the standards referenced in those codes for regulation of construction within this State: building, residential, gas, plumbing, mechanical, fire, and energy codes as promulgated, published, or made available by the International Code Council, Inc. and the National Electrical Code as published by the National Fire Protection Association. The appendices of the codes provided in this section may be adopted as needed, but the specific appendix or appendices must be referenced by name or letter designation at the time of adoption. However, the provisions of the codes referenced in this section which concern the qualification, removal, dismissal, duties, responsibilities of, and administrative procedures for all building officials, deputy building officials, chief inspectors, other inspectors, and assistants do not apply unless they have been adopted by the municipal or county governing body.

S.C. Code Ann. § 6-9-50(a). Nowhere within the statutes referenced by the Plaintiffs and listed above does it define the purpose of the statute as being "to protect the innocent purchaser of a home from the negligence of a contractor."

To the extent the above charges were given a new trial absolute is required.

B. The Negligence Charge was incorrect.

(Negligence)

I charge you that negligence is the lack of due care; and due care means commensurate care under all circumstances. The lack of due care may consist in doing the wrong thing at the time and place in question, or it may arise from inaction when something should have been done. The degree of care which a reasonably prudent [corporation] exercises varies with the exigencies of the occasion.

Thomas v. Atlantic Greyhound Corp., 204 S.C. 247, 29 S.E.2d 196 (1944).

The requested charge that "the lack of due care ... may arise from inaction when something should have been done" is an incorrect statement of the law. This is the case only when there is a duty to act. Generally, there is no common law duty to act. Dennis by Evans v. Timmons, 313 S.C. 338, 437 S.E.2d 138 (Ct. App. 1993). Thus, a person usually incurs no liability when he fails to take steps to protect others from harm not

created by his own wrongful conduct. Id. The jury was incorrectly charged that there was a duty to act.

C. The charges on the Implied Warranty of Workmanlike Service and charges on special skills were incorrect.

The Plaintiff requested the following jury charge:

(Implied Warranty of Workmanlike Service)

I charge you that where one holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes to do shall be of proper workmanship and reasonably fit for its intended purpose.

(Implied Warranty of Workmanlike Service - Skill)

One who holds himself out as an expert, or having a higher degree of skill, is held to that higher degree of skill.

Hutton v. Cummins Carolinas, Inc., 280 S.C. 552, 314 S.E.2d 19 (1984)

(Implied Warranty of Workmanlike Service)

I charge you that in every contract for work or services, there is an unspoken, but legally enforceable, obligation to perform the agreement in a workmanlike manner. This is a duty to perform the contract skillfully, carefully, and diligently. The work need not be performed to absolute perfection or to the personal satisfaction of either party, but it must be performed to the satisfaction of the contract. The skill required of a person providing services is the same degree of skill, efficiency, and knowledge of those with ordinary skill, competence, and standing in the particular trade, profession, or business in which the person is working. If you find that the Defendant failed to perform the work in a workmanlike manner, you must return a verdict for the Plaintiff for damages resulting from the unskillful and unworkmanlike work.

Adams v. G. J. Creel & Sons, Inc., 320 S.C. 274, 465 S.E. 2d 84 (1995).

(Implied Warranty of Workmanlike Service)

I charge you that those who participate in the construction of a residential structure impliedly warrant that their work is performed in workman like manner and with suitable materials.

Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 384 S.E.2d 730 (1989).

There was no evidence of any specialty qualification or expert qualification on the part of the Defendant in this matter. This is also an incorrect statement of the law. There has been no heightened duty or any kind of fiduciary relationship recognized in this context, therefore, the charge was incorrect.

In addition, this warranty was inapplicable since this was commercial construction, the buildings were built initially as apartments, the defendant did not sell any of the units, and only later were the apartments converted into condominiums. The jury charge allowed the Jury to consider a heightened duty of care that was unwarranted and should not have been considered. See Smith v. Breedlove, 377 S.C. 415, 422-23, 661 S.E.2d 67, 71 (Ct. App. 2008).

To the extent the Jury was charged that the work need not be performed to absolute perfection or to the personal satisfaction of either party, but it must be performed to the satisfaction of the contract. This is an incorrect standard and an incorrect statement of the law, and constituted reversible error. The Plaintiffs did not bring a breach of contract claim, and could not do so as there was no contract existing between the Plaintiffs and Defendant. If a builder performs construction in such a way that he violates a contractual duty *only*, then his liability is only contractual. Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989).

To charge the jury that the Defendant could be held liable based on the alleged breach of contract is in direct contradiction to Kennedy v. Columbia Lumber and Mfg. Co., Inc., *supra* and requires a new trial absolute.

In addition to the above, the Judge gave the jury numerous charges on the implied warranty of workmanlike service which constituted error.

D. The Cost to Repair to Existing Code.

The Plaintiffs requested that the jury be charged that cost of repair may include the expense necessary to perform the repairs to existing codes. There was no evidence

that this was necessitated. Also, there is no South Carolina law that so provides and this is not the law in South Carolina.

Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible. See Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). Actual damages are awarded to a litigant in compensation for his actual loss or injury. Laird v. Nationwide Ins. Co., 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). Actual damages are such as will compensate the party for injuries suffered or losses sustained. Id. They are such damages as will simply make good or replace the loss caused by the wrong or injury. Actual damages are damages in satisfaction of, or in recompense for, loss or injury sustained. Barnwell v. Barber-Colman Co., 301 S.C. 534, 537, 393 S.E.2d 162, 163 (1989). The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred. Clark, 339 S.C. at 378, 529 S.E.2d at 533.

Actual or compensatory damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant. Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008) (citing Rogers v. Florence Printing Co., 233 S.C. 567, 578, 106 S.E.2d 258, 264 (1958)). The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there has been no wrongful injury. Id. (citing Rogers, 233 S.C. at 578, 106 S.E.2d at 264; Hutchison v. Town of Summerville, 66 S.C. 442, 448, 45 S.E. 8, 10 (1903)).

The charge was incorrect and was reversible error since it was not an accurate measure of how damages can be awarded. The charge did not place the Plaintiffs in a same or similar position but put the Plaintiffs in a better position. The charge required the Jury to better the Plaintiffs' position.

The jury was charged to award the Plaintiffs betterments and that is not a recognized measure of damages in South Carolina and was error, and a new trial should be granted.

E. Depreciation Charge.

The jury was charged that damages could include depreciation. This was error. The Plaintiffs presented no evidence of depreciation. The Jury cannot and should not have been allowed to consider any depreciation since there was no evidence of any such alleged element of damages. Jury instructions should be confined to the issues made by the pleadings and supported by the evidence. Baker v. Weaver, 279 S.C. 479, 482, 309 S.E.2d 770, 771 (Ct. App. 1983). Therefore, the Defendant should be granted a new trial.

F. Punitive Damages.

In addition, the charge on punitive damages was not a correct statement of the law. The jury was not properly charged on all the elements for punitive damages. Punitive damages were not awarded to the Plaintiffs, however, the incorrect charge added to the other issues and necessitate the granting of a new trial.

To the extent the jury was charged in accordance with the charges requested by the Plaintiffs, it constitutes multiple errors in the jury charges and necessitates a new trial absolute be granted.

II. THE DEFENDANT IS ENTITLED TO A NEW TRIAL DUE TO THE FAILURE TO CHARGE THE JURY ON DEFENDANT'S REQUESTED CHARGES.

The Defendant requested jury charges on:

**(CONFLICT IN TESTIMONY OF EXPERT WITNESSES)
REQUEST TO CHARGE NO. 8**

In this case, there has been a conflict in the testimony of expert witnesses. To that end, you must weigh one expert's opinion against that of the other, and you must consider the reasons given by one as compared with those of the other. You should consider the relative credibility and knowledge of the experts who have testified. Thereupon, you should find in favor of that expert testimony which, in your opinion, is entitled to the greater weight.

See Strange v. South Carolina Dep't of Hwys. and Pub. Transp., 307 S.C. 161, 414 S.E.2d 138 (1992); Jones v. Grissett, 258 S.C. 22, 186 S.E.2d 829 (1972).

**(NEGLIGENCE)
REQUEST TO CHARGE NO. 10**

I charge you that the fact that a person received an injury or is damaged, or the fact that an incident occurs, is insufficient to prove negligence.

Gillant v. Peters Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1941).

**(DAMAGES - DUTY TO MITIGATE)
REQUEST TO CHARGE NO. 12**

The Plaintiffs have a duty to exercise reasonable care and diligence to minimize their damages. If the Plaintiffs did not do what was reasonable in order to avoid damage, then the amount of their recovery should be reduced. The Plaintiffs may not recover those damages that could have been avoided with reasonable effort.

Thus, if you believe that, by the use of reasonable care, the Plaintiffs could have reduced their damages, you should determine to what extent, and reduce any damages awarded to that extent.

Genovese v. Bergeron, 327 S.C. 567, 572, 490 S.E.2d 608, 611 (Ct. App. 1997).
Du Bose v. Bultman, 215 S.C. 468, 471, 56 S.E.2d 95, 96 (1949).

**BUILDING CODE
REQUEST TO CHARGE NO.**

The violation of a Building Code is evidence only of negligence. That is, the violation of a building codes establishes only that a legal duty for which a builder can be held liable in tort for proximately caused losses has been violated. The party claiming damages must still prove that the violation of the building code in fact lead to or was the proximate cause of the claimed damages.

See Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 SC 355, 384 S.E.2d 730 (1989); Brigandi v. Piechowicz, 13 A.D. 3d 1105, 1105 (N.Y. 2004) ("Violation of the

building code constitutes some evidence of negligence and it is for a jury to decide whether that violation proximately caused plaintiff's accident." Elliott v. City of New York, 747 N.E.2d 760, 762 (Ct. App. N.Y. 2001).

REQUEST TO CHARGE NO.
BUILDING CODE

The simple violation of this or any other building regulation or code provision is not enough to permit recovery. The violation must have been the cause or must have contributed to the injury in question.

Harry Portesky & Sons, Inc. v. Hurqitz, 235 F.3d 295, 297 (4th Cir. 1956).

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S
REQUEST TO CHARGE NO. ____

A party who has suffered injury or damage from the actionable conduct of another is under a duty to make all reasonable efforts to minimize the damages incurred. To the extent that he reasonably could have so minimized those damages and failed to do so, he is not entitled to recover from the other party. In other words, one cannot recover any damages that might have been avoided by the use of reasonable care and diligence. A plaintiff's failure to mitigate damages allows the defendant to avoid only those damages that reasonably could have been avoided by the plaintiff.

An injured party is required to do that which an ordinary, prudent person would do under similar circumstances to mitigate his damages. However, the injured party is not required to unreasonably exert himself or incur substantial expense in an effort to mitigate damages.

The party who claims damages should have been minimized has the burden of proving they could have been avoided or reduced.

Ralph King Anderson, Jr., *South Carolina Requests to Charge - Civil*, § 13-12.

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S
REQUEST TO CHARGE NO. ____

A party which provides plans, drawings, and/or specifications and requires that another must build according to those plans, drawings, and/or specifications inherently warrants that the plans, drawings and/or specifications provided are sufficient for that purpose. To the extent that these materials are not sufficient, the party who has provided them bears the risk associated with their inadequacy or insufficiency. Hill v. Polar Pantries, 219 S.C. 263, 271, 64 S.E.2d 885, 888 (1951); U.S. v. Spearin, 248 U.S. 132, 39 S.Ct. 59, 63 L.Ed. 166 (1918).

DEFENDANT PROFESSIONAL PLASTERING & STUCCO, INC.'S
REQUEST TO CHARGE NO. ____

A party which accepts goods, including a building, that has defects which are obvious, patent, or otherwise discernable upon a reasonable inspection, waives any right to complain of any claims arising from those defects. Monroe v. Wood, 186 S.C. 507, 516, 197 S.E. 39, 43 (1938); Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008).

REQUEST TO CHARGE NO.
SOLE NEGLIGENCE OF THIRD PARTY

The defendant claims that the plaintiff's injury was not proximately caused by the defendant's negligence, but was solely caused by the negligence of another person. The defendant does not have the burden of proving that the negligence of the other person caused the plaintiff's injury. Instead, the burden remains on the plaintiff to prove that the defendant's negligence was the proximate cause of the plaintiff's injury.

O'Neal v. Carolina Farm Supply of Johnston, Inc., 279 S.C. 490, 309 S.E.2d 776 (Ct. App. 1983).

BUILDER NEGLIGENCE – DUTY OF PLANNING, COORDINATING, AND
SUPERVISING WORK
DEFENDANT'S REQUEST TO CHARGE NO.

Although a person may have no obligation or duty to another, once he undertakes to perform a certain task, such as the construction of a house, he is charged with the duty of properly planning, coordinating, and supervising the work. If he fails in the performance of this duty, he may be held liable for any damages or injuries to persons which proximately result from such a failure.

-South Carolina Requests to Charge § 11-5

See Hardy v. United States, 187 F. Supp. 756 (D.S.C. 1960); Epps v. United States, 187 F. Supp. 584 (D.S.C. 1960).

ACCEPTANCE OF IMPERFECT WORK

Where work is accepted with knowledge that it has not been done according to the contract or under such circumstances that knowledge of its imperfect performance may be imputed, the acceptance will generally be deemed a waiver of the defective performance. This rule does not apply to latent defects. The acceptance of work which has been defectively done, the defects being unknown and not discoverable by inspection, does not amount to a waiver of imperfect performance.

South Carolina Electric and Gas v. Combustion Engineering, Inc., 283 S.C. 182, 194 (1984).

EXPERT TESTIMONY

Although the only expert testimony established that the defendant had the ability to conform his conduct to standards of right and wrong, the expert's testimony is not dispositive. The jury may elect to disregard the expert's opinion.

State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

The jury is free to believe one portion of a witness's testimony and believe another.

State v. Smith, 304 S.C. 129, 131, 403 S.E.2d 162, 163 (Ct. App. 1991).

NEGLIGENCE AS A MATTER OF LAW- PROXIMATE CAUSE

Even if an expert's uncontradicted testimony establishes the defendant's negligence as a matter of law. This alone does not establish liability. Negligence is actionable only if it is a proximate cause of the injury. It is for the jury to decide whether any alleged negligence on the part of the defendant proximately caused the Plaintiffs damages.

Warren Sauers v. Poulin Brothers, 328 S.C.601, 493 S.E.2d 503, 506 (1997) citing Hanselmann v. McCardle, 275 S.C. 46, 267 S.E.2d 531 (1980); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996).

SUPERVISION IS RESPONSIBILITY OF GENERAL CONTRACTOR

The supervision of the various subcontractors is the responsibility of the general contractor.

Warren Sauers v. Poulin Brothers, 328 S.C.601, 493 S.E.2d 503, 506 (1997).

"A trial court must charge the current and correct law." Wells v. Halyard, 341 S.C. 234, 237, 533 S.E.2d 341, 343 (Ct. App. 2000). "Ordinarily, a trial [court] has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence." Fernanders v. Marks Constr. of S.C., Inc., 330 S.C. 470, 473, 499 S.E.2d 509, 510 (Ct. App. 1998). In Burns v. South Carolina Commission for Blind, 323 S.C. 77, 80, 448 S.E.2d 589, 591 (Ct. App. 1994) the court held that if the requested charge stated a sound principle of law that was applicable to the case, and not otherwise covered by the charge, refusal to charge it was error and required a new trial. Moreover, when general instructions to the jury were insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge was reversible error. Failing to give these charges to the jury requires a new trial absolute.

The Court also erred in failing to charge the jury that the implied warranty of workmanlike service only extends for a reasonable time. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (S.C. 2008) (An implied warranty of

workmanlike service extends not only to the original purchasers of the home, with whom the builder is in privity, but to subsequent purchasers who may pursue a cause of action in contract or tort against a builder for a reasonable period after the home's construction).

The jury charges requested were the Defendant's defenses. As there was evidence presented to substantiate these charges it was error for the jury not to be so charged and therefore Defendant's Motion for a New Trial Absolute should be granted.

III. THE JURY CHARGE ON THE SPECIAL VERDICT FORM REQUIRES A NEW TRIAL ABSOLUTE BE GRANTED.

The special verdict form should not have been submitted to the jury with the amount that had previously been paid to the Plaintiffs and the charge on special verdict form was error.

The verdict form used in this case required the jury, in determining its damage award, to only award damages in addition to those already received by the Plaintiffs pursuant to settlement, improperly attempting to remove the Defendant's right to set-off and allowing the jury to consider the amount of settlement received by the Plaintiffs in their determination of damages without any evidentiary basis. The form and charge were a comment on the facts, unduly suggestive and misleading.

"A special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error." SCDOT v. First Carolina, 372 S.C. 295, 303 (2007). In evaluating the prejudicial effect of a defective special verdict question or special interrogatory, the court must consider the question or interrogatory along with the instructions given to the jury. Fortune v. Gibson, 304 S.C. 279, 282, 403 S.E.2d 674, 675 (Ct. App. 1991) (finding that special interrogatories and instructions must be considered together). In the present case, the

error was not cured but exacerbated by the jury charge on the special verdict form, and a new trial absolute should be granted.

Where there are no questions of fact concerning the settlement agreement for the jury's determination, evidence thereof should be excluded from consideration of the jury, and credit shall be applied by the court. Powers v. Temple, 250 S.C. 149, 155 (1967). It was error in the Court's instruction to require that the jury, in their verdict, find over and above the amount received by Plaintiffs in settlement.

Generally a "trial [court] should not intimate to the jury any opinion on the facts of a case, whether intentionally or unintentionally." Sierra v. Skelton, 307 S.C. 217, 225, 414 S.E.2d 169, 174 (Ct. App. 1992). In a case tried before a jury, the jury is the judge of the facts in the case. Day v. Kilgore, 444 S.E. 2d 515 (1994). By including the amount that Plaintiffs have received in settlement on the verdict form, the court improperly provided approval to the Plaintiffs' cost of repair estimate and endorsed Plaintiffs' position that the settlement proceeds were not stucco related and not adequate compensation for the damages alleged. In order to use the mechanism which was followed by the Court, an evidentiary hearing should have been held to determine whether the settling defendants had compensated the Plaintiff for alleged defective stucco work. (For a full discussion of settling defendants payments to Plaintiffs for stucco related issues, see Section VII and Defendant's Motion for Set-Off.) The Court's actions in including the settlement amount on the verdict form had a prejudicial effect on Professional Plastering.

It should have been a question for the jury to determine whether the cost of repair was less than the amount stated by Plaintiffs. The jury instruction and special verdict form required the jury to find over and above the eight million dollars Plaintiffs had

received in settlement. This took away from the province of the jury, the question of whether the Plaintiffs had been fully compensated for their damages. The issue of total damages should have been a question for the jury, and the set-off performed by the Court. Unless the Court grants Defendant's request for setoff against the verdict, the jury verdict form and instructions from the Court have nullified the right to setoff and precluded a defendant from being protected from a plaintiff's double recovery.

The error in the Court's jury charge on the verdict form and the defective special verdict form requires a new trial absolute.

IV. THE EXCLUSION OF DEFENDANT'S EXPERT WITNESS, CHRIS DAWKINS, P.E., REQUIRES A NEW TRIAL ABSOLUTE BE GRANTED.

Defendant's expert Chris Dawkins, P.E. should not have been excluded as an expert in this case. Although Mr. Dawkins is not licensed as a professional engineer in South Carolina, that is not a requirement to be qualified to testify as an expert in this state. Fields v. Haynes Waters Builders, Inc., *supra* ("holding that trial court abused its discretion in failing to qualify unlicensed home inspector as an expert").

In Baggerly v. CSX Transportation, Inc., the Court addressed the conflict between Rule 702 of the South Carolina Rules of Evidence qualifications for experts and the statute which includes the offering of expert technical testimony within the practice of engineering. Similar to the situation in this case, the trial court in Baggerly had excluded the Defendant's expert on the basis that he was not a licensed South Carolina professional engineer. In reversing the trial court's decision to exclude the expert, the Supreme Court held that it would not interpret the statute to require a person offering expert testimony in the field of engineering be licensed as a professional engineer. Baggerly v. CSX Transportation, Inc., 370 S.C. 362, 374-75, 635 S.E.2d 97, 103-04 (2006). The Court

determined that the suggestion that only South Carolina licensed professional engineers are permitted to give expert engineering testimony in this state “could not have reasonably been intended by the Legislature.” Id.

The “primary purposes of Section 40-22-30 is to shield South Carolina consumers from those who are not properly credentialed pursuant to this State’s standards, but who nevertheless hold themselves out to be professional engineers.” Id. However, the services of an expert witness are “being offered to a South Carolina jury, not to the State’s citizens seeking traditional professional engineering services.” Id. The Court in Baggerly went on to find that if they “held that the exclusion of an out-of-state professional engineering expert is proper under the statute, the result would be to limit the truth-seeking duty of the courts of this State.” Id. at 375. The Court “refuse[d] to endorse an interpretation of the professional engineer licensing statute which has the potential of either preventing out-of-state experts from testifying in South Carolina courts or imposing the unreasonable burden of getting licensed in this State simply to be permitted to provide forensic testimony.” Id.

To exclude Mr. Dawkins as an expert on the basis that he is not licensed in this state is contrary to Rule 702 of the South Carolina Rules of Evidence which states that if “scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE. In determining a witness’s qualifications as an expert, the trial court should not have a solitary focus, but rather should make an inquiry broad in scope. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008). To be competent to testify as an expert, “a witness must have

acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.” Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 253 (1997).

Mr. Dawkins has sufficient knowledge, skill, experience, education and training to be qualified as an expert in this case. His educational background includes a Masters degree in Civil Engineering from the Georgia Institute of Technology, and a Bachelor’s Degree in Civil Engineering from North Carolina State University. He is a registered Professional Engineer in the states of Georgia and North Carolina. Mr. Dawkins testified that he has been qualified as an expert four times by courts in the state of Georgia. Additionally, he has more than twenty-seven years of experience in civil engineering and building construction systems. Mr. Dawkins further testified that he has been involved with fifty projects involving exterior cladding, one of which included the recladding of more than 100 buildings. It is clear from Mr. Dawkins’s credentials that he has the requisite level of knowledge and is better qualified than the jury to form an opinion on the subject matter. Any issue concerning the amount of Mr. Dawkins training and experience affects the weight, not the admissibility of his testimony. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 254 (1997); Watson v. Ford Motor Co., 389 S.C. 434, 447 (2010) (citing State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009)).

The specialized knowledge in construction and civil engineering that Mr. Dawkins has would certainly assist the jury in this case, and his expert testimony was critical to the defense of this action.

In Fields v. Haynes, the court held that the trial court abused its discretion in failing to qualify the Plaintiff’s home inspector as an expert because he was not licensed

in South Carolina. Fields v. Haynes, 376 S.C. 545, 557 (2008). The court in Fields, however, found this to be harmless error because the expert's testimony would have been cumulative. Id. at 558. At trial, the Fields presented testimony of a repair contractor, who was qualified as an expert in residential homebuilding, and a forensic architect, who was qualified as an expert in the standard of care and in the area of forensic examination and repair of residential construction. Id. The court determined that the testimony of the excluded expert would be cumulative of the testimony of the repair contractor and forensic architect. Id. In fact, the Fields agreed that the forensic architect would testify to essentially the same topics found in the excluded expert's report. Id. Unlike Fields, there was no cumulative evidence in this case. No expert testimony was presented from an engineer or an architect on Professional Plastering's behalf.

The exclusion of Mr. Dawkins expert testimony was highly prejudicial to Professional Plastering. This prejudice was exemplified by the Plaintiffs' closing argument in which it was stated that the sole source of expert testimony in trial came from the Plaintiffs.

By excluding Mr. Dawkins as an expert, the defense was denied the ability to present evidence on the following issues: 1) whether the stucco application was in substantial accordance with the plans and specification and otherwise correct; 2) whether any defects in the stucco were a proximate cause of the alleged damages; 3) whether the admitted building code violations were a proximate cause whether alleged damages; 4) what the proximate causes of the alleged damages were; 5) rebuttal to the testimony of the Plaintiffs' expert; and 6) what a proper scope of repair would entail for the twelve buildings at Fenwick.

The exclusion of Chris Dawkins as an expert witness in this case requires a new trial absolute.

V. THE EXCLUSION OF THE DEFENDANT'S STUCCO ONLY COST ESTIMATE REQUIRES THAT A NEW TRIAL ABSOLUTE BE GRANTED.

It was error for the Court to exclude the Defendant's stucco only cost estimate when the Plaintiffs were allowed to present a stucco only estimate.

Plaintiffs' stucco-only estimate was produced on May 5, 2011, only three days prior to the start of trial. The previous repair estimate produced by Plaintiffs was not an estimate of the damages related only to the stucco. It was a repair estimate for the entire project. When the Defendant received the new repair estimate, it was necessary for the Defendant's expert to analyze Plaintiff's new estimate and to produce a comparable estimate which included only the stucco.

Allowing the Plaintiffs' stucco-only repair estimate while excluding the Defendant's stucco-only estimate is extremely prejudicial to the Defendant. Prejudice is "a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." Fields v. J. Haynes Waters Builders, 376 S.C. 545, 557 (2008). Here, the jury was not provided with an estimate by the Defendant to compare to the Plaintiff's stucco estimate. The only written estimate provided to the jury relating only to the stucco was Plaintiffs' repair estimate. By having no other estimate related to the stucco besides the Plaintiff's stucco-only estimate, there is a reasonable probability that the jury's verdict was influenced by the lack of a comparable written estimate by the Defendant.

In Fields, the Court addressed an issue regarding the admission of repair costs.

Similar to the argument by Plaintiffs in this case, the Fields argued that the report of the builder's estimating expert should have been excluded because it was first provided to them on the day that the builder was to testify. In response, the Builder argued that the report was based solely on a comparison on the invoices of the Plaintiffs repair contractor which was only received on the Friday before trial. In determining that the introduction of the Builder's report was not prejudicial, the Court explained that Fields "had the opportunity to cross-examine [the expert] regarding his report and conclusions, recall their experts in rebuttal, and also could have asked for a short recess or overnight continuance to prepare for cross-examination." Fields, 376 S.C. at 568.

Additionally, in its decision to allow the Fields' repair contractor's costs into evidence, the court determined that the critical issue in regards to whether or not the repair costs were admitted "was the reasonableness and necessity of those costs." Fields, 376 S.C. at 567. The relevant question is not whether the Plaintiffs believed that their repair costs were reasonable, but whether the costs were in fact reasonable. Id.

The admission of Professional Plastering's stucco-only estimate was necessary for the analysis of Plaintiffs' estimate. Prior to the time of the stucco-only estimate, the Defendant had given Plaintiffs an estimate with a breakdown of the costs. An analysis of the Defendant's stucco-only estimate was required to determine the reasonableness and necessity of Plaintiffs' estimate.

The exclusion of the Defendant's stucco-only estimate coupled with the Court's endorsement of the Plaintiffs' settlements being non-stucco related is highly prejudicial to Professional Plastering. This excluded Defendant's analysis and any comparative estimate. The numbers provided by Plaintiffs were the only numbers in the jury room.

Professional Plastering was harmed by the lack of an exhibit for the jury to refer to and perform an analysis.

In excluding the Defendant's repair estimate, this was an additional endorsement by the Court of the Plaintiffs' estimate and damages amount. Excluding the Defendant's repair estimate for the stucco, which was relevant to the defense of this case, was highly prejudicial to the Defendant and requires a new trial absolute.

VI. OBJECTIONS TO THE LAY TESTIMONY OF CHRIS DAWKINS REQUIRE A NEW TRIAL ABSOLUTE.

Although the Court allowed Mr. Dawkins to testify as a lay witness regarding his observations during the testing performed at the property, it was improper for the Court to not allow him to testify concerning the proper names of different building materials and products.

There were several objections during Mr. Dawkins' testimony when he referred to different building materials by their proper name. The witness was repeatedly instructed to use lay person terms or describe the material. The judge's continued admonition to Mr. Dawkins that he was a lay witness and could not use technical terms was highly prejudicial to Professional Plastering. Instead of using the correct name, the witness was required to describe flashing as a "piece of metal". He was not allowed to use the name "z-flashing" regarding a piece of flashing that is described as being in the shape of a z.

Referencing names of products is not expert testimony. A lay witness may testify "as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience or training. Watson v. Ford Motor Co., 389 S.C. 434, 446 (2010); See Rules 602 and 701, SCRE. Here, Mr. Dawkins was not

offering an expert opinion on an issue. He was describing his observations during the testing performed at the project. These matters were within his personal knowledge. In describing what he saw, it was necessary for him to identify by name the building materials that he saw. Not allowing Mr. Dawkins to identify the building materials by name in his testimony diminished the testimony he was allowed to give as a lay witness. Sustaining the objections to the use of product names by Mr. Dawkins and requiring him to describe the building components instead was extremely confusing to the jury and prejudicial to the Defendant. The Defendant is entitled to a new trial absolute on this ground.

VII. PROFESSIONAL PLASTERING & STUCCO IS ENTITLED TO A SET-OFF AGAINST THE DAMAGES AWARDED TO PLAINTIFFS. ANY FAILURE OF THE COURT TO APPLY SUCH A SET-OFF REQUIRES A NEW TRIAL ABSOLUTE.

The Defendant Professional Plastering moves for a set-off against the damages awarded to Plaintiffs. However, if Professional Plastering's Motion for Set-Off is denied, Professional Plastering would request a new trial absolute.

"A non-settling defendant is entitled to credit for the amount paid by another defendant who settles." Rutland v. South Carolina Department of Transportation, 390 S.C. 78, 700 S.E.2d 451 (Ct. App. 2010) (citing Smalls v. S.C. Dept. of Educ., 339 S.C. 208, 219, 528 S.E.2d 682, 688 (Ct. App. 2000); Powers v. Temple, 250 S.C. 149, 156 S.E.2d 759 (1967); Vaughn v. City of Anderson, 300 S.C. 55, 386 S.E.2d 297 (Ct. App. 1989)). "The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid to him." Smalls v. South Carolina Dept. of Educ., 339 S.C. at 219-20

(quoting Hawkins v. Pathology Assocs. Of Greenville, P.A., 330 S.C. 92, 498 S.E.2d 395 (Ct. App. 1998)); Welch v. Epstein, 342 S.C. 279, 313 (Ct. App. 2000) (“there can be only one satisfaction for an injury or wrong”). The court’s jurisdiction “to set-off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties.” Id.

It was error in the Court’s instruction, requiring the jury to find damages in an amount over and above the amount Plaintiffs had received in settlement. The jury should have decided the total amount of damages, and then the set-off should have been performed by the Court.

Even accepting the method used by the Court in requiring the jury to award damages over and above the amount Plaintiffs had received in settlement, which the Defendant does not accept, the Defendant is entitled to a set off. The Defendant requests a set-off of the entire settlement received from all of the building envelope defendants. The buildings at Twelve Oaks have a highly integrated wall system, and in looking at the damages, it is improper and nearly impossible to separate them by building trade or subcontractor. Therefore a set-off is required of the entire settlement received from all of the building envelope defendants.

The following settlement amounts have been received by the Plaintiffs in this action:

<u>Party</u>	<u>Settlement Amount</u>
Summit Contractors	\$5,000,000.00
Fugelberg Koch Architects	\$500,000.00
Los Campos	\$100,000.00
APS	\$100,000.00

Chartis	\$100,000.00
North Florida Framing and Marquez	\$400,000.00
H2L	\$350,000.00
Johnson Roofing	\$175,000.00
Neo	\$65,000.00
All South Vinyl	\$75,000.00
AM Jacobs	\$35,000.00
Development Compliance & Inspection	\$100,000.00
Best Masonry, Successor in Interest to Magna Wall	\$637,500.00
Nava Guzman	\$137,500.00
General Aluminum	\$12,500.00
KMAC	\$187,500.00
Fenwick HOA/Ferguson et al.	\$100,000.00

The total amount of these settlements received by the Plaintiffs is \$8,075,000.00.

The allegations in the Complaint against all of the construction defendants were exactly the same, as were the alleged damages. The Complaint states that

as a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expense associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair, and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing, and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements.

(Plaintiffs' Fourth Amended Complaint, attached as Exhibit 1). The buildings at Twelve Oaks have a highly integrated wall system, and in looking at the damages, it is improper and nearly impossible to separate them by building trade or subcontractor. Additionally, during the trial, Plaintiffs' expert, Myles Glick, AIA testified that this was a stucco case, and that the problems stem from the stucco. Professional Plastering is entitled to a set-off of all monies paid by the settling defendants.

In the alternative, the Defendant requests a set-off by the amounts Plaintiffs have already received pursuant to settlement which are related to the stucco issue.

Particularly, Professional Plastering is entitled to a set-off by the settlements paid by APS and Chartis. APS was Professional Plastering's subcontractor on the project during the 2003-2004 repairs to the breezeways, and Chartis is one of Professional Plastering's insurance carriers. Professional Plastering should receive a set-off by the total amount paid in settlement by APS and Chartis as their work and payment was for the exact same damages alleged against Professional Plastering.

Professional Plastering's damages should also be set-off against the full amount of the settlement received from Fugelberg Koch Architects. Attached to the Plaintiffs' Fourth Amended Complaint is the Affidavit of Myles Glick. In his Affidavit, Mr. Glick states that:

the construction of the buildings at issue with a Magna-Wall system installed as a barrier system, and consequently causing the problems above stated was not in accordance with the Contract documents, was not in accordance with the design concept, and any such certification to the Owner to the contrary contained in the architect certified pay applications, was incorrect. That in his opinion Fugelberg Koch was negligent in failing to exercise its duties to ensure that the actual construction of the buildings at issue met the design concept it had designed, in failing to ensure that such construction was in accordance with the contract documents, and in certifying to the Owner that in fact such construction was in conformity with the Construction documents, when it was not.

That as a result of this negligence, an improper building envelope was installed on the subject buildings, requiring extensive demolition and repair.

(Affidavit of Myles Glick dated April 20, 2009, attached as Exhibit 2).

As outlined in Mr. Glick's affidavit, the architect Fugleberg Koch is directly responsible for the damages associated with the stucco system.

Professional Plastering is also entitled to a set-off by the full amount of the settlement paid by H2L. As set forth in Plaintiffs' Fourth Amended Complaint, H2L investigated water intrusion at breezeways and worked with the defendants Summit and Fugleberg Koch Architects to develop a breezeway repair. (Plaintiffs' Fourth Amended Complaint). H2L recommended a remediation of the "hard coat stucco wall system" to allow drainage of the system which was accomplished, partially, in the breezeway areas of the buildings only. However, no attention was paid to the overall stucco system of the buildings, having the identical design and construction deficiencies. (Plaintiffs' Fourth Amended Complaint).

Professional Plastering is also entitled to a set off from the settlements received from Los Campos, North Florida Framing, and Johnson Roofing. Los Campos was tasked with applying sealant at the project as well as the final layer of the stucco system, the elastomeric paint. The contract between Summit and Los Campos provides that Los Campos "is to furnish and install all required caulking, with the specified type of caulking at all areas of the project. These caulked areas to include, but not limited to, windows, doors, exterior siding, exterior trim, interior trim, exterior door sills, between exterior trim, tubs and masonry and fascia boards." (Subcontract Agreement between Summit and Los Campos, attached as Exhibit 3). Additionally, the subcontract states that "the exterior waterproofing of all stucco is the responsibility of the subcontractor

[Los Campos]. This is to include but not limited to all areas where stucco meets like or unlike surface where paint may or may not be applied.” (Subcontract Agreement between Summit and Los Campos).

North Florida Framing was responsible for the reverse laps in building wrap and flashing at the windows and the other reverse laps in the weather barrier. The contract between North Florida Framing and Summit provides that North Florida Framing “shall furnish and install all of the different types of fasteners, flashing, clips, caulks, rods, epoxies, etc. as required for the entire project.” (Subcontract Agreement between Summit and North Florida Framing, attached as Exhibit 4). Additionally, the subcontract required North Florida Framing “to provide all required caulk and ‘Z’ flashing (termite shield) at the perimeter of the building per plans and specifications and at the top of all windows as required by the Contractor.” (Subcontract Agreement between Summit and North Florida Framing). This section of the subcontract refers to flashing at the head of the windows and treatment at the base of the wall.

Johnson Roofing was the roofer for the project, and according to the contract between Johnson Roofing and Summit, Johnson Roofing was “to provide and install water diverters per the drawings.” (Subcontract Agreement between Summit and Johnson Roofing, attached as Exhibit 5). The subcontract further provided that Johnson Roofing “shall install all products in accordance with manufacturer’s recommendations.” (Subcontract Agreement between Summit and Johnson Roofing). The result of these two sections is that Johnson Roofing was required to install the “kickout flashings” at the wall to roof intersections as described by Mr. Glick.

The scope of work performed by these subcontractors encompassed and impacted the work performed by Professional Plastering, and Professional Plastering is entitled to a set-off of the amounts paid by these subcontractors relating to the stucco.

Magna Wall, the manufacturer of the stucco, settled the claims the Plaintiffs made against it which were based, almost completely on the fact that the Magna Wall, as the manufacturer of the stucco, should have properly inspected and "caught" the issues.

Plaintiffs' Fourth Amended Complaint provides that Magna Wall was negligent

- a. In failing to warn all potential users, consumers, sellers and installer of potentials for defect in its products and in the installation instructions;
- b. In failing to design, manufacture, market, sell and distribute a product free from potential defects when put to its intended reasonable and foreseeable uses;
- c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractor or specialty contractors that sold, used and installed its products; and
- d. In failing to provide adequate installation instructions;
- e. In failing to warn;
- f. In failing to properly inspect the improper application of the stucco and notify the contractor and/or owner of the application deficiencies; and
- g. Other deficiencies or failures will be proved at trial.

(Plaintiffs' Fourth Amended Complaint).

Professional Plastering is also entitled to a set-off from the settlement paid by Summit, who was the general contractor for the project. As the general contractor, Summit was responsible for supervising as well as approving the installation of the stucco at the project. The Settlement and Release Agreement between Plaintiffs and Summit provides that the settlement was to forever settle all past or present claims made or capable of being made in the lawsuit against Releasees and all future claims no matter when arising (resulting in past, present, and future damages) or any other claims now existing or arising in the future against Releasees: (a) relating to any and all construction

deficiencies or Code violations, whether known or unknown, from original construction and subsequent repairs as well as any resulting damages." (Settlement Agreement between Summit and Plaintiffs dated November 9, 2010, attached as Exhibit 6). It is evident by the settlement agreement between Summit and the Plaintiffs that the settlement paid by Summit was to include damages related to the stucco system. Therefore, Professional Plastering should be entitled to a set-off of the settlement proceeds paid by Summit.

The releases available from settling defendants are attached as exhibit 7, and are submitted in support of the above analysis and argument.

Based on the argument above, Professional Plastering & Stucco is entitled to a set-off of the enumerated settlement proceeds received by the Plaintiffs in the amount of \$8,075,000.00. Any failure of the Court to apply such a set-off requires a new trial absolute.

PROFESSIONAL PLASTERING IS ENTITLED TO A NEW TRIAL ABSOLUTE PURSUANT TO THE THIRTEENTH JUROR DOCTRINE.

As an alternative to Professional Plastering's motion for a new trial absolute on the grounds as stated above, Professional Plastering moves for a new trial absolute pursuant to the Thirteenth Juror Doctrine. The court, sitting as the thirteenth juror, should find that the preponderance of the evidence does not support the jury's verdict.

Under the thirteenth juror doctrine, a trial court may grant a new trial if the judge determines the jury's verdict is "contrary to the fair preponderance of the evidence." R.C. McEntire v. Mooregard Exterminating Servs., Inc., 353 S.C. 629, 633, 578 S.E.2d 746, 748 (2003). The trial court's discretion to grant or deny a new trial as the thirteenth juror

is very broad: "As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree" Worrell v. S.C. Power Co., 186 S.C. 306, 313-14, 195 S.E. 638, 641 (1938). "The trial court, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." Youmans v. Dept. of Transp., 380 S.C. 263, 272 (Ct. App. 2008) (citing Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984)).

The facts of this case do not support the jury's verdict of \$7,723,225.00. The Plaintiffs have failed to establish the essential elements of their claim. Plaintiffs have not proven that the actions of Professional Plastering were the proximate cause of Plaintiffs' damages, which is necessary to establish liability.

The mere existence of damages does not establish liability. Gillant v. Peters Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1941). The violation of a building code establishes only that a legal duty for which a builder can be held liable in tort for proximately caused losses has been violated. The party claiming damages must still prove that the violation of the building code in fact lead to or was the proximate cause of the claimed damages. See Kennedy v. Columbia Lumber and Mfg. Co., Inc. 299 SC 355, 384 S.E.2d 730 (1989). Negligence per se will not support a recovery for damages unless the plaintiff can show that the violation of the statute proximately caused or contributed to the injury complained of by the plaintiff. Hurst v. Sandy, 329 S.C. 471, 494 S.E.2d 847 (Ct. App. 1997). A statute can establish a duty to the plaintiff, and a breach of duty can be found with a showing of the violation of the statute, but finding of a statutory violation does not automatically lead to recovery of damages; plaintiff must

prove the violation proximately caused the injury complained of. Trivelas v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001).

The jury's verdict is contrary to the preponderance of the evidence, as the Plaintiffs have failed to prove that the Defendant was the proximate cause of the Plaintiffs damages. Therefore, a new trial absolute is necessary based upon the Thirteenth Juror Doctrine.

CONCLUSION

Professional Plastering and Stucco, Inc. is entitled to a New Trial Absolute based upon the Thirteenth Juror Doctrine as discussed above. The errors enumerated above provide individual grounds for granting a New Trial Absolute but also have a cumulative effect that require a New Trial Absolute.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR, ET AL.

☒ Plaintiff

v.

FENWICK PLANTATION TARRAGON, LLC,
ET AL.

☐ Defendant.

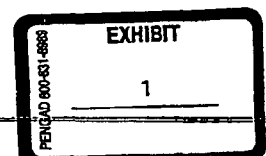
IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-10-0049

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney: John T. Chakeris, Bar No. 7060 Address: P. O. Box 397, Charleston, SC 29402 phone: (843) 853-5678 fax: (843) 853-5677 e-mail: other:	Defendant's Attorney: <u>SEE ATTACHED</u> Bar No. Address: phone: fax: e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion Type	
☐ Written motion attached ☒ Form Motion --	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant <u>3/15/10</u> Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☒ Other: Fourth Amended Complaint is being filed pursuant to a signed Order.	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION	
Collected by: Date Filed:	
☐ MOTION FEE COLLECTED: ☐ CONTESTED - AMOUNT DUE:	

SCCA/233 (1/2003)



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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP, INC., SUMMIT CONTRACTORS, INC., FUGLEBERG KOCH ARCHITECTS, INC., DEVELOPMENT, COMPLIANCE & INSPECTIONS, INC., H2L CONSULTING ENGINEERS, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from August 8, 2006 to December 15, 2008), PROFESSIONAL PLASTERING & STUCCO, INC., JOHNSON COMPANIES, INC., D/B/A JOHNSON ROOFING, INC., LOS CAMPOS, INC., NORTH FLORIDA FRAMING, INC., BEST MASONRY & TOOL SUPPLY, L.P. as successor in interest to BEST MASONRY & TOOL SUPPLY, INC., as successor in interest to MAGNA WALL, INC., ALL SOUTH VINYL PRODUCTS, INC., MARQUEZ CONSTRUCTION, INC., 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 ROSALES, APS ENTERPRISES UNLIMITED, INC., HR ELECTRIC, A.M. JACOBS, INC., MICKEY MASON D/B/A MASON CONTRACTORS, KMAC OF THE CAROLINAS, INC., AND NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10- 49

FOURTH AMENDED SUMMONS
(JURY TRIAL DEMANDED)

FILED
2010 MAR 15 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

YOU ARE HEREBY SUMMONED and are required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscriber, at 864 Lowcountry Blvd., Suite A, Mt. Pleasant, South Carolina 29464, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

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Charleston, South Carolina

Dated: 3/15, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

Plaintiffs,

vs.

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 CONTRACTORS GROUP,
INC., SUMMIT CONTRACTORS, INC., FUGLEBERG
KOCH ARCHITECTS, INC., DEVELOPMENT,
COMPLIANCE & INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE OAKS AT
FENWICK PROPERTY OWNERS ASSOCIATION, INC.,
(from August 8, 2006 to December 15,
2008), PROFESSIONAL PLASTERING & STUCCO,
INC., JOHNSON COMPANIES, INC., D/B/A
JOHNSON ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC., BEST MASONRY
& TOOL SUPPLY, L.P. as successor in
interest to BEST MASONRY & TOOL SUPPLY,
INC., as successor in interest to MAGNA
WALL, INC., ALL SOUTH VINYL PRODUCTS,
INC., MARQUEZ CONSTRUCTION, INC., 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 ROSALES, APS
ENTERPRISES UNLIMITED, INC., HR ELECTRIC,
A.M. JACOBS, INC., MICKEY MASON D/B/A
MASON CONTRACTORS, KMAC OF THE CAROLINAS,
INC., AND NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10- 49

FILED
2010 MAR 15 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FOURTH AMENDED CLASS ACTION COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, by and through their undersigned counsel, bring this class action on behalf of themselves and all others similarly situated, as a voluntary class action under Rule 23 (a) of the South Carolina Rules of Civil Procedure and allege:

PARTIES, CAPACITY, AND JURISDICTION

1. The Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, are owners of Unit Number 224 in the Twelve Oaks at Fenwick Plantation Horizontal Property Regime (hereinafter "Regime"), Johns Island, Charleston County, South Carolina. Moreover, by virtue of the Teseniars' ownership interest in their unit and the Regime, under the Master Deed of the Twelve Oaks of Fenwick Plantation Horizontal Property Regime (hereinafter referred to as "Master Deed") and the By-Laws for the Twelve Oaks at Fenwick Horizontal Property Regime (hereinafter referred to as "By-Laws"), they are a member or shareholder of the incorporated association of owners known as Twelve Oaks at Fenwick Plantation Property Owners Association, Inc.

2. The Plaintiff, Twelve Oaks at Fenwick Property Owners Association (from December 16, 2008 to present) is a South Carolina nonprofit corporation and by virtue of the Master Deed filed with the Register of Mesne and Conveyance for

Charleston County at Book E 594 Page G 684, is charged amongst other things with the duty to repair and maintain the common elements of the Project.

3. Defendant Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is a limited liability company organized under the laws of the State of South Carolina and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units in December of 2001 and converted the apartments to condominiums in August of 2006. Defendant, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, is the agent and/or alter ego of Defendants, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

4. Defendant Charleston Tarragon Manager, LLC, is a limited liability company organized under the laws of the State of Delaware and is the developer of and performed repairs and

modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property in December of 2001 consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Charleston Tarragon Manager, LLC is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, and Tarragon Development Corporation. Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Construction are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

5. Defendant Tarragon Development Corporation, upon information and belief, is a Nevada corporation and is the developer of and performed repairs and modifications to the property commonly known as Twelve Oaks at Fenwick Plantation and purchased the property consisting of 216 apartment units and converted the apartments to condominiums in August of 2006. Defendant, Tarragon Development Corporation is the manager and/or member and/or agent and/or alter ego of Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon

Apartments, LLC and Charleston Tarragon Manager, LLC. Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation (hereinafter "Developer Defendants") are in control of and are the alter ego of The Board of Directors of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008). Accordingly, jurisdiction over the Defendant is proper in this Court under South Carolina Code Ann. § 36-2-802 (1976).

6. Defendant Summit Contractors Group, Inc., and Summit Contractors, Inc., constructed the buildings at Twelve Oaks for and in conjunction with the developers, and is a Florida Corporation.

7. Defendant Fugleberg Koch Architects, Inc. is a Florida architectural corporation, upon information and belief, which designed the buildings, performed contract administration and authorized payment draws, and additionally later designed certain repairs to the buildings prior to the incorporation into a Horizontal Property Regime.

8. Defendant Development, Compliance & Inspections, Inc. is a Florida corporation which performed the code compliance required inspection to the buildings at the time of condominium conversion.

9. Defendant H2L Consulting Engineers is a South Carolina engineering firm which performed inspections on two occasions prior to condominium conversion and which partially designed, and performed oversight of certain repairs to the buildings.

10. Defendant Twelve Oaks at Fenwick Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008) hereinafter the "POA Inc." (from August 8, 2006 to December 15, 2008), is a South Carolina non-profit corporation having its principal place of business in Charleston County and created pursuant to the Master Deed of the Condominium project at issue.

11. Defendants, Professional Plastering & Stucco, Inc. is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

12. Defendant, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., is upon information and belief, a Tennessee corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period, and at all relevant

times herein was engaged in the building and construction of Fenwick apartments and specifically installed the roof and related flashings on the buildings at Twelve Oaks.

13. Defendant, Los Campos, Inc., is upon information and belief, a North Carolina corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically installed the exterior paint, caulk and sealants on and to the buildings at Twelve Oaks.

14. Defendant, North Florida Framing, Inc., is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002 time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically framed the buildings and installed the secondary weather barrier windows and doors and related flashings and siding on and to the buildings at Twelve Oaks.

15. Defendant, Marquez Construction, Inc., is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Summit in construction of the original Fenwick apartments in the 2001-2002

time period and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically framed the buildings and installed the secondary weather barrier windows and doors and related flashings and siding on and to the buildings at Twelve Oaks.

16. That, upon information and belief, the Defendant, General Aluminum Company of Texas, LP, is an individual, sole proprietorships, partnerships, or corporations organized in the another state and/or conducting business in Charleston County is engaged in business in the State of South Carolina, and that General Aluminum Company of Texas, LP, manufactured, distributed, and sold the windows that were installed at the buildings at Twelve Oaks.

17. That, upon information and belief, the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., is a partnership or corporation organized and existing under the laws of the State of Texas and conducts and is engaged in business in the State of South Carolina, and that and at all relevant times herein was engaged in the design, manufacture, and sale of the stucco product that was used in the construction of the buildings at Twelve Oaks.

18. That, upon information and belief, the Defendant, All South Vinyl Products, Inc., is a partnership or corporation

organized and existing under the laws of another state and conducts business in Charleston County, and is engaged in business in the State of South Carolina, and at all relevant times herein was engaged in the building and construction of Fenwick apartments and specifically installed the hand rails on and to the buildings at Twelve Oaks.

19. That upon information and belief, the Defendant, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, is a corporation organized and existing under the laws of the State of Georgia, and doing business in Charleston County, State of South Carolina, and at all relevant times herein was engaged in the building and construction of the buildings at Fenwick and specifically installed and provided the HVAC systems and materials in the buildings at Fenwick.

20. That upon information and belief, the Defendant, Jamie Helman, Individually is a resident of the state State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

21. That upon information and belief, the Defendant, Scott Ferguson, Individually is a resident of the State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly

administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

22. That upon information and belief, the Defendant, Chris Cobbs, Individually is a resident of the State of Florida, and a member of the Board for the POA Inc. (from August 8, 2006 to December 15, 2008), and was charged with properly administering the POA, Inc., and were under the control and alter ego of the Developer Defendants.

23. That upon information and belief, the Defendant, Federal Insurance Company, is a corporation organized and existing under the laws of a state other than the State of South Carolina and is authorized to conduct business in this state. Federal Insurance Company did, as surety, issue a Performance Bond with the Defendant Summit Contractors, Inc. as principal and Fenwick Tarragon Apartments, LLC and its Successors as Owners/Obligees. The unit owners and the POA are the Successor Owners.

24. That upon information and belief, the Defendants, Maria Arias, Individually and Miquel Rosales, Individually are residents of the State of Florida, doing business in South Carolina as subcontractors to Professional Plastering & Stucco in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so

as to prevent water intrusion into the buildings in accordance with building code requirements.

25. Defendant, APS Enterprises Unlimited, is upon information and belief, a Florida corporation which was doing business in South Carolina as a subcontractor to Professional Plastering & Stucco, Inc., in the construction of the original Fenwick apartments in the 2001-2002 time period. Its subcontract was to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.

26. Defendant, HR Electric, is upon information and belief, is an individual, sole proprietorship, corporation, business entity and/or resident of the State of Georgia and conducts business in Charleston County, State of South Carolina, and at all relevant times herein was engaged in the building and construction of the buildings at Fenwick and specifically installed and provided the electrical systems and materials in the buildings at Fenwick during the original construction.

27. Defendant, A.M. Jacobs, Inc., is upon information and belief, a corporation organized and existing under the laws of the State of South Carolina and conducts and is engaged in business in Charleston County, State of South Carolina, and at

all relevant times herein was engaged in the repair of the buildings at Fenwick and specifically improperly repaired flashings at breezeways and other locations at the buildings at Fenwick.

28. Defendant, Mickey Mason d/b/a Contractors, is an individual, sole proprietorship, corporation, business entity and/or resident of Charleston County, State of South Carolina and conduct business in Charleston County, and at all relevant times herein was engaged in the repair of the buildings and specifically repaired the roofs, on and to the buildings at Fenwick.

29. Defendant, KMAC of the Carolinas, Inc., is upon information and belief, a North Carolina corporation which was doing business in South Carolina, and at all relevant times herein was engaged in the building and construction of Fenwick and specifically improperly installed flashing at walls, breezeways, landings and locations on the buildings at Fenwick.

30. Defendant, NEO Corporation, is upon information and belief, a North Carolina corporation which was doing business in South Carolina, and at all relevant times herein was engaged in performing repairs to the buildings at Fenwick.

31. The class of Plaintiffs consists of all persons, corporations, partnerships, unincorporated associations or other entities that own in whole or in part any unit in the Regime.

32. The Court has jurisdiction over the parties and subject matters hereto and that the allegations out of which this action arises from the board's failure to enforce rights and remedies and involve the development, construction, repair and sale of units and management and maintenance of the buildings at issue in the County of Charleston, State of South Carolina.

CLASS ACTION ALLEGATIONS

33. As representatives of the Class defined herein pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure, to recover monetary damages from the Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation for breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, bad faith, mismanagement, breach of express and implied warranties, negligent misrepresentation, unfair trade practices, with respect to their duties as a developer in the development, sale of administration, care, and maintenance and/or repair of the buildings and units at issue.

34. As described above, the class of Plaintiffs consists of individuals, corporations, partnerships, unincorporated associates or other entities that currently or in the future will own, in whole or in part, any unit in the buildings (hereinafter "Class").

35. The Class does not include any former owner of a unit in the Regime.

36. The Class is sufficiently numerous that joinder of all members is impractical.

37. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, will fairly and adequately protect the interests of the Class as Class representatives. The interests of the Class representative are coincident with and not antagonistic to those of the other Class members and Plaintiffs are represented by experienced and able counsel.

38. There are questions of law and fact common to the Class. Common questions of law include the liability of Defendants for, among other things as more particularly described below, negligence, gross negligence, recklessness, willfulness, bad faith, breach of warranties, negligent misrepresentations, unfair trade practices and whether these wrongful acts or omissions of all of the Defendants caused or will cause the Class to suffer damages.

39. Plaintiffs' claims are typical of the Class members' claims and derive from a common nucleus of operative facts in that the Defendants, at all times relevant, are or were either charged with duties as a developer and/or in the sale and disclosure of conditions and/or repair of the buildings and units at issue. Each Class member has been or will be similarly injured by the Defendants' wrongful acts or omissions in the development, sale, and/or repair of the buildings and units at issue and the interests and rights of the members, such that the interest of the Plaintiffs, as Class representatives, are consistent with those of the members of the Class.

40. Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, for the class claim pursuant to Rule 23(a) of the South Carolina Rules of Civil Procedure as Class members envision no unusual difficulty in the management of this action as a class action.

41. Certification of this action as a class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

FACTUAL ALLEGATIONS

42. The Developers are under a duty of to develop, sell and disclose the condition of the buildings and units and to make full, fair and accurate disclosures to prospective purchasers regarding the condition of the property and the

useful life of its common elements and the cost to remedy and code violations.

43. The Defendants, Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation purchased the buildings and units in December of 2001, and converted the rental units to condominiums in August of 2006.

44. Defendant Professional Plastering & Stucco, Inc. upon information and belief was hired as a subcontractor to Summit in the construction of the original Fenwick apartments in the 2001-2002 time period. **Defendant, Professional Plastering & Stucco, Inc. subcontracted with Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., for the stucco installation. These subcontractors were to correctly install the stucco exteriors with the proper details and components so as to prevent water intrusion into the buildings in accordance with building code requirements.**

45. In violation of its contractual and common law duties, Defendants Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.,** did not install the stucco and components in a competent and workmanlike fashion and in conformity to the requirements of the building code, but rather constructed the exterior building envelopes of the buildings at Fenwick in a defective condition

causing or contributing to the leaks into the buildings and in a manner which will require significant repair in order to maintain a water resistant or water management exterior as required by code and by good building practices.

46. H2L Consulting Engineers is an Engineering firm located in Greenville, SC and was employed as an engineering consultant by the Developers in 2003 and again in 2005 prior to the conversion of the apartment complex into a condominium regime.

47. H2L was engaged by Tarragon Management in 2003 to investigate water intrusion at breezeways resulting in moldy odors in some apartments. H2L worked with the defendants Summit and FKA and developed a breezeway repair. During this activity, H2L discovered, among other things, that the breezeway design and construction was incorrect and allowed water intrusion, entrapment, and consequential mold development. H2L recommended a remediation of the "hard coat stucco wall system" to allow drainage of the system. This was accomplished, partially, in the breezeway areas of the building only, with no attention paid to the overall stucco system of the buildings; having the identical design and construction deficiencies.

48. Defendant FKA was also retained in 2003, it investigated, determined that its original wall section design was erroneous, participated in the breezeway re-design, but made

no further recommendations concerning overall repair of the apartment complex.

49. H2L was again called back by the Developer Defendants in the spring of 2005, prior to conversion into condominiums, as many apartments were again complaining of mold, and musky odors. Instead of utilizing the knowledge developed during its investigation in 2003, that the stucco system was likely defective and was entrapping moisture, H2L instead retained a mold-sampling consultant, what resulted in a cosmetic mold remediation of some of the units.

50. Prior to condominium conversion, a proposed lender, Barclay's Bank engaged EMG of Maryland to perform a Building System Analysis. This study, among other things, demonstrated high moisture readings behind stucco exteriors, commented on a number of building envelope deficiencies, and recommended a repair protocol on the buildings and HVAC systems which would cost close to \$1 million. Again, rather than utilizing the knowledge it had concerning the moisture intrusion and the non-drainable stucco system, H2L engaged in a commentary on the EMG report and came to the conclusion that EMG did not have "substantial evidence to support their conclusions". This opinion was issued in writing and had no basis in any destructive testing or other behind the wall analysis performed

by H2L, nor did H2L engage an HVAC consultant in its written refutation of the EMG analysis.

51. As a direct and proximate result of the H2L "clearance opinion letter" of May 23, 2005 to the Developer Defendants, the Developer Defendants took no action to investigate or repair water intrusion problems at the project, created a horizontal property regime, marketed it to the public, and did not reveal the contents of the EMG study to any purchaser.

52. The buildings contained construction defects that resulted in water intrusions and conditions conducive to mold growth and the Defendants made repairs prior to converting the apartments to condominiums and such repairs were ineffective and known to or should have known to be ineffective to Fenwick Plantation Tarragon, LLC f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation. These Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC and Tarragon Development Corporation have committed breaches of fiduciary duties, negligence, gross negligence, recklessness, wantonness, willfulness, breach of warranties, fraud, misrepresentation, bad faith, mismanagement, unconscionable conduct and waste with respect to their developing, repair, and selling of the buildings and units at issue. These wrongful acts

and omissions by all Defendants have caused and will cause the Plaintiffs and the Class members to incur and continue to incur substantial money damages.

53. The design and construction defects have resulted in repeated water intrusion into the residences, failure of the components of the exterior envelope, failure of the structural system(s), and other consequential damages to the common elements of the Association and to the interior of the units. Upon information and belief, these adverse events have occurred each and every year since construction; and constitute "occurrences" and "property damage" and compensable damages under the standard and/or typically generally liability and/or completed operations insurance policies maintained by the defendants herein; further the negligence of each defendant herein has resulted in damage to the work of the others.

54. On or about 2006, the Developers converted the apartments to condominiums.

55. Developers created the Association and Regime and owed the Association and Regime fiduciary and fiduciary-like duties.

56. The Developers owed a duty to the Association to insure that the common elements were in good condition at the time they were transferred to the Association.

57. The current condition of the buildings evidences that at the time the common areas were transferred to the Association, they were not suitably weather resistant and were suffering from water intrusion which has resulted in damage to the common elements and units.

58. Investigations have revealed that the Defendants knew of these construction deficiencies since shortly after construction; and that they have failed to remedy the deficiencies or disclose the same to purchasers, thereby exposing the Association to further liability.

59. The South Carolina Horizontal Property Act, South Carolina Code Ann. § 27-31-430 requires that the condition of the building be set forth in an engineer's report at the time of conversion.

60. Upon information and belief, Defendant DCI performed the conversion inspection and issued the Conversion Condition report.

61. Defendant DCI failed to properly investigate the condition of the buildings and failed to observe or disclose the defective conditions of the residences.

62. As a result of the above described, the Association has chosen and action against Summit, Architect, DCI, H2L, and Developers.

63. That in 2003, prior to conversion, defendants Tarragon became aware of significant mold and mildew problems all over the apartment complex, and retained the original Architect FKA, the original builder, Summit, and engineers H2L, to identify and remedy the problems.

64. That following inspections and testing, those Defendants determined that the stucco system did not drain, was trapping water, the original design of the system was uncovered, and so, limited repairs were made - only to the breezeway areas of the buildings, leaving the remaining majority of the building in their original, defective condition.

65. Thereafter, Developers decided upon a condominium conversion, and a financing bank, Barclay's Bank commissioned a building condition survey by EMG, a Maryland based expert which issued a report. This report put the Developers on notice of significant moisture within walls of the buildings, and consequent mold and mildew and recommended repairs with approved \$1 million for construction.

66. Rather than effecting any repairs, Defendant Developers and H2L certified the EMG report, and elected superficial mold and mildew cleanup to improve the odor, look, and feel of the condos which were to be marketed, created and Horizontal Property Regime, and began selling the condos to the public. Defendant DCI was hired by the Developers to perform and

inspection pre-sale of the buildings as required by the S.C. Code of Laws, and, upon information and belief, Developers failed to provide Defendant DCI with any disclosures of past problems with the units, past repair efforts and experts reports, or the EMG report. Defendant DCI only performed a "walk through" and issued its report.

67. That the POA Inc. (from August 8, 2006 to December 15, 2008). has numerous duties both pursuant to the Master Deed and By-Laws as well as under the Common Law of South Carolina, and it is governed by a Board of Directors which has fiduciary duties to the homeowners. At all times both now and in the past, the Board of Directors of the POA Inc. (from August 8, 2006 to December 15, 2008) and indeed the POA Inc. (from August 8, 2006 to December 15, 2008) is composed of Tarragon employees, and acts as the Agent and Servant of Tarragon, and is essentially the alter ego of Tarragon.

68. That in its capacity as a fiduciary for the homeowners, POA Inc. (from August 8, 2006 to December 15, 2008) has the duty to take action against Tarragon when required and to insure that the common elements of the project are in good repair. In that capacity, the POA Inc. (from August 8, 2006 to December 15, 2008) was and is in possession of all of the information known to Tarragon regarding the problems with the common elements of the property, the partial repair, the expert reports detailing

problems, the fact that building problems were not addressed by Tarragon pre-sale, and of the significant manifestation of water intrusion into the buildings by the constant complaints of mold and mildew stated by the homeowners.

69. That rather than taking actions as required of a fiduciary, the POA Inc. (from August 8, 2006 to December 15, 2008) through its developer-controlled board has not only failed to act properly, but has neglected all of its duties toward the homeowners as required by the Master Deed and By Laws to ensure that the Common Elements of the property are in good repair, and has instead acted in the best interests of Tarragon, to the detriment of the homeowners to whom it owes duties as a fiduciary.

FOR A FIRST CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Developer Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., and Development, Compliance & Inspections, Inc., H2L Consulting Engineers)

70. Plaintiffs repeat and re-allege Paragraphs 1 through 69 above as if fully set forth verbatim.

71. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L Consulting Engineers, by and through their agents, servants, and employees undertook the original construction and repairs of The Vintage at Fenwick Plantation Apartments in 2002.

72. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L, owed a duty to Plaintiffs to design, construct, repair and inspect the residences in a workmanlike fashion, using suitable supplies and details, and in accordance with good design, the architect's design, and the applicable building codes.

73. Upon information and belief, the buildings were acquired by the Developers Tarragon South Development Corporation and Tarragon Corporation through various affiliated and then converted the apartments into Twelve Oaks at Fenwick Plantation, a condominium community.

74. The Defendants, Fenwick Plantation Tarragon, LLC, f/k/a Fenwick Tarragon Apartments, LLC, Charleston Tarragon Manager, LLC, Tarragon Development Corporation, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development Compliance & Inspections, Inc., and H2L Consulting Engineers, by and through their agents, servants and employees undertook and were under a duty to develop, design, repair, inspect and sell the buildings and units that should have been constructed and /or repaired in accordance with the building code, construction industry standards and practices and in accordance with all requirements imposed by the laws and statutes of the State of South Carolina.

75. The Defendants were negligent, grossly negligent, careless, reckless, willful and wanton, in developing, building, repairing, inspecting and selling the buildings and units at issue and in performing contract administration during the construction of the project. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, construction, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain, and effect permanent repairs to the property;
- d. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- e. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- f. In designing, developing, constructing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- g. In designing, developing, constructing, and selling units and buildings constructed and/or repaired in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- h. In failing to properly perform contract administration and approving pay applications to insure the buildings and the building components were constructed and/or installed in accordance with building codes, standard building practices,

relevant product specifications and accepted construction industry standards and practices;

- i. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
- j. In installing the siding, caulk, roofing, handrails, windows, secondary weather barrier and flashings and HVAC system in violation of the building codes, product specifications and accepted construction, industry standards and practices;
- k. In violating SC Code Section 27-31-430.
- l. In violating SC Code Section 33-31-830.
- m. Other deficiencies or failures as will be proven at trial.

76. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, the Plaintiffs and similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiffs and the Class have been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously

intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A SECOND CAUSE OF ACTION

(Plaintiffs, MARK F. TESENIAR AND NAN M. TESENIAR, on behalf of themselves and others similarly situated claims of Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Defendants, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from August 8, 2006 to December 15, 2008) JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY)

77. Plaintiffs repeat and re-allege Paragraphs 1 through 76 above as if fully set forth verbatim.

78. The Defendants Twelve Oaks Property Owners Association, Inc., (from August 8, 2006 to December 16, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, by and through their agents, servants and employees undertook a duty to maintain the project and properly administer the property owners association from August 8, 2006 through December 15, 2008.

79. These Defendants were negligent, grossly negligent, careless, willful in wanton in maintaining and administering and managing the Association from August 8, 2006 through December 15, 2008 including but not limited to the

following particulars:

- a. In failing to use due care in the maintenance, repair and sale of the buildings and units at issue;
- b. In maintaining and repairing the buildings and units in a manner which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain and adequately fund for future maintenance and repairs and effect permanent repairs to the property;
- d. In failing to properly administer the homeowners association;
- e. In failing to adequately fund the reserve account;
- f. In failing to sell units and turn over the common elements in good condition which met or exceeded the building code;
- g. In putting the defendant's interest before that of the unit owners or association;
- h. In violating SC Code Section 27-31-430;
- i. In violating SC Code Section 33-31-830;
- j. Other deficiencies or failures as will be proven at trial.

80. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness, wantonness of the Defendants, Twelve Oaks at Fenwick Property Owners Association, Inc. (August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, the Plaintiffs Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated unit owners have suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes

of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiffs Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated and the Class have been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A THIRD CAUSE OF ACTION

**The Plaintiff Twelve Oaks Fenwick Property Owners Association,
Inc. (from December 16, 2008 to present)
(Claims of Negligence, Gross Negligence, Carelessness,
Recklessness, Willfulness and Wantonness as to
Defendants, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON,
INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY)**

81. Twelve Oaks Fenwick Property Owners Association, Inc., (from December 16, 2008 to present) re-alleges Paragraphs 1 through 80 above as if fully set forth verbatim.

82. The Defendants, Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, by and through their agents, servants and employees undertook a duty to maintain the project and properly administer the property owners association from August 8, 2006 through December 15, 2008.

83. These Defendants were negligent, grossly negligent, careless, willful in wanton in maintaining and administering and managing the homeowners association from August 8, 2006 through December 15, 2008 including but not limited to the following particulars:

- a. In failing to use due care in the maintenance, repair and sale of the buildings and units at issue;
- b. In maintaining and repairing the buildings and units in a manner which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In failing to take required actions to maintain and adequately fund for future maintenance and repairs and effect permanent repairs to the property;
- d. In failing to properly administer the homeowners association;
- e. In failing to adequately fund the reserve account;
- f. In failing to sell units and turn over the common elements in good condition which met or exceeded the building code;
- g. In putting the defendant's interest before that of the unit owners or association;
- h. In violating SC Code Section 27-31-430;
- i. In violating SC Code Section 33-31-830;
- j. Other deficiencies or failures as will be proven at trial.

84. That as a direct and proximate result of the negligence, gross negligence, carelessness, willfulness,

wantonness of the Defendants, Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, the Plaintiff Twelve Oaks Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) has suffered actual, incidental, consequential, and special damages including but not limited to the expense of having to hire experts to investigate the causes of the water intrusion and conditions conducive to mold growth, construction, repair and remediation defects and failures set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units at issue to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, the Plaintiff Twelve Oaks Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) has been injured and otherwise damaged in that water and moisture have repeatedly and/or continuously intruded and continues to intrude into the building and units at issue causing damage and deterioration to the finish and structural elements of the buildings and units at issue, all of which will be required to be corrected and repaired and result in the loss of use of the units during said repairs.

FOR A FOURTH CAUSE OF ACTION

(Negligence, Gross Negligence, Carelessness, Recklessness, Willfulness and Wantonness as to Professional Plastering & Stucco, Inc., Maria Arias, Miguel Rosales, and APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, and J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation)

85. Each and every allegation contained in Paragraphs 1 through 84 above are incorporated herein by express reference as though fully set forth.

86. That the Defendants, Professional Plastering & Stucco, Inc., Maria Arias, Miguel Rosales, APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation, owed a duty to the Plaintiffs to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code,

industry, standards and accepted construction industry standards and practices.

87. That the Defendants, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.,** Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation,** breached their duties to the Plaintiffs by failing to design, construct, and/or repair the buildings in a workman like fashion and in accordance with the building code, industry, standards and accepted construction industry standards and practices.

88. The Defendants, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc.,** were negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings and apply the stucco cladding and related flashings in accordance with the applicable

building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies to the buildings and condominiums, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair and remodeling of the subject buildings and condominiums;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the buildings and condominiums;
- c. In failing to hire competent subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing and remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices;
- f. In failing to properly install the stucco cladding and related flashings;
- g. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter subject residence;
- h. In constructing and repairing the subject buildings in such a manner that water entered the buildings;
- i. In failing to use due care in constructing and repairing the buildings in such a fashion as to permit excessive moisture to enter into the wall systems and subject buildings without having an adequate avenue for water to escape and/or drain.
- j. Other deficiencies or failures as will be proven at trial.

89. The Defendant, Johnson Companies, Inc., d/b/a Johnson Roofing, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, and in installing the roofs and roofing accessories and flashings on the subject buildings;
- b. In failing to adequately supervise the work and construction, and repair of the subject buildings;
- c. In failing to hire competent employees, subcontractors or specialty contractors;
- d. In failing to adequately and competently supervise and/or train said subcontractors or specialty contractors;
- e. In constructing, repairing, and installing the roofs on subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- f. In failing to provide and install proper flashings.

- g. In other deficiencies as will be proven at trial.

90. That the Defendant, Los Campos, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in building, constructing, and supervising the work to the subject buildings in accordance with the applicable building codes and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the buildings, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless, reckless, willful and wantonness, includes but not limited to the following particulars:

- a. In failing to use due care in the building and construction of the subject buildings;
- b. In failing to adequately supervise the building and construction of the subject buildings;
- c. In failing to hire, supervise and train competent employees, subcontractors and specialty subcontractors;
- d. In building and constructing the subject buildings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. In improperly installing the sealants, caulks, and waterproofings in violation of the building code, standard building practices and accepted construction industry standards and practices;
- f. In failing to properly apply paint, sealants, and caulks at windows and doors and other areas of the buildings as required by the building code, standard building practices and accepted custom industry standards and practices; and
- g. Other deficiencies or failures will be proved at trial.

91. The Defendants, North Florida Framing, Inc., and Marquez Construction, Inc., were negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, framing, supervising and inspecting the subject buildings and in failing to construct, repair and/or remodel said buildings and specifically the framing, installation of flashings and the installation of the windows and doors, installation of secondary weather barrier and installation of siding in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and framing of the subject buildings;
- b. In failing to adequately construct and supervise the construction, repair, framing, installation of flashings, installation of a secondary weather barrier, windows and doors, and installation of siding of the subject buildings;
- c. In failing to hire competent subcontractors, specialty contractors, and/or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors and/or employees;

- e. In constructing, repairing and/or remodeling subject buildings in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices.
- f. In improperly installing windows and doors;
- g. In failing to properly frame the buildings;
- h. In failing to properly install flashings;
- i. In failing to properly install the siding;
- j. In failing to properly install a secondary weather barrier;
- k. In installing the framing, flashings and installation of windows and doors and secondary weather barrier to the buildings which failed to provide a sufficient barrier against the intrusion of water;
- l. In constructing, repairing and/or remodeling the subject buildings in such a manner that water entered the dwellings;
- m. In failing to use due care in constructing, repairing and/or remodeling the buildings in such a fashion as to permit excessive moisture to enter subject buildings;
- n. In other deficiencies as will be proven at trial.

92. The Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in providing, designing, manufacturing, marketing, selling and distributing a product which was potentially defective and/or provided deficient installation instructions that was not in accordance with the applicable building codes and accepted construction and product manufacturing and industry standards, all of which have directly and proximately caused defects and deficiencies in the building, which have been or will need to be corrected, repaired and/or replaced. Such negligence, gross

negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to warn all potential users, consumers, sellers and installers of potentials for defect in its products and in the installation instructions;
- b. In failing to design, manufacture, market, sell and distribute a product free from potential defects when put to its intended reasonable and foreseeable uses;
- c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractors or specialty contractors that sold, used and installed its products; and
- d. In failing to provide adequate installation instructions.
- e. In failing to warn;
- f. In failing to properly inspect the improper application of the stucco and notify the contractor and/or owner of the application deficiencies; and
- g. Other deficiencies or failures will be proved at trial.

93. That the Defendant, All South Vinyl Products, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in building, constructing, and supervising the work to the subject buildings in accordance with the applicable building codes and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in and to the buildings, which will need to be corrected, repaired, remediated and/or replaced. Such negligence, gross negligence, careless,

reckless, willful and wantonness, includes but not limited to the following particulars:

- a. In failing to use due care in the building and construction of the subject buildings;
- b. In failing to adequately supervise the building and construction of the subject buildings;
- c. In failing to hire, supervise and train competent employees, subcontractors and specialty subcontractors;
- d. In building and constructing the subject buildings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices;
- e. In improperly installing the handrails;
- g. In installing handrails in a manner that allowed water to intrude into the buildings;
- h. Other deficiencies or failures will be proved at trial.

94. The Defendants, General Aluminum Company of Texas, LP, was negligent, grossly negligent, careless, reckless, willful and wanton in manufacturing and distributing windows which failed to meet the use for which they were sold, applicable building codes and windows manufacturers' industry standards which have directly and proximately caused defects, deficiencies and damages to the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to warn all potential users, consumers, sellers and installers of the defects or potentials for defect in its products and the inherent risks of using its products in the buildings at issue or other similarly situated

buildings;

- b. In failing to design, manufacture, market, sell and distribute a product free from defects when put to its intended reasonable and foreseeable uses; and
- c. In failing to adequately and competently supervise and/or train the applicators, vendors, subcontractors or specialty contractors that sold, used and installed its products; and
- d. In failing to provide proper installation requirements;
- e. Other deficiencies or failures will be proved at trial.

95. The Defendant, J. R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the heating and air systems;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject residence including but not limited to the installing of the heating and air systems;

- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- e. In failing to properly **design** and install the HVAC and duct system;
- f. In constructing, repairing, remodeling and installing the heating and air systems, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. Other deficiencies or failures as will be proven at trial.

96. The Defendant, HR Electric, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the electrical systems;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to

- the installing of the electrical systems;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
 - d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
 - e. In failing to properly install the electrical systems;
 - f. In constructing, repairing, remodeling and installing the systems, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
 - g. Other deficiencies or failures as will be proven at trial.

97. The Defendant, A.M. Jacobs, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the residence, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in repairing the flashings at the breezeways and other areas of

- the buildings;
- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to the installing and/or repairing of the flashings at breezeways and other areas of the buildings;
 - c. In failing to hire competent subcontractors, specialty contractors or employees;
 - d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
 - e. In failing to properly repair flashings;
 - f. In repairing, and installing flashings in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
 - g. Other deficiencies or failures as will be proven at trial.

98. The Defendant, Mickey Mason d/b/a Mason Contractors, was negligent, grossly negligent, careless, reckless, willful and wanton in repairing, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, manufacturers' recommendations, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, of the roofs of the buildings;
- b. In failing to adequately supervise the work and construction and repair of the subject buildings including but not limited to the roofs;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- f. In constructing, repairing, and installing the roofing components in violation of applicable building codes, standard building practices, and accepted construction industry standards and practices; and
- g. Other deficiencies or failures as will be proven at trial.

99. The Defendant, KMAC of the Carolinas, Inc., was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the construction, repair, remodeling and in installing the flashing at walls, breezeways and landing locations;

- b. In failing to adequately supervise the work and construction, repair and remodeling of the subject buildings including but not limited to the flashing at walls, breezeways and landing locations;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- f. In improperly installing the flashings at walls,, breezeway and landing locations;
- g. In constructing, repairing, and installing flashings, in violation of applicable building codes, standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- h. Other deficiencies or failures as will be proven at trial.

100. The Defendant, Neo Corporation, was negligent, grossly negligent, careless, reckless, willful and wanton in constructing, repairing, remodeling, supervising and inspecting the subject buildings and in failing to construct and/or repair said buildings in accordance with the applicable building codes, and in conformance with accepted construction and industry standards, all of which have directly and proximately caused defects and deficiencies in the buildings, which will need to be or have been corrected, repaired and/or replaced. Such negligence, carelessness, recklessness, willfulness and wantonness includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in the repair, and remediation of the buildings;
- b. In failing to adequately perform and supervise the remediation work to repair building components, prevent water intrusion, eliminate musty odors and remediate mold;
- c. In failing to hire competent subcontractors, specialty contractors or employees;
- d. In failing to adequately and competently supervise and/or train said subcontractors, specialty contractors or employees;
- e. In failing to use due care in repairing and/or remodeling the buildings in such a fashion as to permit excessive moisture to continue to enter subject buildings and in failing to eliminate the musty odors and other construction defects for which it was hired; and
- f. Other deficiencies or failures as will be proven at trial.

101. That as a direct and proximate result of the Defendants' negligence, gross negligence, carelessness, willfulness and wantonness, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into

105. That the Defendants breached the contract with the Plaintiffs by failing to develop, sell and repair said buildings and units in accordance with the applicable building codes, in conformance with accepted construction and industry standards, in conformity with component product manufacturer installation instructions and specifications, and in compliance with the disclosure laws and statutes of this State all of which have directly and proximately caused defects and deficiencies in the residence which will need to be or have been corrected, repaired and/or replaced and are in breach of the aforesaid contracts. Such breaches includes but is not limited to the following particulars, to-wit:

- a. In failing to use due care in development, repair and sale of the buildings and units at issue;
- b. In designing, developing and implementing a scope and repair in which it was inevitable that water would intrude into the buildings and units at issue causing damage to the wall system;
- c. In improperly installing and repairing the stucco and exterior wall system including related flashings and weather proofing;
- d. In designing, developing and implementing repairs which failed to provide an adequate water management system;
- e. In designing, developing, preparing, repairing and selling the buildings and units at issue which fail to provide sufficient barriers against the intrusion of water into the wall system and an adequate avenue for exit of water that gets into the system resulting in water damage to the units;
- f. In designing, developing and selling units and buildings constructed and/or repaired in violation of applicable building codes,

- standard building practices, relevant product specifications and accepted construction industry standards and practices; and
- g. In failing to disclose conditions conducive to water intrusion and/or the existence of prior water intrusion conditions prior to the sale of the units.
 - h. In violating SC Code Section 27-31-430.
 - i. In violating SC Code Section 33-31-830.
 - j. Other deficiencies or failures as will be proven at trial.

106. That as a direct and proximate result of the Defendants' breach of contracts with the Plaintiffs, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages including, but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies, as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that has intruded into the subject buildings and units causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and

repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SIXTH CAUSE OF ACTION

(Breach of Warranty of Habitability, Breach of Warranty Against Latent Defects, Breach of Warranty of Workmanlike Services, Breach of Warranty for Fitness for a Particular Purpose and Breach of Warranty of Merchantability and Serviceability as to All Defendants)

107. Each and every allegation contained in Paragraphs 1 through 106 above are incorporated herein by express reference as though fully set forth.

108. That the Defendants implicitly and/or expressly warranted that the subject units, buildings and common areas would be habitable and fit for its intended uses as apartments and/or condominiums, and that said units would be designed, developed, constructed, repaired and remodeled in a fit, serviceable, good and workmanlike fashion in accordance with the applicable building codes, accepted building component manufacturing standards and specifications and accepted construction industry standards applicable thereto and that the subject buildings and units would be merchantable, free from latent defects and fit for the particular purpose for which it was developed, built and sold.

109. That Defendants breached said warranties by designing, constructing, selling, supervising and/or failing to supervise, remodeling or repairing the subject residences in

such manner as to be in violation of applicable building codes, not in conformance with accepted construction and architectural industry standards, not in conformity with component product manufacturer installation instructions, and not in conformity with the laws and statutes of this State.

110. As a direct and proximate result of the Defendants' breach of these warranties, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation as to Developer Defendants)

111. Each and every allegation contained in Paragraphs 1 through 110 above are incorporated herein by express reference as though fully set forth.

112. The Defendant Developers, through their agents and/or employers, advertisements, literature and other written materials, made representations and non-disclosures to the Plaintiffs and the public, including the Plaintiffs, about the quality of the construction of the subject buildings and units suitability for habitation and low maintenance.

113. Defendant Developers made the above-described representations and non-disclosures in a business or commercial capacity.

114. As set forth above, the above-described representations and non-disclosures made by the Defendant Developers and their agents to Plaintiffs were untrue and were misrepresentations or non-disclosures of material facts and were made in such a manner that, by the exercise of reasonable and ordinary care, the Defendant Developers knew or should have known that they were false and that the Plaintiffs could and would reasonably and justifiably rely on such representations and/or non-disclosures in purchasing, making and/or authorizing payment and accepting the subject residences.

115. The Plaintiffs relied on this false information supplied by the Defendant Developers when they purchased their condominium units at Twelve Oaks at Fenwick Plantation.

116. Such reliance by the Plaintiffs was reasonable and justifiable based on the knowledge available to them and the circumstances at the time.

117. Defendant Developers breached their duties by failing to exercise due care when making these representations.

118. The Plaintiffs reasonably and justifiably relied on these Defendants' representations, to their detriment.

119. The Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute a violation of South Carolina Code §§ 27-31-43 and 33-31-830.

120. As a direct, foreseeable and proximate result of Defendants' negligent misrepresentations and non-disclosures, and failing to disclose that the residences were not constructed in accordance with applicable building codes, not in conformance with accepted construction and industry standards, not in conformity with component product manufacturer installation instructions, and that the buildings and units leaked and had conditions conducive to the growth of mold, the Plaintiffs have relied on such representations and nondisclosures and have suffered actual, direct, incidental, consequential and special

damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into the subject buildings and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN EIGHTH CAUSE OF ACTION

(PLAINTIFFS MARK F. TESENIAR AND NAN M. TESENIAR, on behalf of themselves and others similarly situated (Claims of Breach of Fiduciary Duty as to Developer Defendants, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from August 8, 2006 to December 15, 2008) JAMIE BELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY)

121. Each and every allegation contained in Paragraphs 1 through 120 above are incorporated herein by express reference as though fully set forth.

122. In their capacity as developers and governing body of the condominium project at Twelve Oaks at Fenwick Plantation, the Defendant Developers and Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, as a matter of law, undertook a fiduciary duty towards the Plaintiffs.

123. The Defendant Developers and Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 8, 2006 to December 15, 2008) Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs in failing to act in a reasonable prudent manner, and in placing their interests ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects failed to disclose these construction defects to new homeowners, and failed to take proper measures to remedy the same.

124. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A NINTH CAUSE OF ACTION

**Twelve Oaks Fenwick Property Owners Association, Inc. (from
December 16, 2008 to present)
(Claims of Breach of Fiduciary Duty as to Developer Defendants
JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND
CHRIS COBBS, INDIVIDUALLY)**

125. Each and every allegation contained in Paragraphs 1 through 124 above are incorporated herein by express reference as though fully set forth.

126. In their capacity as developers and governing body of the condominium project at Twelve Oaks at Fenwick Plantation, the Defendant Developers and Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, as a matter of law, undertook a fiduciary duty towards the Plaintiffs.

127. The Defendant Developers and Jamie Helman, Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, in their capacity set forth above, breached their duty as fiduciaries towards the Plaintiffs in failing to act in a reasonable prudent manner, and in placing their interests

ahead of the interests of those to whom they owed a clear fiduciary duty. Rather than acting in the highest possible degree of good faith and fair dealing concerning the Plaintiffs, these Defendants acted exactly to the contrary in acting in their own interests at all times, in all aspects of the development and sales of the condominium units, maintenance, and showed lack of concern of the construction defects failed to disclose these construction defects to new homeowners, and failed to take proper measures to remedy the same.

128. As a direct and proximate result of these breaches of fiduciary duty, the Plaintiffs have suffered damages in the amount equal to the extraordinary, repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, diminution in value of the condominium units and loss of use.

FOR A TENTH CAUSE OF ACTION
(Unfair Trade Practices as to Developer Defendants)

129. Each and every allegation contained in Paragraphs 1 through 128 above are incorporated herein by express reference as though fully set forth.

130. The Developer Defendants are "persons" within the meaning of South Carolina Code § 39-5-10(a).

131. The Developer Defendants, by their actions in developing, designing, selling, repairing, supervising and

overseeing construction and/or repair activities are engaged in commerce within the meaning of South Carolina Code §39-5-10(b).

132. The Developer Defendants, by their action(s) described hereinabove, including representations to the Plaintiffs that induced them to purchase units at issue in this case, constitute unfair and deceptive practices within the meaning of South Carolina Code §39-5-20(a).

133. The Defendants' act(s) are capable of repetition and, upon information and belief and in accord with the allegations herein, have been repeated.

134. The Developer Defendants' conduct affects the public interest of the people of South Carolina.

135. The Developer Defendants knew or should have reasonably known that their conduct violated the Unfair Trade Practices Act.

136. As a direct, foreseeable and proximate result of the Developer Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and having to spend substantial sums of money in order to renovate, correct, repair and restore the buildings and units to make them safe and habitable. These deficiencies as set forth above have

caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded into the building and units causing rot, deterioration and other damages to the finish and structural elements. All of which has or will require the Plaintiffs to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their properties as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR AN ELEVENTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

(AS TO Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., JT Walker Industries, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JEH Merger Co., LLC, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY AND CHRIS COBBS, INDIVIDUALLY, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation)

137. The Plaintiffs re-allege the allegations contained in Paragraphs 1 through 136 of this Complaint and incorporates the same herein as if repeated verbatim.

138. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., 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, Chris Cobbs, Individually, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**, are persons "within the meaning of South Carolina Code §39-5-10(a) and by his actions in preparing, building, constructing, designing, drawing, overseeing the construction of the buildings and its components are engaged in commerce within the meaning of South Carolina Code § 39-5-10(b).

139. The Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, and APS Enterprises Unlimited, Inc.**, Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los

Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., 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, **HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation**, by his action(s) described hereinabove constitute unfair and deceptive practice within the meaning of South Carolina Code § 39-5-20(a) and such action(s) are capable of repetition and upon information and belief have been repeated.

140. That the conduct of the Defendants, Summit Contractors Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., H2L Consulting Engineers, Professional Plastering & Stucco, Inc., **Maria Arias, Miquel Rosales, APS Enterprises Unlimited, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Campos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., All South Vinyl Product, Inc., Marquez Construction, Inc., General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JEH Merger Co., LLC, Jamie Helman,**

Individually, Scott Ferguson, Individually, and Chris Cobbs, Individually, HR Electric, A.M. Jacobs, Inc., Mickey Mason d/b/a _____ Mason Contractors, KMAC of the Carolinas, Inc., and Neo Corporation, affects the public interest of the people in South Carolina and the Defendant knew or should have known that their conduct violated the South Carolina Unfair Trade Practices Act.

141. As a direct foreseeable and proximate result of the Defendants' unfair and deceptive practices, the Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to the expenses associated with having to hire experts to investigate the cause of the defects and deficiencies set forth above and their having to spend substantial sums of money in order to renovate, correct, repair, restore and remediate their residence to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that there has been a continuous exposure to moisture and water that intruded into the subject buildings causing and resulting in damage to walls, rot, deterioration and other damages to the finish and structural elements of the buildings at Fenwick. The defects and deficiencies set forth above were not discoverable to or by the

Plaintiffs in the exercise of reasonable diligence and the damages were as a result of exposure to the elements. All of which will require the Plaintiffs to expend great amounts of money to correct and repair the deficiencies including the resulting in mold damage as set forth herein as well as to suffer the loss, use and enjoyment of their property as well as the loss of value and depreciation by virtue of the defect and damages aforesaid.

FOR A TWELFTH CAUSE OF ACTION

(Strict Liability)

(AS TO, BEST MASONRY & TOOL SUPPLY, L.P. as successor in interest to BEST MASONRY & TOOL SUPPLY, INC., as successor in interest to MAGNA WALL, INC., AND GENERAL ALUMINUM COMPANY OF TEXAS, LP,)

142. The Plaintiff re-alleges the allegations contained in Paragraphs 1 through 141 of this Complaint and incorporates the same herein as if repeated verbatim.

143. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., manufactured, and sold and distributed the stucco and coating that were defective and unreasonably dangerous and was installed into and onto the buildings at Fenwick.

144. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., are in the

business of manufacturing, marketing and selling stucco and other like products.

145. That the stucco and coating manufactured and sold by the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., when installed into and onto the buildings at Fenwick were in substantially the same condition as when sold.

146. That the Defendant, Best Masonry & Tool Supply L.P. as successor in interest to Best Masonry & Tool Supply, Inc., as successor in interest to Magna Wall, Inc., is strictly liable to the Plaintiff pursuant to §15-73-10 of the South Carolina Code Annotated (1976, as amended).

147. That the Defendants, General Aluminum Company of Texas, LP, manufactured, and sold and distributed the windows that were defective and unreasonably dangerous and was installed into and onto the buildings at Fenwick.

148. That the Defendants, General Aluminum Company of Texas, LP, are in the business of manufacturing, marketing and selling windows and other like products.

149. That the windows manufactured and sold by the Defendant, General Aluminum Company of Texas, LP, when installed into and onto the buildings was in substantially the same condition as when sold.

150. That the Defendants, General Aluminum Company of Texas, LP, are strictly liable to the Plaintiff pursuant to §15-73-10 of the South Carolina Code Annotated (1976, as amended).

151. The Plaintiffs have suffered actual, direct, incidental, consequential and special damages, including but not limited to, the expenses associated with having to hire experts to investigate the causes of the defects set forth above and their having to spend substantial sums of money in order to renovate, correct, repair and restore his residence to make it safe and habitable. These deficiencies as set forth above have caused damage to the wall sheathing, structural framing and other building components including but not limited to the stucco and siding. Additionally, Plaintiffs have been injured and otherwise damaged in that moisture has intruded and continues to intrude into their home causing rot, deterioration, and other damages to the finish and structure elements of the Plaintiffs' home. All of which has or will require the Plaintiff to expend great amounts of money to correct and repair as well as to suffer the loss, use and enjoyment of their property as well as loss of value in depreciation by virtue of the defects and damages aforesaid.

FOR A THIRTEENTH CAUSE OF ACTION
(Suit on Bond/Defendant Federal Insurance Company)

152. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 151 of this Complaint and incorporate the same herein as if repeated verbatim.

153. The Defendant Federal Insurance Company issued a Performance Bond no. 8187-43-33 naming itself as Surety, Defendant Summit Contractors, Inc., as principal, and Fenwick Tarragon Apartments, L.L.C., and its Successors as Owners/Obligees. The unit owners and the POA are the Successor Owners.

154. The Performance Bond provides, inter alia, that the contractor and the surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for performance of the Owner/Contractor agreement. The Performance Bond further provides, inter alia, that in the event of default by the Contractor under the terms of the Owner/Contractor Agreement, the Surety is obligated for the responsibilities of the contractor for correction of defective work and completion of the construction contract.

155. In and by the terms of the Performance Bond, Defendant Federal Insurance Company is liable to the Plaintiff Owner POA should Summit breach its contract with the POA's predecessor. The unit owners and the POA and their predecessor Owner has performed all obligations required of them under the terms of the Performance Bond.

156. The Defendant, Summit Contractors, Inc., has breached its contract with the unit owners' and POA's predecessor and therefore with the POA, and is in default thereof within the meaning of the Performance Bond in the particulars set forth hereinabove, and as a result of said breach, the Plaintiff POA is entitled to judgment against the Defendant Federal Insurance Company in an amount to be determined by the trier of fact, together with attorneys' fees and costs.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs and the Class respectfully pray that this Court certify this action as a Class Action under Rule 23 (a) of the South Carolina Rules of Civil Procedure, hold the Defendants, jointly and severally liable for the conduct complained of herein, enter a judgment against the Defendants and in favor of the Plaintiffs and the Class for the relief as requested in this Complaint, and award the Plaintiffs and the Class their costs and attorneys fees, and for such other and further relief as may be deemed appropriate.

Plaintiffs and the Class further demand a jury trial with respect to all issues so triable.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A NO. 08-CP-10-49

MARK F. TESENIAR AND NAN M.
TESENIAR, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

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
CONTRACTORS GROUP, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE
& INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., and
PROFESSIONAL PLASTERING &
STUCCO, INC.,

Defendants.

AFFIDAVIT OF
MYLES I. GLICK, AIA

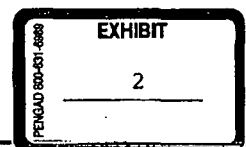
2009 APR 20 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY BJ

FILED

Personally appeared before me Myles I. Glick, who being duly sworn on oath deposes

and says:

1. That he is a licensed architect in the state of South Carolina, he holds a national
board - NCARB - certificate in architecture, and a copy of his CV is attached hereto and made a
part hereof as exhibit "A."



2. That this affidavit is given in order to satisfy the requirements of SC Code §15-36-100.

3. That he has examined the buildings at issue in this litigation, the design documents, correspondence, and the Contract between Fugelberg Koch Architects, Inc. and the Owner of the Fenwick project, Tarragon Realty Investors, Inc., dated August 1, 2001.

4. That his review of the above material demonstrates that the original design intent for the exterior building envelopes was a drainable system, but what was actually installed was a "Magna-Wall" system installed as a barrier system, the effect of which was to entrap water, leading to mold, mildew, building components deterioration, and requiring extensive replacement.

5. That his review of the Contract documents demonstrates that the Architect, Fugelberg Koch, undertook the responsibilities: 1) to visit the site at appropriate intervals to determine in general that the Work when completed would be in accordance with the Contract Documents, 2) to review Product Data and samples to check for conformance with the design concept expressed in the Contract Documents, 3) to certify payment applications - which certifications constituted a representation to the Owner that the quality of the Work was in accordance with the Contract Documents.

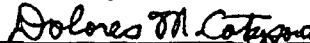
6. That the construction of the buildings at issue with a "Magna-Wall" system installed as a barrier system, and consequently causing the problems above stated was not in accordance with the Contract Documents, was not in conformance with the design concept, and any such certification to the Owner to the contrary contained in the architect-certified pay applications, was incorrect.

7. That in his opinion Fugelberg Koch was negligent in failing to exercise its duties to ensure that the actual construction of the buildings at issue met the design concept it had designed, in failing to ensure that such construction was in conformance with the Contract Documents, and in certifying to the Owner that in fact such construction was in conformity with the Construction Documents, when it was not. That as a result of this negligence, an improper exterior building envelope was installed on the subject buildings, requiring extensive demolition and repair.

FURTHER YOUR DEPONENT SAYETH NOT.

By: 
Myles I. Glick, AIA

SWORN to before me this 20th
day of April, 2009.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-11-13

127906

FILE COPY

Paint

MAR 29 2002



SUBCONTRACT AGREEMENT

THIS SUBCONTRACT made and entered into this 11 March, 2002 by and between SUMMIT CONTRACTORS, INC. "CONTRACTOR," and LOS CAMPOS OF GEORGIA, INC., Post Office Box 2628, Loganville, GA 30052, Office Phone: 404-867-4749, Fax Phone: 919-556-0376 "SUBCONTRACTOR," which shall include SUBCONTRACTOR, its employees, agents, suppliers and subcontractors.

ARTICLE 1: DEFINITION OF SUBCONTRACT TERMS

PROJECT: VINTAGE AT FENWICK PLANTATION BUDDY REEVES
3000 Fenwick Hall Allee Phone: 407-709-5123
Charleston, South Carolina 29455

OWNER: (The term "Owner" as used in the Subcontract Documents shall mean the person or entity referred to below or the Owner's authorized representative.)

THE VINTAGE AT FENWICK PLANTATION, L.L.C. ROBERT C. ROHDIE, PARTNER
c/o Tarragon Realty Investors Phone: 212-949-5000
1775 Broadway, 23rd Floor Fax: 212-949-8001
New York, New York 10019

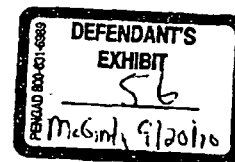
SUBCONTRACT: The Subcontract is the entire and integrated agreement between the Contractor and the Subcontractor.

SUBCONTRACT AGREEMENT: The Subcontract Agreement is this standard form construction subcontract, identified as Subcontract Agreement No. 01033-19, which forms a part of the Subcontract Documents.

SUBCONTRACT WORK: (As more particularly described in Article 6)

ARCHITECT: (Include Business Name, address, telephone and facsimile numbers.)

FUGLEBERG KOCH ARCHITECTS MIKE WILLIAMS
2555 Temple Trail Phone: 407-629-0595
Winter Park, Florida 32789 Fax: 407-628-1057



CONTRACTOR: (Include Federal Employer ID Number, business name, address, telephone and facsimile numbers.)

SUMMIT CONTRACTORS, INC. TACY MCGINTY
Federal I.D.#: 6877 Phillips Industrial Boulevard Phone: 904-268-5500
59-2947787 Jacksonville, Florida 32256 Fax: 904-268-5889

SUBCONTRACTOR: (Include Federal Employer ID Number, business address, telephone and facsimile numbers.)

Federal I.D.#: ~~XXXXXXXXXX~~ LOS CAMPOS ~~XXXXXXXXXX~~, INC. mC MILTON CAMPOS 770 mC
56-2005439 890 PARK AVENUE Phone: 404-240-402
YOUNGVILLE NC 27596 Fax: 919-556-0376

ARTICLE 2: SUBCONTRACT SUM

CONTRACTOR shall pay SUBCONTRACTOR in current funds for the performance of this work, subject to additions and deductions by written change order as herein provided for, the total sum of TWO HUNDRED NINETY ONE THOUSAND FOUR HUNDRED SIXTY FOUR DOLLARS AND 00/100 (\$291,464.00) (Includes \$ 10.00 and the first .001% of the Subcontract Sum per Article 14.)

Cost Code: 09-20-01

Amount: \$291,464.00

Summit 16162

ARTICLE 3: PROGRESS PAYMENTS

a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. In the event of non-payment by OWNER, then SUBCONTRACTOR'S remedies are against the OWNER ONLY TO THE EXTENT AS PERMITTED BY STATE LAW OF SOUTH CAROLINA. AND
Contractor Initials: MC Subcontractor Initials: MC

CONTRACTOR AGREE TO COOPERATE WHOLLY IN PURSUIT OF MC

b. CONTRACTOR shall pay SUBCONTRACTOR Progress Payments for work performed and authorized material suitably stored and inventoried on the job site in monthly payments.

c. SUBCONTRACTOR to submit invoices for payment no later than the twentieth (20th) day of each month for work completed prior to the twentieth (20th) day of each month for labor bi-weekly and materials monthly.

d. Ten Percent (10%) retainage will be held until SUBCONTRACTOR has satisfied all of its obligations under this Subcontract Agreement, including all punch items, and has delivered to CONTRACTOR all required Releases of Lien and all supplier or written warranties required by Subcontract Documents, and the work has received final approval from OWNER, ARCHITECT and CONTRACTOR and retainage has been received by CONTRACTOR.

e. At CONTRACTOR's request SUBCONTRACTOR shall furnish partial unconditional lien waivers through the date of the current request for payment from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or a potential claim against CONTRACTOR's Labor and Material Payment Bond.

f. In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any progress payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 4: FINAL PAYMENT

Final Payment shall be due when the Work described in this Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, and is satisfactory to the OWNER, ARCHITECT and CONTRACTOR, and SUBCONTRACTOR has furnished final lien waivers from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or potential claims against CONTRACTOR's Labor and Material Payment Bond.

It is the intent of the parties that as an absolute condition precedent to Final Payment to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's Work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. Therefore, SUBCONTRACTOR acknowledges that this Subcontract Agreement has been entered into by CONTRACTOR in reliance upon receiving payment for work performed by SUBCONTRACTOR on the project from OWNER and OWNER shall have the right to approve payment of all CONTRACTOR's pay requests and change order requests. SUBCONTRACTOR agrees that CONTRACTOR's actual receipt of full payment from the OWNER shall be a condition precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR and to the bringing of any action by SUBCONTRACTOR against CONTRACTOR relating to CONTRACTOR's failure to make payment. SUBCONTRACTOR shall not be entitled to receive any progress payment or final payment prior to CONTRACTOR's actual receipt of that payment from OWNER. If CONTRACTOR never receives payment from OWNER, then SUBCONTRACTOR shall never be entitled to payment from CONTRACTOR. It is the express intention of the SUBCONTRACTOR to share in the risk of non-payment by OWNER to CONTRACTOR ONLY TO THE EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA AND CONTRACTOR AGREES TO CO-OPERATE WHOLLY IN PURSUIT OF FULL PAYMENT TO SUB CONTRACTOR.

SUBCONTRACTOR also agrees that all contracts with its sub-contractors, laborers, suppliers, materialmen, or other contractors contain a similar or identical requirement of "pay when and if paid" to provide that it shall be a condition precedent to SUBCONTRACTOR's payment to its own sub-contractors, laborers, suppliers, materialmen, or other contractors that payment be received by CONTRACTOR from OWNER. SUBCONTRACTOR further agrees that it will indemnify and hold harmless the CONTRACTOR from any claims of SUBCONTRACTOR's sub-contractors, laborers, materialmen, or other contractors claiming by, through, or under SUBCONTRACTOR for payment not yet due from or received by CONTRACTOR from OWNER due to non-fulfillment of the above condition precedent that CONTRACTOR first receive payment from OWNER ONLY TO THE EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA AND CONTRACTOR AGREES TO CO-OPERATE WHOLLY IN PURSUIT OF FULL PAYMENT TO SUB CONTRACTOR.

In the event of non-payment by OWNER, SUBCONTRACTOR's remedies are against the OWNER. The parties agree that Subcontract Agreement ARTICLE 4: FINAL PAYMENT establishes the exclusive conditions for Final Payment to SUBCONTRACTOR, and SUBCONTRACTOR hereby waives all other terms and conditions regarding Final Payment contained in the Contract Documents. SUBCONTRACTOR RETAINS ALL RIGHT CONTAINED BY ANY LAWS OF SOUTH CAROLINA PERTAINING TO RIGHTFUL PAYMENT COLLECTIONS.

In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any final payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

Contractor Initials: 

2

Subcontractor Initials: 

Summit 16163

ARTICLE 5: THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Subcontract Agreement, including Attachment "A"; the Owner-Contractor Agreement, including the Conditions of the Contract; Drawings, Plans; Specifications, all written Addenda issued prior to and all written Modifications issued subsequent thereto. All of the above documents, which form the Contract Documents are a part of this Subcontract Agreement and shall be available for inspection by SUBCONTRACTOR upon its request. If anything in the Contract Documents is inconsistent with this Subcontract Agreement, this Subcontract Agreement shall govern and then the highest or fullest level of performance and installation shall govern. *SUBCONTRACTOR requiring a complete copy of all above for his records.*

ARTICLE 6: THE WORK

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction. SUBCONTRACTOR agrees to be bound to CONTRACTOR by the terms and conditions of the General Contract between CONTRACTOR and OWNER as well as this Subcontract Agreement and hereby assumes towards the CONTRACTOR all of the duties, obligations and responsibilities applicable to SUBCONTRACTOR's work which the CONTRACTOR owes towards the Owner under the General Contract. The obligations assumed by SUBCONTRACTOR hereunder include, but are not limited to, the technical requirements of the plans, drawings, and specifications in the General Contract which are applicable to SUBCONTRACTOR's work, all warranties and obligations of the CONTRACTOR with respect to defective or nonconforming work which are applicable to SUBCONTRACTOR's work, and all limitations on remedies, claims or time extensions imposed on the CONTRACTOR by the OWNER under the General Contract. SUBCONTRACTOR shall perform all of the following work:

SEE ATTACHMENT "B" FOR SCOPE OF WORK

ARTICLE 7: ASSIGNMENT

SUBCONTRACTOR acknowledges that the services provided under this Subcontract Agreement are in the nature of personal services, which cannot be assigned without CONTRACTOR's express written consent, which consent shall be within the sole discretion of CONTRACTOR. Any assignment of this contract or sums due hereunder without such prior written consent of CONTRACTOR shall constitute a material default, which shall entitle CONTRACTOR to terminate the Subcontract Agreement for cause.

ARTICLE 8: SUBCONTRACTING AGREEMENT

SUBCONTRACTOR shall not subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of CONTRACTOR, which consent shall be within the sole discretion of CONTRACTOR. Any subcontracting of any portion of this subcontract without such prior written consent of CONTRACTOR shall be considered a material default under this Subcontract Agreement and shall entitle CONTRACTOR to terminate SUBCONTRACTOR for cause. *SUBCONTRACTOR SHALL SUBMIT COMPLETE LIST OF ALL SUBS (IF ANY) USED IN THIS PROJECT. ONLY THESE SUBS (IF ANY) WILL BE APPLIED WITHOUT QUESTION.*

ARTICLE 9: FEES, PERMITS, TAXES, INSURANCE

SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement, whether or not yet effective. Further, SUBCONTRACTOR shall secure and pay for all permits, fees, licenses and testing necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract Agreement. SUBCONTRACTOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Subcontract Agreement, whether or not yet effective.

Insurance requirements are listed below:

Liability	<u>High Hazard Occupations</u>	\$1,000,000.00 General Aggregate
	(Example: Mech., Plumbing,	\$ 500,000.00 Products
	HVAC, Elect., Roofing,	\$ 500,000.00 Personal & Adv. Injury
	Framing, Painting, Sitework,	\$ 500,000.00 Each Occurrence
	Masonry, Stucco, Steel Erection,	\$ 50,000.00 Fire Damage
	Utilities, Concrete)	\$ 1,000.00 Med Exp.
	<u>Low Hazard Occupations</u>	\$ 500,000.00 General Aggregate
	(Example: Flooring, Tile, Paving,	\$ 500,000.00 Products
	Pool)	\$ 500,000.00 Personal & Adv. Injury
		\$ 500,000.00 Each Occurrence
		\$ 50,000.00 Fire Damage
		\$ 1,000.00 Med Exp.

Auto

\$ 500,000.00 Combined Single Limit

(see next page for continuation of Insurance Instructions)

Summit 16164

Contractor Initials: *[Signature]*

3

Subcontractor Initials: *ML*

Workman's Compensation

1st

2nd Employer's

Liability

Part D

Installation Floater -

STATUTORY requirements for Each State

\$ 100,000.00 Bodily Injury by Accident (Each Accident)

\$ 500,000.00 Bodily Injury by Disease (Policy Limit)

\$ 100,000.00 Bodily Injury by Disease (Each Person)

Amount to cover cost of materials not yet installed. Any and all losses of this SUBCONTRACTOR's stored materials are the responsibility of this SUBCONTRACTOR.

- Each Insurance Certificate shall contain the wording showing Summit Contractors, Inc. as "ADDITIONAL INSURED"

ARTICLE 10: NO DAMAGES FOR DELAY OR DISRUPTION

SUBCONTRACTOR shall not be entitled to additional compensation, overtime, extended field of home office overhead or other damages from CONTRACTOR for delays, disruptions, hindrance, constructive acceleration of other schedule and work force impacts. SUBCONTRACTOR's sole remedy shall be an approved extension or adjustment of the contract time. No extension or adjustment of the contract time shall be allowed for the following:

- Events which were caused by SUBCONTRACTOR'S fault or negligence, by a lower tier subcontractor's fault or negligence, or any other event which is the responsibility of the SUBCONTRACTOR or its lower tier subcontractors or suppliers;
- Delays which are concurrent with other unexcused delays; *ONLY IF FAULT OF SUBCONTRACTOR. IF CAUSED BY OTHERS, ADDITIONAL CLAIMS MAY BE ENTERED.*
- Delays which do not affect the critical path of construction;
- Delays for which the SUBCONTRACTOR has failed to request additional time or has failed to document within the time frames required by the contract documents;
- Failure of the SUBCONTRACTOR to provide sufficient manpower, materials, facilities and equipment;
- Failure of the SUBCONTRACTOR to reschedule activities, work weekends, increase equipment or other actions to complete work within the available schedule float or as otherwise required by CONTRACTOR's scheduling and coordination; *ONLY IF FAULT OF SUBCONTRACTOR. IF CAUSED BY OTHERS, ADDITIONAL CLAIMS MAY BE ENTERED.*
- Delays for normal inclement weather.

In the event this provision is determined by a court or arbitration panel of competent jurisdiction to be unenforceable under the circumstances, SUBCONTRACTOR shall in no event be entitled to recover damages for extended home office overhead, idle labor and equipment, lost profit on other projects, lost bonding capacity, and any consequential damages.

ARTICLE 11: PERFORMANCE OF THE WORK

SUBCONTRACTOR agrees to commence the performance of the aforesaid Work and to continue to perform said work until completion so that SUBCONTRACTOR shall meet the OWNER and CONTRACTOR's construction schedule for completion of the job in accordance with the Contract Documents. SUBCONTRACTOR shall commence performance of the work on the date and time specified by CONTRACTOR and shall continue to proceed in accordance with CONTRACTOR's instructions. Time is of the essence in this Contract and extensions of time for performance of the work will be granted only for reasons as provided in the Contract Documents.

ARTICLE 12: CORRECTION OF WORK

SUBCONTRACTOR shall promptly correct all Work rejected by ARCHITECT or OWNER as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion. SUBCONTRACTOR shall bear all costs of correcting such rejected work, including compensation for the ARCHITECTS additional services required.

ARTICLE 13: INDEMNIFICATION

SUBCONTRACTOR hereby covenants to defend, indemnify, hold harmless and exonerate CONTRACTOR, CONTRACTOR's surety, OWNER and their respective officers, directors, employees, agents and legal representatives (hereinafter "Indemnitees") from any and all liabilities, claims, lawsuits, arbitrations, fines, or other charges for any property damages, personal injury or economic losses (hereafter "Claims"), which are caused in whole or in part by SUBCONTRACTOR, including the design of systems and installation and operations of same by this SUBCONTRACTOR, its employees, agents, guests, suppliers or subcontractors (including any lower tier suppliers or subcontractors, whether or not in direct privity with SUBCONTRACTOR), or which in any way arise out of or involve any of their work or their acts or omissions. This Indemnity Agreement shall extend to and include the full amount of all Claims whether or not caused in part by

Contractor Initials: _____

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Summit 16165

Subcontractor Initials: *mc*

Indemnitees, except that SUBCONTRACTOR shall not be liable under this Indemnity Agreement for Claims directly caused by or resulting from the sole fault or negligence of Indemnitees. SUBCONTRACTOR acknowledges consideration for his Indemnification Agreement of Ten (\$10.00) Dollars, together with payment of the first .001% (not to exceed \$500.00) of the contract price. The SUBCONTRACTOR's obligations under this indemnity agreement for CONTRACTOR's actions or inactions shall not exceed \$1,000,000.00; however SUBCONTRACTOR's obligation for its actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be unlimited, limited to CONTRACTOR's amount as per sub

The obligation to defend, indemnify and hold harmless includes Claims resulting from injury, sickness or death of any employee of SUBCONTRACTOR or any employee of any lower tier suppliers or subcontractors of SUBCONTRACTOR (whether or not in direct privity with SUBCONTRACTOR), regardless of whether such employee has been paid pursuant to any Worker's Compensation Law or other similar federal or state legislation for the protection of employees. SUBCONTRACTOR's Liability Insurance policies shall each contain contractual coverage so as to protect Indemnitees under this Indemnity Agreement.

ARTICLE 14: SUSPENSION OF WORK, DEFAULT AND TERMINATION

a. CONTRACTOR May Suspend Work

At any time and without cause, CONTRACTOR may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to SUBCONTRACTOR which will fix the date on which Work will be resumed. SUBCONTRACTOR shall resume the Work on the date so fixed. SUBCONTRACTOR shall be allowed only an adjustment or extension of the contract times directly attributable to any such suspension, provided SUBCONTRACTOR timely makes a claim as allowed by the Contract Documents. In no event shall SUBCONTRACTOR be entitled to claim additional compensation for such temporary suspension of work.

b. CONTRACTOR Shall Terminate for Cause

i. The occurrence of any one or more of the following events justifies CONTRACTOR's termination of SUBCONTRACTOR for cause:

1. SUBCONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule).
2. SUBCONTRACTOR disregards Laws, Codes or Regulations of any public body having jurisdiction.
3. SUBCONTRACTOR fails to remain current with payments to its subcontractors or material suppliers.
4. SUBCONTRACTOR assigns or subcontracts any portion of the Work without permission of CONTRACTOR as required by the Contract Documents. *EXCEPT AS PROVIDED IN ARTICLE 20*
5. SUBCONTRACTOR fails to obtain or maintain in effect any of the insurance required under the Contract Documents.
6. SUBCONTRACTOR otherwise violates in any way provisions of the Contract Documents.

ii. CONTRACTOR may, after giving SUBCONTRACTOR (and the surety, if any) forty-eight hours written notice and to the extent permitted by applicable law, terminate the services of SUBCONTRACTOR, exclude SUBCONTRACTOR from the Site and take possession of the Work and of all SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by SUBCONTRACTOR (without liability to SUBCONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which CONTRACTOR has paid SUBCONTRACTOR but which are stored elsewhere, and finish the Work as CONTRACTOR may deem expedient. In such case SUBCONTRACTOR shall not be entitled to receive any further payment until the Work is finished. SUBCONTRACTOR shall be liable for any and all damages sustained by the CONTRACTOR because of SUBCONTRACTOR's default and termination. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by CONTRACTOR arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration of other dispute resolution costs) such excess will be paid to SUBCONTRACTOR. If such costs, losses and damages exceed such unpaid balance, SUBCONTRACTOR shall pay the difference to CONTRACTOR. Such costs, losses and damages incurred by CONTRACTOR will be incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CONTRACTOR shall not be required to obtain the lowest price for the Work performed.

Summit 16166

Contractor Initials: *[Signature]*

5

Subcontractor Initials: *MC*

iii. Where SUBCONTRACTOR's services have been so terminated by CONTRACTOR, the termination will not affect any rights or remedies of CONTRACTOR against SUBCONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due SUBCONTRACTOR by CONTRACTOR will not release SUBCONTRACTOR from liability.

iv. ~~Contractor shall be responsible for the cost of the SUBCONTRACTOR's services and materials. If the SUBCONTRACTOR's services are terminated by the CONTRACTOR for convenience, the CONTRACTOR shall be responsible for the cost of the SUBCONTRACTOR's services and materials.~~ *mc*

c. **CONTRACTOR May Terminate for Convenience**

ninety six
Upon ~~forty eight~~ *mc* hours written notice to SUBCONTRACTOR, CONTRACTOR may, without cause and without prejudice to any other right or remedy of CONTRACTOR, elect to terminate the Agreement. In such case, SUBCONTRACTOR shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination based upon the unit price for said work, if applicable, or the scheduled value of said work, if applicable. Otherwise, SUBCONTRACTOR shall be paid for the actual and necessary cost of the work together with 10% for overhead and profit on such Work;
2. Actual expenses sustained or paid to subcontractors and suppliers prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus 5% for overhead and profit on such expenses;
3. Amounts reasonably paid in settlement of terminated contracts with Subcontractors, Suppliers and others.
4. SUBCONTRACTOR shall not be paid on account of loss of anticipated profits or revenue under this Agreement or any other contract or projects, lost bonding capacity or any other economic losses arising out of or resulting from such termination.

ARTICLE 15: WARRANTY OF THE WORK

mc
days and
rejection
of work
to
SUBCONTRACTOR warrants and guarantees to CONTRACTOR, OWNER, and ARCHITECT (or other applicable design professional) that all Construction will be in strict accordance with the Contract Documents, will be free from all faults and defects, and will be free of all liens and claims of third parties. SUBCONTRACTOR warrants and guarantees to CONTRACTOR that all Construction and materials will be new, of above average quality and in strict compliance with the Contract Documents. SUBCONTRACTOR further warrants and guarantees to CONTRACTOR that all work shall be in compliance with all federal, state and local codes and requirements. SUBCONTRACTOR further agrees to be bound to CONTRACTOR for all warranties and obligations to correct SUBCONTRACTOR's defective or nonconforming work for which CONTRACTOR is bound to OWNER. SUBCONTRACTOR shall further cause all of its subcontractors and suppliers to assign all separate warranties for work performed or materials supplied in connection with the Project directly to CONTRACTOR or, if required by CONTRACTOR, to the OWNER. Such assignment of separate subcontractor and supplier warranties shall be a condition precedent to final payment to SUBCONTRACTOR under this Agreement and shall be in addition to all other required SUBCONTRACTOR Warranties.

ARTICLE 16: RISK OF LOSS

SUBCONTRACTOR expressly agrees to be responsible for and bear any risk of loss to its work until final acceptance by the ARCHITECT, CONTRACTOR, and OWNER. Damaged work shall be replaced by SUBCONTRACTOR at its own expense, *ONLY IF CAUSED BY SUBCONTRACTOR* *mc*

ARTICLE 17: LIQUIDATED DAMAGES FOR DELAY

SUBCONTRACTOR acknowledges that it has read all of the Contract Documents including any liquidated damages provisions for delay. In the event CONTRACTOR is assessed liquidated damages due to the failure of SUBCONTRACTOR to timely perform the Work to CONTRACTOR's satisfaction, then it is agreed between the parties that these damages will be deducted from payment(s) due SUBCONTRACTOR.

Summit 16167

Contractor Initials: *mc*

6

Subcontractor Initials: *mc*

ARTICLE 18: CHANGE ORDERS

Before performing additional or changed work involving additional time or expense, SUBCONTRACTOR shall obtain from CONTRACTOR a written change order describing the change and the amount or method of determining extra compensation. Additional expense will not be allowed without such written Change Order and SUBCONTRACTOR hereby waives any claim for additional expense unless such written change order has been issued prior to performance of additional or changed work. In the event CONTRACTOR has issued a change order to SUBCONTRACTOR and CONTRACTOR has not received the signed change order from SUBCONTRACTOR within fourteen (14) days from the date of issuance, it shall be considered to be a part of this Subcontract Agreement unless written notice of disagreement is received by CONTRACTOR from SUBCONTRACTOR within the above stated time.

ARTICLE 19: OTHER CONTRACTS

~~SUBCONTRACTOR expressly agrees to allow CONTRACTOR the right to retain and offset monies due and owing on any other contract between CONTRACTOR and SUBCONTRACTOR.~~ MC

ARTICLE 20: ARBITRATION

Any dispute between Summit and Subcontractor arising in any manner from this subcontract, or the performance of work on the project, or payment therefor, shall be resolved by arbitration in accordance with the Florida Arbitration Act. The arbitration panel shall consist of three arbitrators. The party requesting arbitration shall request arbitration in writing, by certified mail. The request shall state the name and address of the arbitrator selected by the requesting party. The other party shall select its arbitrator within 20 days after receipt of the request and inform the other party and its selected arbitrator in writing of its selection. The two arbitrators thus selected shall select a third arbitrator. In the event they are unable to agree on a third arbitrator within 30 days, a judge of the Circuit Court of Duval County shall appoint the third arbitrator. The written decision of any two arbitrators will determine the issues. Each party will pay the arbitrator it selects. The expense of the third arbitrator will be shared equally. All other costs, including, without limitation, attorney fees, will be paid by the party incurring such costs.

Notwithstanding the foregoing, if Summit is sued by the owner, or any other person or entity, because of any claim allegedly arising from Subcontractor's scope of work or Subcontractor's alleged acts or failure to act, then this Article 20 shall not apply to such suit and Summit shall be entitled to make Subcontractor a party to such suit.

ARTICLE 21: CHOICE OF LAW AND VENUE

This Subcontract shall be construed in accordance with the Laws of the State of Florida. ~~SUBCONTRACTOR expressly agrees to be subject to personal jurisdiction in the State of Florida and further waives any right to venue in any action brought under this Subcontract Agreement or against any bond posted by CONTRACTOR. SUBCONTRACTOR acknowledges that CONTRACTOR's bonding company is an intended third-party beneficiary of this jurisdiction and venue provision. CONTRACTOR has the sole option to select venue in Duval County, Florida or the site of the project, for any action brought under the Subcontract Agreement. In any action brought against CONTRACTOR or its bonding company under this Subcontract Agreement, jurisdiction and venue shall be in Duval County, Florida unless and until CONTRACTOR stipulates jurisdiction and venue at the site of the project.~~ MC
CONTRACTOR TO SUPPLY SUB CONTRACTOR COMPLETE COPY OF "FLORIDA ARBITRATION ACT" SOUTH CAROLINA MC

ARTICLE 22: TRASH REMOVAL

It is fully understood that SUBCONTRACTOR will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of CONTRACTOR and ARCHITECT. Further, SUBCONTRACTOR shall be totally responsible for the clean up and haul off on a daily basis of all debris generated by SUBCONTRACTOR'S daily operations. Should it become necessary for CONTRACTOR to incur any expenses performing cleanup work or removing debris from site for SUBCONTRACTOR, such expense will be deducted from SUBCONTRACTOR's contract amount.

ARTICLE 23: FIELD VERIFICATIONS

SUBCONTRACTOR shall verify all dimensions, inspect the job site and its conditions, and notify CONTRACTOR of any problem, which would prevent or hinder performance by SUBCONTRACTOR. SUBCONTRACTOR will be deemed to have accepted any preceding work and materials and to have waived any and all claims as to non-suitability, unless defects are reported to CONTRACTOR in writing and CONTRACTOR authorizes SUBCONTRACTOR to proceed. ~~ONLY TO THE EXTENT THAT A VISUAL INSPECTION DISCLOSES POTENTIAL PROBLEMS.~~ MC

This Subcontract entered into as of the day and year first written above.

SUMMIT CONTRACTORS, INC.

LOS CAMPOS ~~CONSTRUCTION~~ INC. MC

By: [Signature]

By: MITCHELL CAMPOS president

Date: 4/18/02

Date: 3-29-02

DM Initials: 42

Summit 1616

Contractor Initials: [Signature]

Subcontractor Initials: MC

SUBCONTRACTOR DOCUMENTS ACKNOWLEDGMENT

SUBCONTRACTOR shall complete all work per Plans, Specifications and approved shop drawings.

Site Improvement Plans

The below listed Plans were prepared by Hoffman Lester Associates, Inc., Land Planning/Civil Engineering/Landscape Architecture/Wetland Consulting/Land Surveying, 29 Leinbach Drive, Charleston, S.C. 29407 (843-763-1166).

DOCUMENTS	TITLE	DATED
Cover Sheet	Sheet 1 of 11	Dated 06-26-01, Revised 07-05-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01, Revised 08-30-01, Revised 10-15-01
Existing Conditions	Sheet 2 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01
Site Layout Plan	Sheet 3 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Rev. #1 dated 10-15-01 Pool & Add Sidewalk
Water Plan	Sheet 4 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Revised 10-15-01, Revised 11/02/01, Revised 11/09/01
Grading & Drainage	Sheet 5 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Grading & Drainage	Sheet 6 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 7 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 8 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Typical Details	Sheet 9 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-14-01, Revised 10-15-01
Typical Details	Sheet 10 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01
Typical Details	Sheet 11 of 11	Dated 09-07-01, Rev. #1 dated 10-10-01
Typical Details	Sheet 11a of 11	Dated 11-09-01

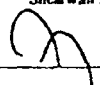
No Site Specification Book was available for the bidding process.

No Landscape Drawings were available for the bidding process.

Architectural Plans:

The Plans listed below were prepared by Fugleberg Koch Architects, 2555 Temple Trail, Winter Park, Florida 32789, Contact: Mike Williams (407) 629-0595, FAX (407) 628-1057

DOCUMENTS	TITLE	DATED
A0.01	Title Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev. #3 dated 1/29/02
A0.02	Index and Code Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev. #3 dated 1/29/02
A1.01	Architectural Site Plan	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev. #3 dated 1/29/02
S0.00	Cover Sheet	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev. #3 dated 1/29/02, Latest Date 1/30/02
S0.02	General Specifications	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.03	Fastening Schedule	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.04	Shearwall Specifications	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.05	Shearwall Details	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01 Summit 161C9

Contractor Initials: 

8

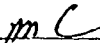
Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
S1.01	Foundation Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.01A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.02	Foundation Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S1.02A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03	Foundation Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.04	Foundation Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.02	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.03	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02
S4.01	Stud Layout Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.02	Stud Layout, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S4.03	Stud Layout Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.04	Stud Layout, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S5.01	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.01A	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02	Framing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02A	Framing Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03A	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.04	Framing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.01	Bracing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.02	Bracing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.03	Bracing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.04	Bracing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S7.01	Roof Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.02	Roof Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.03	Roof Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.04	Roof Plans, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S8.01	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Summit 16170

Contractor Initials: 

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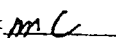
Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
S8.02	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.01	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.02	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.03	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.04	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.05	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.06	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.02	General Specifications	Undated, Rev.#1 dated 09-12-01
SC0.03	Fastening Schedule	Undated, Rev.#1 dated 09-12-01
SC0.04	Shearwall Specifications	Undated, Rev.#1 dated 09-12-01
SC0.05	Shearwall Details	Undated, Rev.#1 dated 09-12-01
SC1.01	Foundation Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC4.01	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC4.02	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC5.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.01	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.02	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC7.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC9.01	Framing Details	Undated, Rev.#1 dated 09-12-01
SC9.02	Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.01A	Building Plan Type "1" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01B	Building Plan Type "1" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01C	Building Plan Type "1" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01D	Roof Plan Bldg. Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02A	Building Plan Type "2" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02B	Building Plan Type "2" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02C	Building Plan Type "2" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02D	Roof Plan Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.03A	Building Plan Type "3" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03B	Building Plan Type "3" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03C	Building Plan Type "3" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Summit 16171

Contractor Initials: 

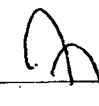
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Subcontractor Initials: 

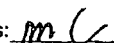
DOCUMENTSTITLEDATED

A2.03D	Roof Plan Bldg. Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04A	Building Plan Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	1st & 2nd Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	Building Plan Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	3rd Flr. & Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	Leasing Center First Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05B	Leasing Center Second Flr. Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05C	Leasing Center Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.01	Flat "A" Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.02	Flat "B" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.03	Flat "C" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.04	Flat "D" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.05	Townhouse Unit "E"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.06	First, Second & Third Floors	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.06	Garage Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.01	Elevation Views Bldg. Type "1"	Dated 05-01-01, Revised 08-10-01
A4.02	Elevation Views Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A4.03	Elevation Views Bldg. Type "3"	Dated 05-01-01, Revised 08-10-01
A4.04	Elevation Views Bldg. Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.05B	Leasing Center Side Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.01	Building Type 1, Stair	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Breezeway Building Section	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Townhome Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.03	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04B	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.05	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.06	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07B	Sections and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07	Clubhouse Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.08	Buildings 4, 5 & 7	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.01	Wall Sections & Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.01	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.02	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.03	Stair Sections & Misc. Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

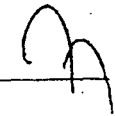
Summit 16172

Contractor Initials: 

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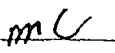
Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
A7.01	Door, Window Details & Schedules	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.01	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8.02	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.01	Leasing Center Trash Compactor Enclosure And Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.02	Pool Pavilion Plans, Elevations, and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10.03	Storage Building #9	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 01-29-02, Latest Date 01-30-02
AF6.01	Firestop Systems Through Penetration	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
AF6.02	Through Penetration Firestop Systems	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
H3.01	Flat A HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.02	Flat B HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.03	Flat C HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.04	Flat D HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3.05	Town Home Unit HVAC Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
H6.01	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
H6.02	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01
H10.01	Leasing Center First Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.02	Leasing Center Second Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.03	Bath Pool and Fitness Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10.04	HVAC Schedules and Details	Dated 05-01-01, Rev.#1 dated 09-12-01
HE2.01	Building Type 1, 1 st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
HE2.02	Building Type 1, 2 nd & 3 rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.03	Building Type 2, 1 st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-29-02
HE2.04	Building Type 2, 2 nd & 3 rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.05	Building Type 3, 1 st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
HE2.06	Building Type 3, 2 nd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.07	Building Type 3, 3 rd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.08	Building Type 4, 1 st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2.09	Building Type 4, 2 nd & 3 rd Floor HVAC & Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E1.01	Electrical Site Plan	Dated 05-01-01, Revised 08-15-01
E3.01	Flat A Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.02	Flat B Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.03	Flat C Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3.04	Flat D Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Contractor Initials: 

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Summit 16173

Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
E3.05	Town Home Unit Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E6.01	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
E6.02	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-11-02
E10.01	Leasing Center First Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.02	Leasing Center Second Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.03	Bath Pool and Fitness Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.04	Electrical Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P2.01	Building Type 1, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.02	Building Type 1, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.03	Building Type 2, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#3 01-29-02
P2.04	Building Type 2, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.05	Building Type 3, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.06	Building Type 3, 2 nd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.07	Building Type 3, 3 rd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.08	Building Type 4, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P2.09	Building Type 4, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P3.01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.04	Flat D Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.05	Town Home Unit Plumbing Plans/Dated	05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P6.01	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.02	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.03	Plumbing Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#3 dated 01-29-02.
P10.01	Leasing Center First Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.02	Leasing Center Second Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.03	Bath Pool and Fitness Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.04	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.05	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
F1.01	Fire Protection Site Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.01	Building Type 1, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.02	Building Type 1, 2 nd & 3 rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.03	Building Type 2, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
F2.04	Building Type 2, 2 nd & 3 rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.05	Building Type 3, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Summit 16174

Contractor Initials:

[Handwritten Signature]

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Subcontractor Initials:

[Handwritten Signature]

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
F2.06	Building Type 3, 2nd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.07	Building Type 3, 3rd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.08	Building Type 4, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.09	Building Type 4, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F3.01	Flat A - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.04	Flat D - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.05	Town Home Unit Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F6.01	Fire Sprinkler Schedules And Details	Dated 05-01-01, Revised 08-15-01
F10.01	Leasing Center, First Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.02	Leasing Center Second Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.03	Bath Pool and Fitness Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.04	Fire Protection Schedules And Details	Dated 05-01-01, Rev.#1 dated 09-12-01
SP1.01	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
SP1.02	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.03	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.04	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.05	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Landscape Design

Hoffman Lester Associates, Inc., 29 Leinbach Drive, Charleston, S.C. 29407, 843-763-1166.

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
L1 of L4	Landscape Plan	11-12-01
L2 of L4	Landscape Plan	11-12-01
L3 of L4	Landscape Plan	11-12-01
L4 of L4	Landscape Plan	11-12-01

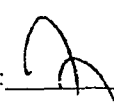
Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211".

BY: Milton Campos 

COMPANY NAME/TITLE: LOS CAMPOS CONSULTING, INC. N.C.M.C.

DATE: 3-27-02

Summit 16175

Contractor Initials: 

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Subcontractor Initials: MC

ATTACHMENT "A"

1. All parties hereby agree that no extra payment will be made for material storage, freight costs, travel expenses, delivery charges, re-inspection fees or any other miscellaneous costs required to install the scope of work included in this subcontract agreement.

2. All parties hereby agree that any conflicts between the drawings, specifications and/or any conflicts between pages or details that is discovered by SUBCONTRACTOR shall be brought to the attention of CONTRACTOR immediately. Any work performed by SUBCONTRACTOR with previous knowledge of conflicts will be at the complete liability of SUBCONTRACTOR for its acceptance, and any costs to correct to compliance shall be paid by SUBCONTRACTOR.

3. All parties hereby agree that SUBCONTRACTOR is responsible for maintaining CONTRACTOR's master set of project record drawings on a weekly basis. In the event SUBCONTRACTOR fails to meet this requirement, progress or final payments may be withheld until such time that CONTRACTOR receives updated project record drawings from SUBCONTRACTOR.

4. All parties hereby agree that SUBCONTRACTOR has the sole responsibility for compliance with all of the requirements of the Occupational Safety and Health Act of 1970 and agrees to indemnify and hold harmless CONTRACTOR against any legal liability or loss including personal injuries which CONTRACTOR may incur due to SUBCONTRACTOR's failure to comply with the above referenced act. In the event any fines or legal costs are assessed against CONTRACTOR by any governmental agency due to noncompliance of safety codes or regulations by SUBCONTRACTOR, such costs will be deducted, by change order, from SUBCONTRACTOR's Subcontract amount.

5. All parties hereby agree that control of the Work Schedule, use of the site and coordination of all on-site personnel will be performed under the complete direction of CONTRACTOR's supervisory staff. CONTRACTOR may enforce upon SUBCONTRACTOR any of the following actions in order to expedite or coordinate the work. However, CONTRACTOR does not assume any liability for delays to SUBCONTRACTOR or third parties in connection with coordination of on-site personnel. These actions include, but are not limited to, the following:

- A) Designated storage, designated unloading and parking areas.
- B) Require unacceptable materials, equipment or vehicles to be removed from the project.
- C) Limit the use of the site by SUBCONTRACTOR's equipment, vehicles, personnel or stored materials.
- D) Temporarily or permanently bar specific personnel from the site. Listed below is a partial list of reasons to deny a person access to the project.
 - 1) Drug or alcohol use
 - 2) Fighting, possession of weapons
 - 3) Theft
 - 4) Harassment of anyone on or off the project
 - 5) Personal use of the areas near the project limits for parking, eating, sleeping, etc.
 - 6) Failure to cooperate with CONTRACTOR's supervisory personnel or comply with project documents.

6. All parties hereby agree that CONTRACTOR may provide, in locations determined to be appropriate for the project, temporary electrical, temporary water and temporary toilet services. Further, SUBCONTRACTOR shall make use of the services as provided. However, the inability of SUBCONTRACTOR to make use of the services as provided or the temporary unavailability of services, shall not release SUBCONTRACTOR'S obligation to complete the work included in this Subcontract Agreement, on schedule, or by supplying at SUBCONTRACTOR'S own expense any additional utilities or services it may require to perform its scope of work in accordance with the project schedule.

7. All parties hereby agree that all technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR. Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided by CONTRACTOR, shall be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

8. All parties hereby agree that the cost of any testing, re-testing, layout, staking, engineering, inspection fees, reinspection fees, repair work or any other cost associated with any testing, inspections or examinations required by the specifications to determine the acceptability of SUBCONTRACTOR's scope of work will be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

9. All parties hereby agree that SUBCONTRACTOR is responsible for all related work, no matter in what sections of the plans and specifications it is detailed, to complete the scope of work as listed in Attachment "B" to this Subcontract Agreement.

Summit 16176

Contractor Initials: A

15

Subcontractor Initials: MC

10. All parties hereby agree that SUBCONTRACTOR will provide all necessary equipment, manpower and rigging to safely and efficiently unload its materials in the areas assigned or approved by CONTRACTOR's supervisory personnel. Further, all material delivery times will be coordinated with suppliers and approved by CONTRACTOR so as not to impede or disrupt the work or schedule of CONTRACTOR or other subcontractors.

11. All parties hereby agree that this executed Subcontract Agreement hereby supersedes any prior proposals, both written or verbal, therefore, any prior written or verbal proposals hereby becomes null and void at the signing of this Subcontract Agreement.

12. All parties hereby agree that SUBCONTRACTOR is to submit a detailed "Schedule of Values" for approval by CONTRACTOR prior to the signing of this Subcontract Agreement. In the event of disagreement between the parties then CONTRACTOR'S decision shall govern.

13. ~~All parties hereby agree that SUBCONTRACTOR shall secure and pay for all permits required to install the Scope of Work included in this Subcontract Agreement.~~ *mc*

14. ~~All parties hereby agree that weekday overtime work and weekend work will be required to complete this project in accordance with CONTRACTOR'S schedule. Further, this weekday overtime work and weekend work will be performed at the sole direction of CONTRACTOR and all cost thereof is included in this Subcontract Agreement.~~ *mc*

15. All parties hereby agree that SUBCONTRACTOR shall be responsible that both he and each subcontractor under his control shall pay all State Sales Tax, Consumer Tax, Use and other similar taxes for the work, or portions thereof, provided by this SUBCONTRACTOR, ~~whether or not representative.~~ *mc*

16. All parties hereby agree that in all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Subcontract Agreement, whether or not the phrase "or equal" is used after such name, SUBCONTRACTOR shall furnish the product of the named manufacturers without substitution, unless a written request for the substitute has been submitted to CONTRACTOR by the SUBCONTRACTOR and approved, in writing, by CONTRACTOR.

17. All parties hereby agree that SUBCONTRACTOR shall employ a competent superintendent and necessary assistants all approved by CONTRACTOR who shall be in attendance at the project site full-time during the progress of the work included in this Subcontract Agreement.

18. All parties hereby agree that SUBCONTRACTOR assures that either he or an authorized representative of his company will attend all jobsite meetings as established by CONTRACTOR's supervisory staff unless their presence is not requested by CONTRACTOR. In the event a representative shall represent SUBCONTRACTOR at these meetings, said representative shall be able to make binding commitments on all matters to be discussed at such meetings, including cost, payments, change orders, time schedules and manpower requirements. This is to include but not limited to, all Project Manager Near Term Meeting and Superintendent Meetings. Further, a penalty of \$500.00 per meeting will be imposed if SUBCONTRACTOR or SUBCONTRACTOR's representative is not present at these meetings. The following person(s) are designated as SUBCONTRACTOR's representatives having the authority as stated herein.

Subcontractor Designated Representative: Oscar Campos

(Optional Representative) Fredy Gonzales

19. All parties hereby agree that by SUBCONTRACTOR approving and submitting shop drawings, product data, and samples, SUBCONTRACTOR hereby represents that he has reasonably determined and verified all dimensions, quantities, field dimensions, relations to the existing work, coordination with work to be installed later, coordination with information on previously accepted shop drawings, product data, or samples and verification of compliance with all of the requirements of the Contract Documents. Further, the accuracy of such information is the sole responsibility of SUBCONTRACTOR. In reviewing shop drawings, product data, and samples, CONTRACTOR shall be entitled to rely on SUBCONTRACTOR'S representation that such information is correct and accurate.

20. All parties hereby agree that no portion of the work requiring submission of a shop drawing, product data, or sample shall be commenced until CONTRACTOR has received from SUBCONTRACTOR all required shop drawings, product data, or required samples and all have been approved by the appropriate parties. Further, all such portions of the work shall be furnished and installed by SUBCONTRACTOR in accordance with approved shop drawings, product data, or samples.

Summit 16177

Contractor Initials: *MC*

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Subcontractor Initials: *mc*

21. All parties hereby agree this is a Lump Sum Subcontract Agreement, written with the intent that there be no extras if installed in accordance with the Project Plans and Specifications. All prices are firm and includes applicable ~~taxes~~ taxes, licenses, freight, unloading, project distribution, hoisting and any other needed items to complete the scope of work as listed herein. *MC*

22. All parties hereby agree that SUBCONTRACTOR shall be held responsible and pay all associated cost for repairs to all damages to any buildings or the work of others resulting from his negligence or negligence of a material supplier or subcontractor of this SUBCONTRACTOR.

23. All parties hereby agree that SUBCONTRACTOR is responsible for all costs associated with all necessary flagmen, barricades, and safety equipment necessary to install the scope of work as listed in this Subcontract Agreement.

24. All parties hereby agree that the OWNER, or OWNER'S representative, could request SUBCONTRACTOR to do additional work without obtaining the approval of CONTRACTOR or CONTRACTOR'S representative and that there is a possibility that OWNER would not pay this claim if SUBCONTRACTOR performs said work without CONTRACTOR'S consent. In the event this happens and OWNER does not pay CONTRACTOR, SUBCONTRACTOR then waives all claims against CONTRACTOR for payment of these portions of work. *UNLESS AN APPROVED CHANGE IS ISSUED BY CONTRACTOR. ALL WORK MUST BE PERFORMED UNDER CONTRACT WITH CONTRACTOR* *MC*

25. All parties hereby agree this Subcontract Agreement shall not be deemed as a commitment, or offer to engage the services of SUBCONTRACTOR until such time this Subcontract Agreement is duly executed by an authorized representative of CONTRACTOR.

26. All parties hereby agree that before work commences, SUBCONTRACTOR shall submit an original insurance certificate showing General Liability Coverage and Limits of Worker's Compensation Coverage to CONTRACTOR'S home office. All parties further agree that no payments will be received by SUBCONTRACTOR for any work performed on the project until such time CONTRACTOR has received these Insurance Certificates from SUBCONTRACTOR.

27. All parties hereby agree that for purposes of this agreement, "hazardous substances" shall mean any contaminants, wastes, substances or other materials which pose violation of any local, state or federal law or regulation or are deemed environmentally hazardous, toxic or harmful by any local, state or federal environmental protection or other agency, including, without limitation, asbestos, polychlorinated biphenyl's, petroleum products, flammable explosives, radioactive materials or infectious substances. SUBCONTRACTOR shall not bring any hazardous substance to the jobsite, and hereby agrees to fully defend, indemnify and hold CONTRACTOR and OWNER harmless from and against any and all liability, claims, losses, penalties, costs, expenses, damages and causes of action suffered or incurred by CONTRACTOR or OWNER resulting in any manner whatsoever, directly or indirectly, from the presence of any hazardous substance as a result of the actions of SUBCONTRACTOR. In the event that SUBCONTRACTOR encounters any material on the jobsite reasonably believed to be a hazardous substance, SUBCONTRACTOR will handle such hazardous substance in accordance with all laws and applicable ordinances.

28. All parties hereby agree that it shall be SUBCONTRACTOR'S responsibility to review all plans and specifications, to learn the general policies of the CONTRACTOR, and the schedule pace of work and general methods of procedure. All parties hereby agree that SUBCONTRACTOR is to plan its material and equipment deliveries and the volume of its manpower in order to coordinate all of its work with CONTRACTOR'S policies, methods and schedule.

29. All parties hereby agree that all applicable Federal, State and Local Codes take precedence over project plans and specifications and any additional cost to make the required changes to comply with said codes is hereby included in this Subcontract Agreement. *WILL REQUIRE A CHANGE ORDER* *MC*

30. All parties hereby agree that SUBCONTRACTOR and all of its employees and subcontractors will only use ingress and egress routes as directed by CONTRACTOR'S jobsite superintendent.

31. All parties hereby agree that SUBCONTRACTOR acknowledges that other site and building improvements will be in progress during the course of its work, and SUBCONTRACTOR will take the necessary steps in the coordination of material handling and in the implementation of its work so as not to lose time on its schedule or interfere with the construction of other improvements.

32. All parties hereby agree that in the event temporary electrical service becomes inoperable SUBCONTRACTOR will then furnish its own means of project power to install the scope of work included in this Subcontract Agreement. *WILL REQUIRE A CHANGE ORDER* *MC*

33. All parties hereby agree that CONTRACTOR will have final approval of SUBCONTRACTORS on site supervision and upon approval of this supervision SUBCONTRACTOR hereby agrees not to replace this approved jobsite supervision without CONTRACTOR'S consent. *TO THE EXTENT THAT SUBCONTRACTOR HAS ABILITY TO CONTROL PERSONNEL.* *MC*

Summit 16172

Contractor Initials: *MC*

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Subcontractor Initials: *MC*

34. All parties hereby agree that SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1996.

35. All parties hereby agree that SUBCONTRACTOR has visited the project site and is aware of all site conditions that affect its scope of work. All parties further agree that no additional compensation will be made due to SUBCONTRACTOR'S failure to familiarize itself with all site conditions prior to the execution of this Subcontract Agreement.

36. All parties hereby agree that SUBCONTRACTOR shall submit a Material Safety Data Sheet (MSDS) notebook to CONTRACTOR'S job site Superintendent prior to commencing work on the project.

37. All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary heating devices, including fuel for same, necessary for the installation of this scope of work.

38. All parties hereby agree that in the event SUBCONTRACTOR crosses any permanent improvements such as concrete curb or sidewalks, it shall be the responsibility of SUBCONTRACTOR to take the appropriate measures to protect these existing improvements. In the event any areas are damaged, it shall be the SUBCONTRACTOR's responsibility to remove and replace these damaged areas.

39. All parties hereby agree that SUBCONTRACTOR shall have the responsibility of notifying CONTRACTOR seven (7) days prior to any known material shortages on project.

40. All parties hereby agree that SUBCONTRACTOR shall furnish and install a jobsite radio for his jobsite foreman capable of communicating with the CONTRACTOR'S Jobsite Superintendent.

41. All parties hereby agree that the trees on the jobsite are of extreme importance to the value of the property. All parties further agree that SUBCONTRACTOR shall be fully liable for any damage caused to these trees by this SUBCONTRACTOR including, but not limited to, consequential damages resulting therefrom.

42. All parties hereby agree that each item required by all Federal, State, and Local governing authorities may not be specifically shown on the Plans and Specifications; however, all requirements imposed by these governing authorities are hereby included in this Subcontract Agreement. Compliance with all governing laws, ordinances, rules, regulations, and lawful orders, inclusive of documentation and/or reporting of occurrences and/or conditions, enacted prior to execution of this Subcontract Agreement for the Work, or portions thereof, provided by this Subcontract, of any governing authority having jurisdiction over the performance of this Work, whether or not yet effective, is hereby included in this Subcontract. *mc*

43. All parties hereby agree that all required and necessary submittal data shall be submitted by SUBCONTRACTOR to CONTRACTOR within three (3) days of the signing of this Subcontract Agreement to allow sufficient time for approval.

44. All parties hereby agree that SUBCONTRACTOR had in its possession at time of bid all Contract Documents necessary to supply CONTRACTOR a complete turnkey bid for SUBCONTRACTOR's scope of work included herein.

45. All parties hereby agree that SUBCONTRACTOR shall keep at the jobsite on a full-time basis at least one superintendent or foreman who speaks the English Language.

46. All parties hereby agree that all installed items on the project remain the responsibility of SUBCONTRACTOR until accepted by OWNER or OWNER'S representative.

47. All parties hereby agree that any required hoisting, scaffolding, lulls, forklifts or any other machinery of any kind, including labor for same, to unload, store, move around on jobsite, and handle SUBCONTRACTOR's materials to install this scope of work in any nature is included in this Subcontract Agreement. Further, SUBCONTRACTOR agrees to use properly certified personnel to operate equipment while on project site.

48. All parties hereby agree that SUBCONTRACTOR is not authorized to install a SUBCONTRACTOR job sign without written consent of CONTRACTOR.

Contractor Initials: *M*

18

Summit-16179

Subcontractor Initials: *mc*

ATTACHMENT "B"
SCOPE OF WORK

Painting

mc
Furnish all labor, material, ~~permits~~, equipment, supervision, services, labor taxes, material taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Painting of 12 buildings, Clubhouse, Pool Pavilion, all garages, and trash compactor (1), all in its entirety and in strict accordance with the Contract Documents enumerated in Subcontractor Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. All parties hereby agree that SUBCONTRACTOR shall submit paint and stain colors for final approval on 6 x 6 actual color cards. (7) sets of submittals to be submitted to the CONTRACTOR within 2 weeks of receiving this subcontract.
2. All parties hereby agree that all surfaces to be painted or finished shall be clean, dry, smooth, and free from dust and all foreign matter, which may adversely affect adhesion or appearance. Further, SUBCONTRACTOR shall perform preparation and cleaning procedures in strict accordance with the coating manufacturer's recommendations.
3. All parties hereby agree that workmanship shall be of a high standard, installed by skilled mechanics. Further, all materials shall be properly applied and shall be free from runs, sags, holidays, clogging and excessive flooding. SUBCONTRACTOR shall not proceed with any additional coats until the preceding coat is thoroughly dry and hard.
4. It is the intent of the this SUBCONTRACT to convey to the SUBCONTRACTOR that the exterior waterproofing of all stucco is the responsibility of the SUBCONTRACTOR. This is to include but not limited to all areas where stucco meets like or unlike surface where paint may or may not be applied.
5. All parties hereby agree that SUBCONTRACTOR is to furnish and install all required caulking, with the specified type of caulking, at all areas of project. These caulked areas are to include, but not be limited to, windows, doors, exterior siding, exterior trim, interior trim, exterior door sills, between exterior trim, tubs and masonry and fascia boards. Further, SUBCONTRACTOR shall use caulking compound in a color to match the building finish or of painted nature.
6. All parties hereby agree that SUBCONTRACTOR shall paint all exterior electrical boxes, roof vents, exposed flashing, lintels, and ~~any other items as directed by CONTRACTOR~~ *ALL ITEMS SHOWN ON PLANS TO BE PAINTED* *mc*
7. Clubhouse to have a minimum of six different colors. *mc*
8. All parties hereby agree that "paint" as used herein means all coating systems materials, including primers, emulsions, enamels, stains, elastomeric, sealers and fillers and any other materials whether used as prime, intermediate or finished coats. All parties hereby agree that materials shall be delivered to jobsite factory mixed, ready for application with manufacturing labels attached showing the name, brand, type and color of paint, instructions for thinning and type and percentages of pigment, vehicle and solvent.
9. All parties hereby agree that SUBCONTRACTOR shall store materials not in use in tightly covered containers. Further, SUBCONTRACTOR shall maintain containers used in storage, mixing and application of paint in a clean condition, free of foreign materials and residue.
10. All parties hereby agree that no paint shall be stored in project closets.
11. All parties hereby agree that SUBCONTRACTOR shall remove all oily rags and oil or solvent-soaked waste from building at end of each workday. Further, SUBCONTRACTOR shall take every reasonable precaution to avoid danger of fire.
12. All parties hereby agree that SUBCONTRACTOR shall avoid painting under conditions, which might result in condensation on freshly painted surfaces.
13. All parties hereby agree that no paint will be applied to finishes in spaces where dust is being generated.
14. All parties hereby agree that SUBCONTRACTOR shall provide good ventilation during all painting operations.
15. All parties hereby agree that SUBCONTRACTOR shall examine surfaces scheduled to receive paint or finishes. Further, for conditions that will adversely affect execution, performance or quality of work and which cannot be placed into acceptable condition through preparatory work then SUBCONTRACTOR shall immediately notify CONTRACTOR of such problem.

Contractor Initials: *mc*

19

Summit 16183

Subcontractor Initials: *mc*

16. All parties hereby agree that SUBCONTRACTOR shall accept the beginning of any work in any specific area as acceptance of the substrate surfaces to be satisfactory to produce properly finished surfaces this is to include but not limited to metal stairs and railings.

17. All parties hereby agree that SUBCONTRACTOR shall protect all adjacent surfaces not to be painted. Further, before painting, SUBCONTRACTOR shall remove hardware, accessories, plate lighting fixtures and similar items or provide ample protection of such items prior to painting. Upon completion of each space, SUBCONTRACTOR shall replace the above items.

18. All parties hereby agree that SUBCONTRACTOR shall remove doors if necessary to paint all edges. SUBCONTRACTOR shall replace each door removed in the same opening using only skilled mechanics for removing and reinstalling these doors.

19. All parties hereby agree that SUBCONTRACTOR shall use drop cloths or similar temporary covers to protect finished flooring, cabinetwork and other surfaces subject to damage. Further, SUBCONTRACTOR shall protect all windows, sliding glass doors, counter tops and other finished surfaces from paint drops prior to the paint setting. Further, SUBCONTRACTOR shall remove overspray and splattered paint by proper methods of washing and scraping using care not to scratch or otherwise damage finished surfaces.

20. All parties hereby agree that SUBCONTRACTOR shall provide "wet paint" signs as required to protect newly painted finishes.

21. All parties hereby agree that SUBCONTRACTOR shall make edges of paint adjoining other materials or colors sharp and clean with straight lines.

22. All parties hereby agree that SUBCONTRACTOR shall apply primer to adjacent surfaces before glazing or caulking.

23. All parties hereby agree that SUBCONTRACTOR shall furnish and install the painting for all stair stringers, if applicable to this project, stair railings, breezeway railings, balcony railings, exterior door trim, exterior doors, breezeway ceilings, balcony ceilings, and any other miscellaneous exterior painting as directed by CONTRACTOR — PER PLAN) MC (M)

24. All parties hereby agree that all doors shall be pre-primed by SUBCONTRACTOR prior to installation. This is to include bottom, top, and both sides of door.

25. All parties hereby agree that the interior painting shall include, but not be limited to, all drywall walls and ceilings, interior doors (top and bottom), interior trim, baseboards, window stools, door trim, shoe mold, crown mold, chair rails and mantels, and any other areas as directed by CONTRACTOR. PER PLAN) MC (M)

26. All parties hereby agree that all necessary caulking, sanding, and puttying required for a first class quality job as directed by CONTRACTOR is included in this Subcontract Agreement.

27. All parties hereby agree that SUBCONTRACTOR is responsible for the masking of all finished areas and protection from overspray of it. Further, SUBCONTRACTOR shall remove all overspray immediately after request from CONTRACTOR.

28. All parties hereby agree that any and all required painting punch out work is included in this Subcontract Agreement and to included but not limited to minor sheet rock repair.

29. All parties hereby agree that any roof projection to be painted in a color selected by the CONTRACTOR.

30. All parties hereby agree that any required repairs to entry doors is included in the Subcontract Agreement. MC (M)

31. All parties hereby agree that SUBCONTRACTOR is to leave an adequate supply of paint for touch-up purposes on site with Property Manager. Minimum of 3 dents over 3 to be compensated. MC (M)

32. All parties hereby agree that SUBCONTRACTOR shall provide appropriate personnel to walk with CONTRACTOR's Jobsite Superintendent when units in buildings are being turned to Owner.

33. All parties hereby agree that SUBCONTRACTOR shall fill, sand, and prime all nail holes in the exterior cornice as needed.

34. All parties hereby agree that SUBCONTRACTOR shall mask all project door hinges as they are not to be painted.

Summit 16181

Contractor Initials: M

20

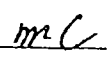
Subcontractor Initials: MC

35. All parties hereby agree that SUBCONTRACTOR is responsible for the cleaning of all paint from carpets.
36. All parties hereby agree that SUBCONTRACTOR shall remove weather-stripping from exterior doors prior to painting them and SUBCONTRACTOR shall install weather-stripping back after doors have been painted.
37. All parties hereby agree that bi-fold door rollers and pins shall not be painted.
38. All parties hereby agree that SUBCONTRACTOR shall clean brushes and tools only in areas designated by CONTRACTOR's Jobsite Superintendent.
39. All parties hereby agree that paint is not to be poured onto any ground area at any time.
40. Apartment Specifications: Interior
- A. Prep all trim work caulk and puddy, sand all trim for finish coats.
 - B. Apply two coats of flat to all living areas.
 - C. Apply two coats of semi gloss to all trim and doors.
 - D. Apply two coats of semi gloss to bathroom walls and ceilings.
 - a. Application of semi gloss to above area will increase durability because of moisture.
 - E. Apply caulking to shower units where it meets the G.W.B.
 - F. Apply caulking at window units after final cleaning of windows.
 - G. Apply flat white to ceiling
41. Apartment Specifications: Exterior Elastomeric
- A. Inspect the exterior substrate for PH in the stucco.
 - B. Written PH results to be submitted to the CONTRACTOR prior to exterior application.
 - C. Inspect and fix all metal doors for dings prior to final coat of paint
 - D. Apply one coat of masonry pigmented surface primer.
 - E. Apply elastomeric coating to get a total of 20 mils total dry thickness. The number of coats required per manufactures recommendation to get the 20 mils dry total is the responsibility of the SUBCONTRACTOR.
 - F. Apply specified caulking to exterior.
 - G. Apply one coat of enamel undercoating to exterior wood trim.
 - H. Apply trim colors to doors and columns etc. as specified
 - I. Apply two coats of industrial enamel to all ferrous metals.
 - a. Handrails on the exterior of buildings.
42. Apartments Clubhouse: Interior
- A. Prep all trim work caulk and puddy, sand all trim for finish coats.
 - B. Apply two finish coats of flat to walls.
 - C. Apply two finish coats of semi gloss to all trim and doors.
 - D. Apply two coats of epoxy to pool bathroom walls and ceilings.
 - E. Paint all ceilings flat white
43. Painting cost to include: Interior and exterior
- 1. All interior painting specifications.
 - 2. All exterior painting specifications.
 - 3. Interior and exterior of Clubhouse.
 - 4. Exterior trash compactors.
44. The SUBCONTRACTOR is to provide the SUBCONTRACTOR'S jobsite foreman with a NEXTEL radio compatible to the CONTRACTOR'S jobsite superintendent.

Summit 16182

Contractor Initials: 

21

Subcontractor Initials: 



SUMMIT
CONTRACTORS, INC.

REVISED MAR 5 12002
MAR 20 2002

FILE COPY

PURCHASE ORDER

VENDOR: North Florida Framing, Inc. P.O. Box 73 Bostwick, Florida 32177	REMIT TO ADDRESS: _____ _____ _____	ORDER NO. 2271 DATE March 4, 2002 JOB NO. 01-033 COST CODE: 06-10-01 JOB NAME: Vintage @ Fenwick Plantation F.O.B.: Jobsite
Contact: David Anderson		
PHONE: 904-328-9400 FAX: 904-284-7496		

Sales Tax Registration No. _____ **State** _____ **Terms Net 30 days**
VIA: Supplier

PLEASE DELIVER THE FOLLOWING ORDER TO:

SHIP TO: Summit Contractors, Inc.
3000 Fenwick Hall Allee
Charleston, South Carolina 29455
Contact: Buddy Reeves
Phone: 407-709-5123

BILL TO: Summit Contractors, Inc.
6877 Phillips Industrial Blvd.
Jacksonville, Florida 32256
Phone: 904-268-5500
Fax: 904-268-5889

IT IS AGREED THAT DELIVERY WILL BE MADE *As Required. PURCHASE ORDER NUMBER MUST APPEAR ON ALL INVOICES. DELIVERY MUST BE MADE IN A TIMELY MANNER OR RIGHT IS RESERVED TO CANCEL THIS ORDER. ALL DELIVERY TICKETS MUST BE SIGNED BY SUMMIT CONTRACTOR PERSONNEL. ** Please attach all delivery Tickets to Invoices **

This Purchase Order Agreement is in the amount of \$748,594.00 to provide framing materials as per the attached Scope of Work

Amount of Purchase Order	\$706,220.75
State Sales Tax (6%)	\$ 42,373.25
Total Amount of Purchase Order	\$748,594.00

"It is understood that the amount herein is for a single purchase which may be delivered in multiple shipments".

"Materials Safety Data Sheets are required for all materials ordered. Supplier is to submit them to the jobsite with the shipment."

"Additional materials/services beyond the Purchase Order amounts must be approved in writing by the undersigned (Vendee) prior to ordering or shipment. It is the expressed responsibility of the Vendor to monitor and track materials/services included in this Purchase Order to prohibit costs from exceeding the Purchase Order Sum."

This Purchase Order Agreement entered into on this 4 March, 2002 by and between SUMMIT CONTRACTORS, INC., "Vendee," and NORTH FLORIDA FRAMING, INC. "Vendor." By signing this Purchase Agreement, the above named parties affirm that they have read, understand and accept the "Terms and conditions" set out on the reverse side.

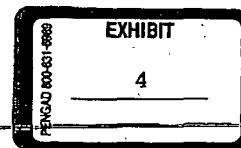
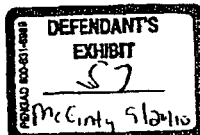
SUMMIT CONTRACTORS, INC.
Vendee
By: [Signature]
Name: Tacy McGinty, Project Manager

NORTH FLORIDA FRAMING, INC.
Vendor
by: [Signature] Secretary (Signature)
Printed Name Title

DM: [Signature]
Contractors Initials [Signature]

1 of 6

Summit 00573
Subcontractors Initials HA

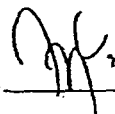


PURCHASE ORDER

TERMS & CONDITIONS

1. **ENTIRE CONTRACT.** The foregoing is the entire Purchase Order and shall include all terms and conditions here and there are no representations, warranties or understandings of any kind or nature from either party to the other except as set out herein.
2. **EQUIPMENT & MATERIALS.** VENDOR shall provide the equipment and materials specified in this Purchase Order. VENDOR shall provide such equipment and materials in strict conformity with the plans, specifications and shop drawings. If anything in this Purchase Order is inconsistent with the plans, specifications or shop drawings, this Purchase Order shall govern.
3. **SUBMITTALS.** VENDOR shall submit shop drawings, submittal data, brochures and samples to VENDEE within ten (10) days of VENDEE's written request and in as many duplicate copies as VENDEE requires. VENDEE, Project Owners and Architect's approval of all submitted shop drawings, submittal data, brochures and samples is required before VENDOR manufactures or delivers any equipment or materials provided for under this Purchase Order.
4. **PATENTS.** VENDOR warrants that all equipment, materials, devices, processes or manufactured materials that VENDOR will use or furnish under this Purchase Agreement shall not infringe upon any valid patent, copyright or trademark. If necessary, VENDOR shall secure authorization, pay all royalties and license fees for VENDOR's or VENDEE's use or furnishing of any patented, copyrighted or trademarked equipment, materials, devices, processes or manufactured materials provided under this Purchase Order. VENDOR further agrees to defend, indemnify, save harmless and reimburse VENDEE from all losses, damages or expenses, including court costs and attorney fees, incurred as a result of any claim relating to VENDOR's or VENDEE's use or furnishing of any patented, copyrighted or trademarked equipment, materials, devices, processes or manufactured materials provided under this Purchase Order.
5. **FEES, PERMITS, TAXES, INSURANCE.** VENDOR shall give all orders and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on, and shall secure and pay for all permits, fees, and licenses necessary for its performance under this Purchase Order. VENDOR shall comply with Federal, State and local law, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to its performance under this Purchase Order.
6. **DELIVERY.** VENDOR expressly assumes all responsibility and risk of loss to any and all equipment and materials while in transit and until VENDEE has accepted delivery. VENDOR warrants that it shall procure and maintain insurance sufficient to cover any such loss, and that VENDEE will be listed as an insured beneficiary under such policy.
7. **PURCHASE ORDER SUM.** VENDEE shall pay VENDOR the total sum as shown in this Purchase Order for the equipment and materials VENDOR is to provide under this Purchase Order. Such sum shall include any and all license or permit fees and state and federal taxes.
8. **CONDITIONAL PAYMENT.** The parties expressly understand and agree that time is of the essence as in this Purchase Order, and that VENDEE's payment for the equipment and materials described in this Purchase Order is conditioned upon complete and timely performance by VENDOR.
9. **DELAY.** VENDOR agrees to timely deliver the equipment and materials described in this Purchase Order in strict compliance with the project scheduling. Should VENDOR delay the project, or any portion thereof, in any way, VENDOR shall be liable to VENDEE for any and all damages, expenses and losses incurred as a result of such delay, including any liquidated damages assessed against VENDEE and all consequential damages and costs for continued project supervision, job overhead, insurance, project facilities and other ongoing costs.
10. **LIQUIDATED DAMAGES FOR DELAY.** VENDOR represents that it has included itself as to any provision in the contract between VENDEE and the project Owner concerning liquidated damages, and agrees that in the event liquidated damages are imposed upon VENDEE as the result, in whole or in part, of the performance or non-performance of VENDOR, such liquidated damages (or an appropriate share thereof) will constitute one element of the damages that VENDEE shall be entitled to recover from VENDOR by withholding payment or otherwise. In addition, VENDOR agrees to reimburse VENDEE for any loss or damages, including damages that may be incurred due to the project Owner, for any extra expenses incurred by VENDEE over and above VENDOR's failure to timely deliver any and all equipment and materials.
11. **ACCEPTANCE BY VENDEE.** Any payments made under this Purchase Order shall not be construed as VENDEE's acceptance of equipment and materials supplied hereunder. VENDEE reserves the right to reject any nonconforming equipment and materials, or to require VENDOR to comply with the plans, specifications and shop drawings, regardless of whether VENDEE has previously paid VENDOR. VENDEE also reserves the right to issue a joint check to VENDOR and any material supplier of VENDOR who may raise any claims against VENDEE, its surety or the project Owner.
12. **ASSIGNMENT.** Neither this Purchase Order nor any interest therein may be transferred, voluntarily or involuntarily, without the written consent of VENDEE. VENDOR shall not assign this Purchase Order or any amounts due hereunder.
13. **OTHER CONTRACTS.** VENDEE expressly retains the right to offset monies owed VENDOR under this Purchase Order from any monies due and owing under any other contracts between VENDEE and VENDOR.
14. **WARRANTIES.** VENDOR expressly warrants that the equipment and materials provided for under this Purchase Order are new unless otherwise specified, strictly conform to the plans, specifications, shop drawings, samples or other description furnished or adopted by VENDEE, and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect. VENDEE may deem all equipment and materials not conforming to these requirements to be defective and may return them to VENDOR at VENDOR's expense. These warranties shall be in addition to, but not limited by, any other warranty or remedy required or permitted by law, and shall run to VENDEE, its successors, assigns, customers, and the users of its products. Warranties will commence on the date VENDEE receives the equipment and materials provided for under this Purchase Order and will continue for a period of 15 months or to the full extent of the manufacturer's warranty, whichever is longer.
15. **MATERIALMAN LIENS.** VENDOR shall indemnify all liens and claims against the project property, if any, upon payment of this Purchase Order sum. If, at any time, VENDEE, its surety or the project Owner shall become liable on any new or other claims against the project property chargeable to VENDOR, then VENDEE shall have the right to retain any payment or portion thereof, due or about to become due to VENDOR, which is sufficient to indemnify VENDEE, its surety and the project Owner against such lien or claim, including costs, attorney fees and interest. VENDEE may require, as a condition precedent to payment, that VENDOR provide VENDEE evidence that VENDOR has paid its suppliers for all equipment and materials provided for under this Purchase Order and completed Release and Waiver forms.
16. **INDEMNITY.** In exchange for ten (\$10,000) dollars the receipt and sufficiency of which is acknowledged, VENDOR hereby covenants to defend, indemnify, save harmless and exonerate VENDEE and the project Owner as to and from all liability, claims, lawsuits, arbitrations, other claims for damages, and injuries or other losses for property damage, personal injury or economic losses arising out of the equipment or materials provided by or to be provided by VENDOR, its employees, agents and suppliers. VENDOR further agrees to indemnify and reimburse VENDEE for VENDEE's legal expenses, including attorney fees, and for other attorney fees and costs assessed against VENDEE in any lawsuit, arbitration or other claims arising from any acts or omissions by VENDOR, its employees, agents or suppliers related to this Purchase Order.
17. **CONDITION PRECEDENT TO FILING SUIT.** VENDOR expressly agrees as an absolute condition precedent to filing any claim or filing any suit against VENDEE or VENDEE's surety, or the filing of any lien against the project Owner's property, to supply VENDEE with written notice of any breach and provide VENDEE thirty (30) days in which to correct the breach.
18. **ATTORNEY FEES.** In the event that litigation or other dispute resolution proceeding is commenced, involving, arising out of or relating to this Purchase Order, then the prevailing party shall be entitled to an award of taxable court costs, other related but non-taxable costs and expenses and reasonable attorney's fees from the time that the proceeding was commenced until all appeals, if any, are final. This paragraph shall apply where the proceeding results in a declaration of rights, damages for default, damages for misrepresentation or other legal or equitable remedies.
19. **CHOICE OF LAW AND VENUE.** This Purchase Order shall be construed in accordance with the laws of the State of Florida. VENDOR expressly waives any right of venue in any action brought under this Purchase Order or against the bond posted by VENDEE. VENDOR agrees that the venue provisions of this Purchase Order shall control venue in any action brought against any bond posted by VENDEE on the project, and the bonding company is an intended third-party beneficiary of the venue provision. VENDEE has the express right to select venue in Duval County, the location of the VENDOR or the site of the project for any actions brought under this Purchase Order. In any action brought by or against VENDEE under this Purchase Order, venue selection is the sole prerogative of VENDEE. In any action brought by or against the bonding company, venue selection is the sole prerogative of VENDEE.
20. **TERMINATION.** Should VENDOR fail to timely deliver any equipment or materials provided for under this Purchase Order, VENDEE may declare VENDOR to be in breach of, and as VENDEE's option, may terminate this Purchase Order and negotiate and execute a Purchase Order contract with another Vendor to supply the same or similar equipment and materials as provided for in this Purchase Order. In the event that VENDEE executes such a Purchase Order contract with another Vendor, VENDOR shall be liable to VENDEE for any and all damages, expenses and losses incurred as a result thereof, including attorney fees, costs, interest, overhead and lost profit.

Contractors Initials:



2 of 6

Summit 00574

Subcontractors Initials

ISA

PURCHASE ORDER

ATTACHMENT "A"

INSURANCE REQUIREMENTS

VENDOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the service under this Purchase Order. VENDOR shall secure and pay for all permits, fees, and licenses necessary for the services described in the Purchase Order. VENDOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Purchase Order.

Insurance requirements are listed below:

Liability		\$ 500,000.00 General Aggregate
		\$ 500,000.00 Products
		\$ 500,000.00 Personal & Adv Injury
		\$ 500,000.00 Each Occurrence
		\$ 50,000.00 Fire Damage
		\$ 1,000.00 Med Exp
Auto		\$ 500,000.00 Combined Single Limit
Workmans Compensation	1 st	STATUTORY requirements for Each State
	2 nd Employer's	\$ 100,000.00 Bodily Injury by Accident (Each Accident)
	Liability	\$ 500,000.00 Bodily Injury by Disease (Policy Limit)
	Part D	\$ 100,000.00 Bodily Injury by Disease (Each Person)

Each Insurance Certificate shall show a Job Name, City and State, along with the wording showing Summit Contractors, Inc. as "Additional Insured."

Contractors Initials: ME

3 of 6

Summit 00575

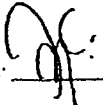
Subcontractors Initials KSA

**THE VINTAGE AT FENWICK PLANTATION
ATTACHMENT "B"
SCOPE OF WORK**

Rough Carpentry Framing and Hardware Materials

Furnish all labor, materials, accessories, permits, equipment, supervision, services, labor taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Framing Materials, Siding Materials and Structural Hardware all in its entirety and in strict accordance with the Contract Documents enumerated in VENDER Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This is to include 10 Apartment Buildings, 1 Clubhouse, 1 Pool Pavilion, and Trash Compactors. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. Provide all banding, trim work and cornish as required per plans and specifications.
2. Provide a 24" band of PT plywood at the perimeter of each building for termite protection.
3. All parties hereby agree that VENDER has included all materials to install all walls, blocking, bracing, wall sheathing, plates, smoke stops, draft stops, smoke stop framing, pre-fab beams, floor decking, truss bracing both temporary and permanent, roof decking, stairs, flashing, stair treads (if applicable), conventional roof framing, sub-fascia, soffit blocking, blocking for plumbing, signage, lofts, kneewalls, HVAC vent framing and curbing, attic accesses, all required fur downs for project, and miscellaneous framing and punch out work as required by CONTRACTOR and per the Plans and Specifications to provide a complete framing scope of work for this project inclusive of, but not limited to, all complete assemblies. VENDER further agrees that Plans may not show all fur downs, draft stops, firestopping, smoke walks, or other incidental framing as may be required, and VENDER agrees to install these items as part of this scope of work.
4. VENDER agrees to coordinate and replace studs or any material that has been removed for purposes of access by other trades.
5. Provide all materials, grade, and species as specified by the Structural Engineer or provide submittals for exchanges to be approved.
6. All parties hereby agree that VENDER shall furnish and install all of the different types of fasteners, flashing, chips, caulkers, rods, epoxies etc. as required for the entire project.
7. All parties hereby agree that VENDER shall furnish lifts and cranes or any needed equipment including labor to unload, and move all materials and supplies related or unrelated to its trade as directed by CONTRACTOR so as not to conflict or impact Schedule including but not limited to windows, interior stair stringers/treads, ceramic tile etc.
8. VENDER to provide all required caulk and "Z" flashing (termite shield) at the perimeter of the building per plans and specifications and at the top of all windows as required by the CONTRACTOR.
9. VENDER shall install all "Dead Wood" for the project as directed by CONTRACTOR'S Jobsite Superintendent and for a complete installation per plans and specifications.
10. All parties hereby agree that VENDER is to install all required dead wood for the project.
11. All lumber shall be the size and species directed by the plans and specifications. Any variance from the plans will only be allowed if allowed by the architect or engineer of record.
12. All parties hereby agree that VENDER shall provide all horizontal draft stopping at all party walls, and install all inaccessible vertical draft stopping where trusses are perpendicular to party walls.
13. All parties hereby agree that VENDER is to furnish all wood stair framing and landing as applicable to this project.
14. All parties hereby agree that VENDER is to furnish all required storage trailers, temporary fencing, etc. required to install the scope of work included in this Subcontract agreement.

Contractors Initials: 

4 of 6

Summit 00576

Subcontractors Initials: 

15. All parties hereby agree that VENDER shall provide materials for roof crickets at relocated from the valley chimneys as required as well as install Positive drainage on all roofs above door openings at the direction of CONTRACTOR.
16. All parties hereby agree that all lumber material stored on-site shall be placed at locations designated by CONTRACTOR's Jobsite Superintendent. VENDER shall provide all labor as necessary to ensure that these materials are kept neatly stacked and covered.
17. All parties hereby agree that VENDER is responsible for the installation of any necessary framing associated with cathedral ceilings.
18. All OSB is to be 15/32nds.
19. All parties hereby agree that VENDER is to provide all interior plywood shear walls.
20. All parties hereby agrees that certain interior walls of the project may have to be changed from 2" x 4" to 2" x 6" material in some cases due to functional purposes and the labor for this change is included in this Subcontract Agreement.
21. The VENDER agrees and fully understands that the trees and the tree barricades on the jobsite are of extreme importance to the value of the property. The VENDER shall be fully liable for any damage caused these trees by the VENDER including but not limited to consequential damages resulting therefrom. Barricades will have to be worked around as required without removing said barricades and fences.

COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM

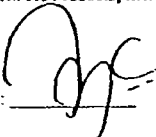
Furnish all material, fire caulks, material taxes, insurance, licenses, and any other related cost necessary for of COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM in its entirety and in strict accordance with the Contract Documents enumerated in VENDER Documents Acknowledgment to this Agreement, and in strict compliance with the requirements, and all State and Local governing authorities. This Subcontract is to be inclusive of, the Clubhouse, Pool Pavilion, 10 unit buildings.

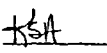
THIS SUBCONTRACT SHALL INCLUDE BUT IS NOT LIMITED TO THE FOLLOWING PROVISIONS:

1. VENDER shall submit Seven (7) complete sets of submittals for approval within two (2) weeks of execution of the Agreement.
2. Before work commences, the VENDER shall submit an original insurance certificate indicating adequate General Liability Coverage and Limits, Automobile Coverage and Worker's Compensation Coverage to the CONTRACTOR's home office.
3. It shall be the VENDER's responsibility to review all plans and specifications, to learn the general policies of the CONTRACTOR, the scheduled pace of work, and general methods of procedure. The VENDER shall plan his/her material and equipment deliveries and the volume of his/her manpower in order to coordinate all of his/her work with the CONTRACTOR's policies, methods and schedule.
4. VENDER shall be responsible for any and all applicable fees, permits, taxes, licenses, freight, etc.
5. VENDER must notify in advance of any intentions to store materials on site. CONTRACTOR, OWNER and Lender must approve all of these requests in advance. Stored materials, if approved, shall not exceed that will be installed within 45 days. Payment to VENDER for stored materials is for the VENDER's convenience and shall not create any liability to CONTRACTOR for storage, protection, etc. Value of stored materials will be supported with copies of material suppliers/manufacturers invoices.
6. VENDER to supply all "Quick Tie" materials as well as and conventional strapping, clips, truss to truss connectors, post and beam connectors, plywood clips, bolts or any connector required by the plans, structural engineer or the City of Charleston to make a complete structural hardware package.
7. VENDER agrees to provide for the complete installation of materials for the Quick Tie System, including Quick Ties, Hurricane Clips, miscellaneous Metal Straps, Hold Downs for shear walls, and Fire Caulk for Quick Tie penetrations through rated assemblies. Connections supplied shall be only from the truss to top plate connection and down. Post to foundation, post to beam, truss to truss, gable, and gable over-framing connections are not included in this scope of work, all other are to be provided. Quick Tie Products, Inc. to provide sealed shop drawings and sealed field reports of each building installation

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Summit 00577

Contractors Initials: 

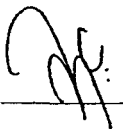
Subcontractors Initials 

8. The Subcontract's intent is to provide a turn key materials with the correct accessories i.e. fasteners, caulks, clips, epoxy etc. to complete all required hardware and structural hardware.

Rough Carpentry Materials

1. Lumber all required materials for a complete package for the Clubhouse, Pool Pavilion and 10 unit Buildings shall be provided as "framing packages" and shall be the responsibility of the SUBCONTRACTOR to coordinate all shipments and delivery schedules.
2. All take off materials and all usage of said materials is the responsibility of the SUBCONTRACTOR. Additional monies for building materials is not to be paid.
3. SUBCONTRACTOR will arrange with a local lumber company for small order fill-ins if needed.
4. Terms of payment shall be "Net 15th Prox" based on a 25th of the month cutoff date.
5. All delivery ticket shall be signed and submitted with invoices. The invoices must contain a reference number that can be matched to an individual Delivery Ticket. Non-conforming billings WILL NOT BE PAID and attached to said invoice with a front page explaining attached invoices. The Subcontract's intent is to provide a turn key labor and all materials associated with framing, trusses, beams, strong wall and fasteners, lumber.

Contractors Initials:

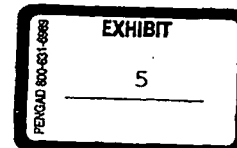


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Summit 00578

Subcontractors Initials





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SUBCONTRACT AGREEMENT

FILE COPY 2002

THIS SUBCONTRACT made and entered into this 13 February, 2002 by and between SUMMIT CONTRACTORS, INC. "CONTRACTOR," and JOHNSON ROOFING, 847 Springfield Hwy., Sute. 201. Goodlettsville, TN 37072, Office Phone 615-851-1725, Fax Phone: 615-851-1371 "SUBCONTRACTOR," which shall include SUBCONTRACTOR, its employees, agents, suppliers and subcontractors

ARTICLE 1: DEFINITION OF SUBCONTRACT TERMS

PROJECT: VINTAGE AT FENWICK PLANTATION BUDDY REEVES
3000 Fenwick Hall Allee Phone: 407-709-5123
Charleston, South Carolina 29455

OWNER: (The term "Owner" as used in the Subcontract Documents shall mean the person or entity referred to below or the Owner's authorized representative)

THE VINTAGE AT FENWICK PLANTATION, L.L.C. ROBERT C. ROHDIE, PARTNER
c/o Tarragon Realty Investors Phone: 212-949-5000
1775 Broadway, 23rd Floor Fax: 212-949-8001

SUBCONTRACT: The Subcontract is the entire and integrated agreement between the Contractor and the Subcontractor.

SUBCONTRACT AGREEMENT. The Subcontract Agreement is this standard form construction subcontract, identified as Subcontract Agreement No. 01033-13, which forms a part of the Subcontract Documents.

SUBCONTRACT WORK: (As more particularly described in Article 6)

ARCHITECT: (Include Business Name, address, telephone and facsimile numbers)

FUGLEBERG KOCH ARCHITECTS MIKE WILLIAMS
2555 Temple Trail Phone: 407-629-0595
Winter Park, Florida 32789 Fax: 407-628-1057

CONTRACTOR: (Include Federal Employer ID Number, business name, address, telephone and facsimile numbers)

SUMMIT CONTRACTORS, INC. TACY MCGINTY
6877 Phillips Industrial Boulevard Phone: 904-268-5500
Jacksonville, Florida 32256 Fax: 904-268-5889

SUBCONTRACTOR: (Include Federal Employer ID Number, business address, telephone and facsimile numbers)

JOHNSON ROOFING BRENT ATKINSON
847 Springfield Hwy., Sute 201 Phone: 615-851-1725
Goodlettsville, TN 37072 Fax: 615-851-1371

ARTICLE 2: SUBCONTRACT SUM

CONTRACTOR shall pay SUBCONTRACTOR in current funds for the performance of this work, subject to additions and deductions by written change order as herein provided for, the total sum of ONE HUNDRED FIFTY TWO THOUSAND ONE HUNDRED THREE DOLLARS AND 00/100 (\$152,103.00) (Includes \$ 10.00 and the first .001% of the Subcontract Sum per Article 14.)

Cost Code: 07-50-01

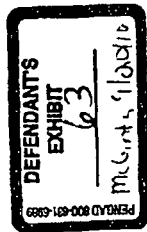
Amount: \$152,103.00

ARTICLE 3: PROGRESS PAYMENTS

a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents in the event of non-payment by OWNER, then SUBCONTRACTOR'S remedies are against the OWNER.

b. CONTRACTOR shall pay SUBCONTRACTOR Progress Payments for work performed and authorized material suitably stored and inventoried on the job site in monthly payments

Contractor Initials: [Signature] 1 Subcontractor Initials: [Signature]



Submit draw by the 20th to receive payment by the 20th of next month TE.
c. SUBCONTRACTOR to submit invoices for payment no later than the twentieth (20th) day of each month for work completed prior to the twentieth (20th) day of each month.

d. Ten Percent (10%) retainage will be held until SUBCONTRACTOR has satisfied all of its obligations under this Subcontract Agreement, including all punch items, and has delivered to CONTRACTOR all required Releases of Lien and all supplier or written warranties required by Subcontract Documents, and the work has received final approval from OWNER, ARCHITECT and CONTRACTOR and retainage has been received by CONTRACTOR.

e. At CONTRACTOR's request SUBCONTRACTOR shall furnish partial unconditional lien waivers through the date of the current request for payment from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or a potential claim against CONTRACTOR's Labor and Material Payment Bond.

f. In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any progress payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 4: FINAL PAYMENT

Final Payment shall be due when the Work described in this Subcontract Agreement is fully completed and performed in accordance with the Contract Documents, and is satisfactory to the OWNER, ARCHITECT and CONTRACTOR, and SUBCONTRACTOR has furnished final lien waivers from any of its sub-subcontractors, laborers or materialmen who have served notice to owner or otherwise established potential lien rights against the project or potential claims against CONTRACTOR's Labor and Material Payment Bond.

It is the intent of the parties that as an absolute condition precedent to Final Payment to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's Work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract documents. Therefore, SUBCONTRACTOR acknowledges that this Subcontract Agreement has been entered into by CONTRACTOR in reliance upon receiving payment for work performed by SUBCONTRACTOR on the project from OWNER and OWNER shall have the right to approve payment of all CONTRACTOR's pay requests and change order requests. SUBCONTRACTOR agrees that CONTRACTOR's actual receipt of full payment from the OWNER shall be a condition precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR and to the bringing of any action by SUBCONTRACTOR against CONTRACTOR relating to CONTRACTOR's failure to make payment. SUBCONTRACTOR shall not be entitled to receive any progress payment or final payment prior to CONTRACTOR's actual receipt of that payment from OWNER. If CONTRACTOR never receives payment from OWNER, then SUBCONTRACTOR shall never be entitled to payment from CONTRACTOR. It is the express intention of the SUBCONTRACTOR to share in the risk of non-payment by OWNER to CONTRACTOR. *TE*

SUBCONTRACTOR also agrees that all contracts with its sub-contractors, laborers, suppliers, materialmen, or other contractors contain a similar or identical requirement of "pay when-and-if paid" to provide that it shall be a condition precedent to SUBCONTRACTOR's payment to its own sub-contractors, laborers, suppliers, materialmen, or other contractors that payment be received by CONTRACTOR from OWNER. SUBCONTRACTOR further agrees that it will indemnify and hold harmless the CONTRACTOR from any claims of SUBCONTRACTOR's sub-contractors, laborers, materialmen, or other contractors claiming by, through, or under SUBCONTRACTOR for payment not yet due from or received by CONTRACTOR from OWNER due to non-fulfillment of the above condition precedent that CONTRACTOR first receive payment from OWNER.

~~In the event of non-payment by OWNER, SUBCONTRACTOR's remedies are against the OWNER. The parties agree that Subcontract Agreement ARTICLE 4: FINAL PAYMENT establishes the exclusive conditions for Final Payment to SUBCONTRACTOR, and SUBCONTRACTOR hereby waives all other terms and conditions regarding Final Payment contained in the Contract Documents.~~ *TE*

In the event any of SUBCONTRACTOR's sub-subcontractors, materialmen or laborers have established a construction lien on the project property or a claim against CONTRACTOR's Labor and Material Bond, CONTRACTOR shall have the right to withhold from any final payment otherwise due to SUBCONTRACTOR sufficient monies to satisfy said claim of lien or claim against the bond unless SUBCONTRACTOR shall furnish a bond removing the lien from the property or indemnifying CONTRACTOR and its bonding company from all liability on the claim of lien or the claim against the CONTRACTOR's bond.

ARTICLE 5: THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Subcontract Agreement, including Attachment "A", the Owner-Contractor Agreement, including the Conditions of the Contract, Drawings, Plans, Specifications, all written Addenda issued prior to and all written Modifications issued subsequent thereto. All of the above documents, which form the Contract

Contractor Initials: *[Signature]*

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Summit 00348

Subcontractor Initials: *TE*

Documents are a part of this Subcontract Agreement and shall be available for inspection by SUBCONTRACTOR upon its request. If anything in the Contract Documents is inconsistent with this Subcontract Agreement, this Subcontract Agreement shall govern and then the highest or fullest level of performance and installation shall govern

ARTICLE 6: THE WORK

The work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated in such construction. SUBCONTRACTOR agrees to be bound to CONTRACTOR by the terms and conditions of the General Contract between CONTRACTOR and OWNER as well as this Subcontract Agreement and hereby assumes towards the CONTRACTOR all of the duties, obligations and responsibilities applicable to SUBCONTRACTOR's work which the CONTRACTOR owes towards the Owner under the General Contract. The obligations assumed by SUBCONTRACTOR hereunder include, but are not limited to, the technical requirements of the plans, drawings, and specifications in the General Contract which are applicable to SUBCONTRACTOR's work, all warranties and obligations of the CONTRACTOR with respect to defective or nonconforming work which are applicable to SUBCONTRACTOR's work, and all limitations on remedies, claims or time extensions imposed on the CONTRACTOR by the OWNER under the General Contract. SUBCONTRACTOR shall perform all of the following work.

SEE ATTACHMENT "B" FOR SCOPE OF WORK

ARTICLE 7: ASSIGNMENT

SUBCONTRACTOR acknowledges that the services provided under this Subcontract Agreement are in the nature of personal services, which cannot be assigned without CONTRACTOR's express written consent, which consent shall be within the sole discretion of CONTRACTOR. Any assignment of this contract or sums due hereunder without such prior written consent of CONTRACTOR shall constitute a material default, which shall entitle CONTRACTOR to terminate the Subcontract Agreement for cause.

ARTICLE 8: SUBCONTRACTING AGREEMENT

SUBCONTRACTOR shall not subcontract the whole or any portion of this Subcontract Agreement without the prior written consent of CONTRACTOR, which consent shall be within the sole discretion of CONTRACTOR. Any subcontracting of any portion of this subcontract without such prior written consent of CONTRACTOR shall be considered a material default under this Subcontract Agreement and shall entitle CONTRACTOR to terminate SUBCONTRACTOR for cause.

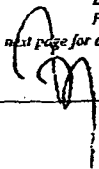
ARTICLE 9: FEES, PERMITS, TAXES, INSURANCE

SUBCONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract Agreement, whether or not yet effective. Further, SUBCONTRACTOR shall secure and pay for all permits, fees, licenses and testing necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract Agreement. SUBCONTRACTOR shall comply with Federal, State and Local tax laws, social security acts, unemployment compensation acts, and workmen's compensation acts insofar as applicable to the performance of this Subcontract Agreement, whether or not yet effective.

Insurance requirements are listed below:

Liability	<u>High Hazard Occupations</u>	\$1,000,000.00 General Aggregate
	(Example: Mech., Plumbing,	\$ 500,000.00 Products
	HVAC, Elect. Rooling,	\$ 500,000.00 Personal & Adv. Injury
	Framing, Painting, Sietework,	\$ 500,000.00 Each Occurrence
	Masonry, Stucco, Steel Erection,	\$ 50,000.00 Fire Damage
	Unlities, Concrete)	\$ 1,000.00 Med Exp.
	<u>Low Hazard Occupations</u>	\$ 500,000.00 General Aggregate
	(Example: Flooring, Tile, Paving,	\$ 500,000.00 Products
	Pool)	\$ 500,000.00 Personal & Adv. Injury
		\$ 500,000.00 Each Occurrence
Auto		\$ 50,000.00 Fire Damage
		\$ 1,000.00 Med Exp.
Workman's Compensation		\$ 500,000.00 Combined Single Limit
	1 st	STATUTORY requirements for Each State
	2 nd Employer's	\$ 100,000.00 Bodily Injury by Accident (Each Accident)
	Liability	\$ 500,000.00 Bodily Injury by Disease (Policy Limit)
	Part D	\$ 100,000.00 Bodily Injury by Disease (Each Person)

(see next page for continuation of Insurance Instructions)

Contractor Initials. 

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Summit 00349

Subcontractor Initials: 72

Installation Floater -

Amount to cover cost of materials not yet installed. Any and all losses of this SUBCONTRACTOR's stored materials are the responsibility of this SUBCONTRACTOR.

- Each Insurance Certificate shall contain the wording showing Summit Contractors, Inc. as "ADDITIONAL INSURED"

ARTICLE 10: NO DAMAGES FOR DELAY OR DISRUPTION

SUBCONTRACTOR shall not be entitled to additional compensation, overtime, extended field of home office overhead or other damages from CONTRACTOR for delays, disruptions, hindrance, constructive acceleration of other schedule and work force impacts. SUBCONTRACTOR's sole remedy shall be an approved extension or adjustment of the contract time. No extension or adjustment of the contract time shall be allowed for the following:

1. Events which were caused by SUBCONTRACTOR'S fault or negligence, by a lower tier subcontractor's fault or negligence, or any other event which is the responsibility of the SUBCONTRACTOR or its lower tier subcontractors or suppliers;
2. Delays which are concurrent with other unexcused delays;
3. Delays which do not affect the critical path of construction;
4. Delays for which the SUBCONTRACTOR has failed to request additional time or has failed to document within the time frames required by the contract documents;
5. Failure of the SUBCONTRACTOR to provide sufficient manpower, materials, facilities and equipment;
6. Failure of the SUBCONTRACTOR to reschedule activities, work weekends, increase equipment or other actions to complete work within the available schedule float or as otherwise required by CONTRACTOR's scheduling and coordination;
7. Delays for normal inclement weather

In the event this provision is determined by a court or arbitration panel of competent jurisdiction to be unenforceable under the circumstances, SUBCONTRACTOR shall in no event be entitled to recover damages for extended home office overhead, idle labor and equipment, lost profit on other projects, lost bonding capacity, and any consequential damages

ARTICLE 11: PERFORMANCE OF THE WORK

SUBCONTRACTOR agrees to commence the performance of the aforesaid Work and to continue to perform said work until completion so that SUBCONTRACTOR shall meet the OWNER and CONTRACTOR's construction schedule for completion of the job in accordance with the Contract Documents. SUBCONTRACTOR shall commence performance of the work on the date and time specified by CONTRACTOR and shall continue to proceed in accordance with CONTRACTOR's instructions. Time is of the essence in this Contract and extensions of time for performance of the work will be granted only for reasons as provided in the Contract Documents.

ARTICLE 12: CORRECTION OF WORK

SUBCONTRACTOR shall promptly correct all Work rejected by ARCHITECT or OWNER as defective or failing to conform to the Contract Documents whether observed before or after Substantial Completion. SUBCONTRACTOR shall bear all costs of correcting such rejected work, including compensation for the ARCHITECT'S additional services required.

ARTICLE 13: INDEMNIFICATION

SUBCONTRACTOR hereby covenants to defend, indemnify, hold harmless and exonerate CONTRACTOR, CONTRACTOR's surety, OWNER and their respective officers, directors, employees, agents and legal representatives (hereinafter "Indemnitees") from any and all liabilities, claims, lawsuits, arbitrations, fines, or other charges for any property damages, personal injury or economic losses (hereafter "Claims"), which are caused in whole or in part by SUBCONTRACTOR, including the design of systems and installation and operations of same by this SUBCONTRACTOR, its employees, agents, guests, suppliers or subcontractors (including any lower tier suppliers or subcontractors, whether or not in direct privity with SUBCONTRACTOR), or which in any way arise out of or involve any of their work or their acts or omissions. This Indemnity Agreement shall extend to and include the full amount of all Claims whether or not caused in part by Indemnitees, except that SUBCONTRACTOR shall not be liable under this Indemnity Agreement for Claims directly caused by or resulting from the sole fault or negligence of Indemnitees. SUBCONTRACTOR acknowledges consideration for this Indemnification Agreement of Ten (\$10.00) Dollars, together with payment of the first .001% (not to exceed \$500.00) of the contract price. The SUBCONTRACTOR's obligations under this indemnity agreement for CONTRACTOR's actions or

Contractor Initials. _____

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Summit 00350

Subcontractor Initials. TL

inactions shall not exceed \$1,000,000.00, however SUBCONTRACTOR's obligation for its actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be unlimited.

The obligation to defend, indemnify and hold harmless includes Claims resulting from injury, sickness or death of any employee of SUBCONTRACTOR or any employee of any lower tier suppliers or subcontractors of SUBCONTRACTOR (whether or not in direct privity with SUBCONTRACTOR), regardless of whether such employee has been paid pursuant to any Worker's Compensation Law or other similar federal or state legislation for the protection of employees SUBCONTRACTOR's Liability Insurance policies shall each contain contractual coverage so as to protect Indemnitees under this Indemnity Agreement.

ARTICLE 14: SUSPENSION OF WORK, DEFAULT AND TERMINATION

a. CONTRACTOR May Suspend Work

At any time and without cause, CONTRACTOR may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to SUBCONTRACTOR which will fix the date on which Work will be resumed. SUBCONTRACTOR shall resume the Work on the date so fixed. SUBCONTRACTOR shall be allowed only an adjustment or extension of the contract times directly attributable to any such suspension, provided SUBCONTRACTOR timely makes a claim as allowed by the Contract Documents. In no event shall SUBCONTRACTOR be entitled to claim additional compensation for such temporary suspension of work.

b. CONTRACTOR Shall Terminate for Cause

i. The occurrence of any one or more of the following events justifies CONTRACTOR's termination of SUBCONTRACTOR for cause:

1. SUBCONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule)
2. SUBCONTRACTOR disregards Laws, Codes or Regulations of any public body having jurisdiction.
3. SUBCONTRACTOR fails to remain current with payments to its subcontractors or material suppliers.
4. SUBCONTRACTOR assigns or subcontracts any portion of the Work without permission of CONTRACTOR as required by the Contract Documents.
5. SUBCONTRACTOR fails to obtain or maintain in effect any of the insurance required under the Contract Documents.
6. SUBCONTRACTOR otherwise violates in any way provisions of the Contract Documents.

ii. CONTRACTOR may, after giving SUBCONTRACTOR (and the surety, if any) forty-eight hours written notice and to the extent permitted by applicable law, terminate the services of SUBCONTRACTOR, exclude SUBCONTRACTOR from the Site and take possession of the Work and of all SUBCONTRACTOR's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by SUBCONTRACTOR (without liability to SUBCONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which CONTRACTOR has paid SUBCONTRACTOR but which are stored elsewhere, and finish the Work as CONTRACTOR may deem expedient. In such case SUBCONTRACTOR shall not be entitled to receive any further payment until the Work is finished. SUBCONTRACTOR shall be liable for any and all damages sustained by the CONTRACTOR because of SUBCONTRACTOR's default and termination. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by CONTRACTOR arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to SUBCONTRACTOR. If such costs, losses and damages exceed such unpaid balance, SUBCONTRACTOR shall pay the difference to CONTRACTOR. Such costs, losses and damages incurred by CONTRACTOR will be incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph CONTRACTOR shall not be required to obtain the lowest price for the Work performed.

iii. Where SUBCONTRACTOR's services have been so terminated by CONTRACTOR, the termination will not affect any rights or remedies of CONTRACTOR against SUBCONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due SUBCONTRACTOR by CONTRACTOR will not release SUBCONTRACTOR from liability.

Contractor Initials: 

Summit 00351

Subcontractor Initials: 

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iv. In the event that a court or arbitration panel of competent jurisdiction shall determine that CONTRACTOR has wrongfully terminated SUBCONTRACTOR's services for cause, then in such event it shall be conclusively established that CONTRACTOR terminated SUBCONTRACTOR for convenience as hereinafter provided. SUBCONTRACTOR shall have no other rights under this Agreement.

c. CONTRACTOR May Terminate for Convenience

Upon forty-eight hours written notice to SUBCONTRACTOR, CONTRACTOR may, without cause and without prejudice to any other right or remedy of CONTRACTOR, elect to terminate the Agreement. In such case, SUBCONTRACTOR shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination based upon the unit price for said work, if applicable, or the scheduled value of said work, if applicable. Otherwise, SUBCONTRACTOR shall be paid for the actual and necessary cost of the work together with 10% for overhead and profit on such Work.
2. Actual expenses sustained or paid to subcontractors and suppliers prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus 5% for overhead and profit on such expenses.
3. Amounts reasonably paid in settlement of terminated contracts with Subcontractors, Suppliers and others.
4. SUBCONTRACTOR shall not be paid on account of loss of anticipated profits or revenue under this Agreement or any other contract or projects, lost bonding capacity or any other economic losses arising out of or resulting from such termination.

ARTICLE 15: WARRANTY OF THE WORK

SUBCONTRACTOR warrants and guarantees to CONTRACTOR, OWNER, and ARCHITECT (or other applicable design professional) that all Construction will be in strict accordance with the Contract Documents, will be free from all faults and defects, and will be free of all liens and claims of third parties. SUBCONTRACTOR warrants and guarantees to CONTRACTOR that all Construction and materials will be new, of above average quality and in strict compliance with the Contract Documents. SUBCONTRACTOR further warrants and guarantees to CONTRACTOR that all work shall be in compliance with all federal, state and local codes and requirements. SUBCONTRACTOR further agrees to be bound to CONTRACTOR for all warranties and obligations to correct SUBCONTRACTOR's defective or nonconforming work for which CONTRACTOR is bound to OWNER. SUBCONTRACTOR shall further cause all of its subcontractors and suppliers to assign all separate warranties for work performed or materials supplied in connection with the Project directly to CONTRACTOR or, if required by CONTRACTOR, to the OWNER. Such assignment of separate subcontractor and supplier warranties shall be a condition precedent to final payment to SUBCONTRACTOR under this Agreement and shall be in addition to all other required SUBCONTRACTOR Warranties.

ARTICLE 16: RISK OF LOSS

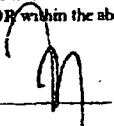
SUBCONTRACTOR expressly agrees to be responsible for and bear any risk of loss to its work until final acceptance by the ARCHITECT, CONTRACTOR, and OWNER. Damaged work shall be replaced by SUBCONTRACTOR at its own expense. *It damaged by no or only workers - others will be billed 45% change order*

ARTICLE 17: LIQUIDATED DAMAGES FOR DELAY

SUBCONTRACTOR acknowledges that it has read all of the Contract Documents including any liquidated damages provisions for delay. In the event CONTRACTOR is assessed liquidated damages due to the failure of SUBCONTRACTOR to timely perform the Work to CONTRACTOR's satisfaction, then it is agreed between the parties that these damages will be deducted from payment(s) due SUBCONTRACTOR.

ARTICLE 18: CHANGE ORDERS

Before performing additional or changed work involving additional time or expense, SUBCONTRACTOR shall obtain from CONTRACTOR a written change order describing the change and the amount or method of determining extra compensation. Additional expense will not be allowed without such written Change Order and SUBCONTRACTOR hereby waives any claim for additional expense unless such written change order has been issued prior to performance of additional or changed work. In the event CONTRACTOR has issued a change order to SUBCONTRACTOR and CONTRACTOR has not received the signed change order from SUBCONTRACTOR within fourteen (14) days from the date of issuance, it shall be considered to be a part of this Subcontract Agreement unless written notice of disagreement is received by CONTRACTOR from SUBCONTRACTOR within the above stated time.

Contractor Initials: 

Summit 00352

Subcontractor Initials: *TE*

ARTICLE 19: OTHER CONTRACTS

SUBCONTRACTOR expressly agrees to allow CONTRACTOR the right to retain and offset monies due and owing on any other contracts between CONTRACTOR and SUBCONTRACTOR.

ARTICLE 20: ARBITRATION

Any dispute between Summit and Subcontractor arising in any manner from this subcontract, or the performance of work on the project, or payment therefor, shall be resolved by arbitration in accordance with the Florida Arbitration Act. The arbitration panel shall consist of three arbitrators. The party requesting arbitration shall request arbitration in writing, by certified mail. The request shall state the name and address of the arbitrator selected by the requesting party. The other party shall select its arbitrator within 20 days after receipt of the request and inform the other party and its selected arbitrator in writing of its selection. The two arbitrators thus selected shall select a third arbitrator. In the event they are unable to agree on a third arbitrator within 30 days, a judge of the Circuit Court of Duval County shall appoint the third arbitrator. The written decision of any two arbitrators will determine the issues. Each party will pay the arbitrator it selects. The expense of the third arbitrator will be shared equally. All other costs, including, without limitation, attorney fees, will be paid by the party incurring such costs.

Notwithstanding the foregoing, if Summit is sued by the owner, or any other person or entity, because of any claim allegedly arising from Subcontractor's scope of work or Subcontractor's alleged acts or failure to act, then this Article 20 shall not apply to such suit and Summit shall be entitled to make Subcontractor a party to such suit.

ARTICLE 21: CHOICE OF LAW AND VENUE

This Subcontract shall be construed in accordance with the Laws of the State of Florida. SUBCONTRACTOR expressly agrees to be subject to personal jurisdiction in the State of Florida and further waives any right to venue in any action brought under this Subcontract Agreement or against any bond posted by CONTRACTOR. SUBCONTRACTOR acknowledges that CONTRACTOR's bonding company is an intended third-party beneficiary of this jurisdiction and venue provision. CONTRACTOR has the sole option to select venue in Duval County, Florida or the site of the project, for any action it brings under the Subcontract Agreement. In any action brought against CONTRACTOR or its bonding company under this Subcontract Agreement, jurisdiction and venue shall be in Duval County, Florida unless and until CONTRACTOR stipulates to jurisdiction and venue at the site of the project.

ARTICLE 22: TRASH REMOVAL

Subcontractor uses Contractor's dumpster TE
It is fully understood that SUBCONTRACTOR will be responsible for keeping its part of the job clean and in an orderly fashion subject to the approval of CONTRACTOR and ARCHITECT. Further, SUBCONTRACTOR shall be totally responsible for the clean up and haul off on a daily basis of all debris generated by SUBCONTRACTOR'S daily operations. Should it become necessary for CONTRACTOR to incur any expenses performing cleanup work or removing debris from site for SUBCONTRACTOR, such expense will be deducted from SUBCONTRACTOR's contract amount.

ARTICLE 23: FIELD VERIFICATIONS

SUBCONTRACTOR shall verify all dimensions, inspect the job site and its conditions, and notify CONTRACTOR of any problem, which would prevent or hinder performance by SUBCONTRACTOR. SUBCONTRACTOR will be deemed to have accepted any preceding work and materials and to have waived any and all claims as to non-suitability, unless defects are reported to CONTRACTOR in writing and CONTRACTOR authorizes SUBCONTRACTOR to proceed.

This Subcontract entered into as of the day and year first written above.

SUMMIT CONTRACTORS, INC.

JOHNSON ROOFING

By: [Signature]

By: [Signature]

Vice President

Date: 3/13/02

Date: 2-21-02

DM Initials: [Signature]

Summit 00353

Contractor Initials: [Signature]

Subcontractor Initials: TE

SUBCONTRACTOR DOCUMENTS ACKNOWLEDGMENT

SUBCONTRACTOR shall complete all work per Plans, Specifications and approved shop drawings.

Site Improvement Plans

The below listed Plans were prepared by Hoffman Lester Associates, Inc., Land Planning/Civil Engineering/Landscape Architecture/Wetland Consulting/Land Surveying, 29 Leinbach Drive, Charleston, S.C. 29407 (843-763-1166)

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
Cover Sheet	Sheet 1 of 11	Dated 06-26-01, Revised 07-05-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01, Revised 08-30-01, Revised 10-15-01
Existing Conditions	Sheet 2 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01
Site Layout Plan	Sheet 3 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Rev. #1 dated 10-15-01 Pool & Add Sidewalk
Water Plan	Sheet 4 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-30-01, Revised 10-15-01, Revised 11/02/01, Revised 11/09/01
Grading & Drainage	Sheet 5 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Grading & Drainage	Sheet 6 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-10-01, Revised 08-29-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 7 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Sewer Plan & Profile	Sheet 8 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01, Revised 08-30-01
Typical Details	Sheet 9 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-14-01, Revised 10-15-01
Typical Details	Sheet 10 of 11	Dated 06-26-01, Revised 07-23-01, Revised 08-07-01
Typical Details	Sheet 11 of 11	Dated 09-07-01, Rev #1 dated 10-10-01
Typical Details	Sheet 11a of 11	Dated 11-09-01

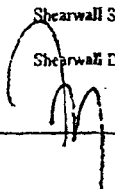
No Site Specification Book was available for the bidding process.

No Landscape Drawings were available for the bidding process.

Architectural Plans:

The Plans listed below were prepared by Fugleberg Koch Architects, 2555 Temple Trail, Winter Park, Florida 32789, Contact: Mike Williams (407) 629-0595, FAX (407) 628-1057

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
A0.01	Title Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev. #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev #3 dated 1/29/02
A0.02	Index and Code Sheet	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev. #1 dated 09-12-01, Rev #2 dated 12-11-01, Rev. #3 dated 1/29/02
A1.01	Architectural Site Plan	Dated 05-01-01, Revised dated 08-01-01, Revised dated 08-15-01, Rev #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev. #3 dated 1/29/02
S0.00	Cover Sheet	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev #2 dated 12-11-01
S0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01, Rev #3 dated 1/29/02, Latest Date 1/30/02
S0.02	General Specifications	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01
S0.03	Fastening Schedule	Undated, Revised 08-15-01, Rev. #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.04	Shearwall Specifications	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev. #2 dated 12-11-01
S0.05	Shearwall Details	Undated, Revised 08-15-01, Rev #1 dated 09-12-01, Rev #2 dated 12-11-01

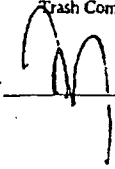
Contractor Initials: 

8

Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
S1.01	Foundation Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.01A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.02	Foundation Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S1.02A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03	Foundation Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.03A	Base Plate and Spread Footings	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S1.04	Foundation Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.02	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S2.03	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02
S4.01	Stud Layout Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.02	Stud Layout, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S4.03	Stud Layout Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S4.04	Stud Layout, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S5.01	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.01A	Framing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02	Framing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.02A	Framing Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.03A	Framing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S5.04	Framing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.01	Bracing Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S6.02	Bracing Plan, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.03	Bracing Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S6.04	Bracing Plan, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S7.01	Roof Plan, Bldg. Type 1	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.02	Roof Plans, Bldg. Type 2	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.03	Roof Plan, Bldg. Type 3	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S7.04	Roof Plans, Bldg. Type 4	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S8.01	Trash Compactor/Pool Pavillion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

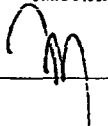
Summit 00355

Contractor Initials: 

9

Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
S8.02	Trash Compactor/Pool Pavilion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.01	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
S9.02	Floor Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.03	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.04	Roof Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.05	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
S9.06	Brace Frame Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.01	Concrete Specifications	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC0.02	General Specifications	Undated, Rev.#1 dated 09-12-01
SC0.03	Fastening Schedule	Undated, Rev.#1 dated 09-12-01
SC0.04	Shearwall Specifications	Undated, Rev.#1 dated 09-12-01
SC0.05	Shearwall Details	Undated, Rev.#1 dated 09-12-01
SC1.01	Foundation Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC2.01	Foundation Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
SC4.01	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC4.02	Stud Layout Plan Leasing Off.	Undated, Rev.#1 dated 09-12-01
SC5.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.01	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC6.02	Bracing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC7.01	Framing Plan Leasing Office	Undated, Rev.#1 dated 09-12-01
SC9.01	Framing Details	Undated, Rev.#1 dated 09-12-01
SC9.02	Framing Details	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.01A	Building Plan Type "1" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01B	Building Plan Type "1" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01C	Building Plan Type "1" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.01D	Roof Plan Bldg Type "1"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02A	Building Plan Type "2" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02B	Building Plan Type "2" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02C	Building Plan Type "2" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.02D	Roof Plan Bldg Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A2.03A	Building Plan Type "3" First Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03B	Building Plan Type "3" Second Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.03C	Building Plan Type "3" Third Floor	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Contractor Initials: 

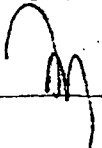
10

Summit 00356

Subcontractor Initials: 

DOCUMENTSTITLEDATED

A2.03D	Roof Plan Bldg. Type "3"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04A	Building Plan Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	1st & 2nd Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.04B	Building Plan Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	3rd Flr. & Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05A	Leasing Center First Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05B	Leasing Center Second Flr Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.05C	Leasing Center Roof Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.01	Flat "A" Floor Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.02	Flat "B" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.03	Flat "C" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.04	Flat "D" Floor Plan	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.05	Townhouse Unit "E"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A3.06	First, Second & Third Floors	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.01	Garage Plans	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.02	Elevation Views Bldg. Type "1"	Dated 05-01-01, Revised 08-10-01
A4.02	Elevation Views Bldg. Type "2"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 dated 1/29/02, Latest Date 1/30/02
A4.03	Elevation Views Bldg. Type "3"	Dated 05-01-01, Revised 08-10-01
A4.04	Elevation Views Bldg. Type "4"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A4.05B	Leasing Center Side Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.01	Building Type 1, Stair/	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Breezeway Building Section	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.02	Townhome Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.03	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04B	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.04	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.05	Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.06	Garage Wall Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07B	Sections and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.07	Clubhouse Building Sections	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A5.08	Buildings 4, 5 & 7	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.01	Wall Sections & Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.01	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.02	Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A6.03	Stair Sections & Misc. Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Contractor Initials: 

11

Summit 00357

Subcontractor Initials: 

DOCUMENTSTITLEDATED

A7 01	Door, Window Details & Schedules	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8 01	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A8 02	Interior Elevations	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10 01	Leasing Center	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10 01	Trash Compactor Enclosure And Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10 02	Pool Pavilion Plans, Elevations, and Details	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A10 03	Storage Building #9	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01, Rev.#3 01-29-02, Latest Date 01-30-02
AF6 01	Firestop Systems Through Penetration	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
AF6 02	Through Penetration Firestop Systems	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
H3 01	Flat A HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3 02	Flat B HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3 03	Flat C HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3 04	Flat D HVAC Plan	Dated 05-01-01, Revised 08-15-01
H3 05	Town Home Unit HVAC Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
H6 01	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
H6 02	HVAC Schedules and Details	Dated 05-01-01, Revised 08-15-01
H10 01	Leasing Center First Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10 02	Leasing Center Second Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10 03	Bath Pool and Fitness Floor HVAC Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
H10 04	HVAC Schedules and Details	Dated 05-01-01, Rev.#1 dated 09-12-01
HE2 01	Building Type 1, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
HE2 02	Building Type 1, 2nd & 3rd Floor HVAC & Elec Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2 03	Building Type 2, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-29-02
HE2 04	Building Type 2, 2nd & 3rd Floor HVAC & Elec Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2 05	Building Type 3, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#3 dated 1-11-02
HE2 06	Building Type 3, 2nd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2 07	Building Type 3, 3rd Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2 08	Building Type 4, 1st Floor HVAC & Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
HE2 09	Building Type 4, 2nd & 3rd Floor HVAC & Elec Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E1 01	Electrical Site Plan	Dated 05-01-01, Revised 08-15-01
E3 01	Flat A Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3 02	Flat B Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3 03	Flat C Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
E3 04	Flat D Electrical Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Contractor Initials. 

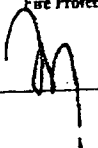
12

Summit 00358

Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
E3.05	Town Home Unit Elec. Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
E6.01	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
E6.02	Electrical Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01 Rev #3 dated 01-11-02
E10.01	Leasing Center First Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.02	Leasing Center Second Floor Electrical Plan	Dated 05-01-01, Rev #1 dated 09-12-01
E10.03	Bath Pool and Fitness Floor Electrical Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
E10.04	Electrical Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P2.01	Building Type 1, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.02	Building Type 1, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.03	Building Type 2, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#3 01-29-02
P2.04	Building Type 2, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01
P2.05	Building Type 3, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.06	Building Type 3, 2 nd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.07	Building Type 3, 3 rd Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P2.08	Building Type 4, 1 st Floor Plumbing Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P2.09	Building Type 4, 2 nd & 3 rd Floor Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
P3.01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.04	Flat D Plumbing Plan	Dated 05-01-01, Revised 08-15-01
P3.05	Town Home Unit Plumbing Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
P6.01	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.02	Plumbing Schedules and Details	Dated 05-01-01, Revised 08-15-01
P6.03	Plumbing Schedules & Details	Dated 05-01-01, Revised 08-15-01, Rev.#3 dated 01-29-02
P10.01	Leasing Center First Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.02	Leasing Center Second Floor Plumbing Plan	Dated 05-01-01, Rev #1 dated 09-12-01
P10.03	Bath Pool and Fitness Floor Plumbing Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.04	Plumbing Schedules & Details	Dated 05-01-01, Rev.#1 dated 09-12-01
P10.05	Plumbing Schedules & Details	Dated 05-01-01, Rev #1 dated 09-12-01
F1.01	Fire Protection Site Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.01	Building Type 1, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.02	Building Type 1, 2 nd & 3 rd Fir. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.03	Building Type 2, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01 Rev.#3 dated 01-29-02
F2.04	Building Type 2, 2 nd & 3 rd Fir. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev #1 dated 09-12-01
F2.05	Building Type 3, 1 st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Summit 00359

Contractor Initials. 

13

Subcontractor Initials: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
F2.06	Building Type 3, 2nd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.07	Building Type 3, 3rd Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.08	Building Type 4, 1st Floor Fire Protection Plan	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F2.09	Building Type 4, 2nd & 3rd Flr. Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F3.01	Flat A - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.04	Flat D - Fire Protection Plan	Dated 05-01-01, Revised 08-15-01
F3.05	Town Home Unit Fire Protection Plans	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
F6.01	Fire Sprinkler Schedules And Details	Dated 05-01-01, Revised 08-15-01
F10.01	Leasing Center, First Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.02	Leasing Center Second Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.03	Bath Pool and Fitness Floor Fire Protection Plan	Dated 05-01-01, Rev.#1 dated 09-12-01
F10.04	Fire Protection Schedules And Details	Dated 05-01-01, Rev.#1 dated 09-12-01
SP1.01	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01
SP1.02	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.03	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.04	Specifications	Dated 05-01-01, Revised 08-15-01
SP1.05	Specifications	Dated 05-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01

Landscape Design

Hoffman Lester Associates, Inc., 29 Leimbach Drive, Charleston, S.C. 29407, 843-763-1166.

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
L1 of L4	Landscape Plan	11-12-01
L2 of L4	Landscape Plan	11-12-01
L3 of L4	Landscape Plan	11-12-01
L4 of L4	Landscape Plan	11-12-01

Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vistage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211"

BY: As of 8/1/02

COMPANY NAME/TITLE: JOHNSON ROOFING / Vice President

DATE: 8-21-02

Contractor Initials: [Signature]

14

Summit 00360

Subcontractor Initials: TE

ATTACHMENT "A"

1 All parties hereby agree that no extra payment will be made for material storage, freight costs, travel expenses, delivery charges, re-inspection fees or any other miscellaneous costs required to install the scope of work included in this subcontract agreement.

2 All parties hereby agree that any conflicts between the drawings, specifications and/or any conflicts between pages or details that is discovered by SUBCONTRACTOR shall be brought to the attention of CONTRACTOR immediately. Any work performed by SUBCONTRACTOR with previous knowledge of conflicts will be at the complete liability of SUBCONTRACTOR for its acceptance, and any costs to correct to compliance shall be paid by SUBCONTRACTOR.

3 All parties hereby agree that SUBCONTRACTOR is responsible for maintaining CONTRACTOR's master set of project record drawings on a weekly basis. In the event SUBCONTRACTOR fails to meet this requirement, progress or final payments may be withheld until such time that CONTRACTOR receives updated project record drawings from SUBCONTRACTOR.

4 All parties hereby agree that SUBCONTRACTOR has the sole responsibility for compliance with all of the requirements of the Occupational Safety and Health Act of 1970 and agrees to indemnify and hold harmless CONTRACTOR against any legal liability or loss including personal injuries which CONTRACTOR may incur due to SUBCONTRACTOR's failure to comply with the above referenced act. In the event any fines or legal costs are assessed against CONTRACTOR by any governmental agency due to noncompliance of safety codes or regulations by SUBCONTRACTOR, such costs will be deducted, by change order, from SUBCONTRACTOR's Subcontract amount.

5 All parties hereby agree that control of the Work Schedule, use of the site and coordination of all on-site personnel will be performed under the complete direction of CONTRACTOR's supervisory staff. CONTRACTOR may enforce upon SUBCONTRACTOR any of the following actions in order to expedite or coordinate the work. However, CONTRACTOR does not assume any liability for delays to SUBCONTRACTOR or third parties in connection with coordination of on-site personnel. These actions include, but are not limited to, the following.

- A) Designated storage, designated unloading and parking areas
- B) Require unacceptable materials, equipment or vehicles to be removed from the project
- C) Limit the use of the site by SUBCONTRACTOR's equipment, vehicles, personnel or stored materials
- D) Temporarily or permanently bar specific personnel from the site. Listed below is a partial list of reasons to deny a person access to the project.
 - 1) Drug or alcohol use
 - 2) Fighting, possession of weapons
 - 3) Theft
 - 4) Harassment of anyone on or off the project
 - 5) Personal use of the areas near the project limits for parking, eating, sleeping, etc.
 - 6) Failure to cooperate with CONTRACTOR's supervisory personnel or comply with project documents

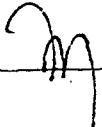
6 All parties hereby agree that CONTRACTOR may provide, in locations determined to be appropriate for the project, temporary electrical, temporary water and temporary toilet services. Further, SUBCONTRACTOR shall make use of the services as provided. However, the inability of SUBCONTRACTOR to make use of the services as provided or the temporary unavailability of services, shall not release SUBCONTRACTOR'S obligation to complete the work included in this Subcontract Agreement, on schedule, or by supplying at SUBCONTRACTOR'S own expense any additional utilities or services it may require to perform its scope of work in accordance with the project schedule.

7 All parties hereby agree that all technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR. Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided by CONTRACTOR, shall be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

8 All parties hereby agree that the cost of any testing, re-testing, layout, staking, engineering, inspection fees, reinspection fees, repair work or any other cost associated with any testing, inspections or examinations required by the specifications to determine the acceptability of SUBCONTRACTOR's scope of work will be borne by SUBCONTRACTOR and any such cost is included in this Subcontract Agreement.

9 All parties hereby agree that SUBCONTRACTOR is responsible for all related work, no matter in what sections of the plans and specifications it is detailed, to complete the scope of work as listed in Attachment "B" to this Subcontract Agreement.

Summit 00361

Contractor Initials: 

15

Subcontractor Initials: 

10 All parties hereby agree that SUBCONTRACTOR will provide all necessary equipment, manpower and rigging to safely and efficiently unload its materials in the areas assigned or approved by CONTRACTOR's supervisory personnel. Further, all material delivery times will be coordinated with suppliers and approved by CONTRACTOR so as not to impede or disrupt the work or schedule of CONTRACTOR or other subcontractors

11 All parties hereby agree that this executed Subcontract Agreement hereby supersedes any prior proposals, both written or verbal, therefore, any prior written or verbal proposals hereby becomes null and void at the signing of this Subcontract Agreement.

12 All parties hereby agree that SUBCONTRACTOR is to submit a detailed "Schedule of Values" for approval by CONTRACTOR prior to the signing of this Subcontract Agreement. In the event of disagreement between the parties then CONTRACTOR'S decision shall govern

13 All parties hereby agree that SUBCONTRACTOR shall secure and pay for all permits required to install the Scope of Work included in this Subcontract Agreement.

14 All parties hereby agree that weekday overtime work and weekend work will be required to complete this project in accordance with CONTRACTOR's schedule. Further, this weekday overtime work and weekend work will be performed at the sole direction of CONTRACTOR and all costs thereof is included in this Subcontract Agreement.

15 All parties hereby agree that SUBCONTRACTOR shall be responsible that both he and each subcontractor under his control shall pay all State Sales Tax, Consumer Tax, Use and other similar taxes for the work, or portions thereof, provided by this SUBCONTRACTOR, whether or not yet effective.

16 All parties hereby agree that in all cases in which a manufacturer's name, trade name, or their proprietary designation is used in connection with materials or articles to be furnished under this Subcontract Agreement, whether or not the phrase "or equal" is used after such name, SUBCONTRACTOR shall furnish the product of the named manufacturers without substitution, unless a written request for the substitute has been submitted to CONTRACTOR by the SUBCONTRACTOR and approved, in writing, by CONTRACTOR

17 All parties hereby agree that SUBCONTRACTOR shall employ a competent superintendent and necessary assistants all approved by CONTRACTOR who shall be in attendance at the project site full-time during the progress of the work included in this Subcontract Agreement *Bla Snyder will be the contact but not on site 100% of time*

18 All parties hereby agree that SUBCONTRACTOR assures that either he or an authorized representative of his company will attend all jobsite meetings as established by CONTRACTOR's supervisory staff unless their presence is not requested by CONTRACTOR. In the event a representative shall represent SUBCONTRACTOR at these meetings, said representative shall be able to make binding commitments on all matters to be discussed at such meetings, including cost, payments, change orders, time schedules and manpower requirements. This is to include but not limited to, all Project Manager Near Term Meeting and Superintendent Meetings. Further, a penalty of \$500.00 per meeting will be imposed if SUBCONTRACTOR or SUBCONTRACTOR's representative is not present at these meetings. The following person(s) are designated as SUBCONTRACTOR's representatives having the authority as stated herein *we will not be on site for every meeting*

Subcontractor Designated Representative.

Bla Snyder

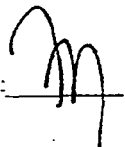
(Optional Representative)

Ty Epley

19 All parties hereby agree that by SUBCONTRACTOR approving and submitting shop drawings, product data, and samples, SUBCONTRACTOR hereby represents that he has reasonably determined and verified all dimensions, quantities, field dimensions, relations to the existing work, coordination with work to be installed later, coordination with information on previously accepted shop drawings, product data, or samples and verification of compliance with all of the requirements of the Contract Documents. Further, the accuracy of such information is the sole responsibility of SUBCONTRACTOR. In reviewing shop drawings, product data, and samples, CONTRACTOR shall be entitled to rely on SUBCONTRACTOR'S representation that such information is correct and accurate.

20 All parties hereby agree that no portion of the work requiring submission of a shop drawing, product data, or sample shall be commenced until CONTRACTOR has received from SUBCONTRACTOR all required shop drawings, product data, or required samples and all have been approved by the appropriate parties. Further, all such portions of the work shall be furnished and installed by SUBCONTRACTOR in accordance with approved shop drawings, product data, or samples.

Contractor Initials:



16

Summit 00362

Subcontractor Initials: TE

34. All parties hereby agree that SUBCONTRACTOR fully agrees to comply with all terms and conditions contained within the Immigration Reform and Control Act of 1986.

35. All parties hereby agree that SUBCONTRACTOR has visited the project site and is aware of all site conditions that affect its scope of work. All parties further agree that no additional compensation will be made due to SUBCONTRACTOR'S failure to familiarize itself with all site conditions prior to the execution of this Subcontract Agreement.

36. All parties hereby agree that SUBCONTRACTOR shall submit a Material Safety Data Sheet (MSDS) notebook to CONTRACTOR'S job site Superintendent prior to commencing work on the project.

37. All parties hereby agree that SUBCONTRACTOR is to furnish and install all necessary heating devices, including fuel for same, necessary for the installation of this scope of work.

38. All parties hereby agree that in the event SUBCONTRACTOR crosses any permanent improvements such as concrete curb or sidewalks, it shall be the responsibility of SUBCONTRACTOR to take the appropriate measures to protect these existing improvements. In the event any areas are damaged, it shall be the SUBCONTRACTOR's responsibility to remove and replace these damaged areas.

39. All parties hereby agree that SUBCONTRACTOR shall have the responsibility of notifying CONTRACTOR seven (7) days prior to any known material shortages on project.

40. All parties hereby agree that SUBCONTRACTOR shall furnish and install a jobsite radio for his jobsite foreman capable of communicating with the CONTRACTOR'S jobsite Superintendent. *we will furnish a cell # capable of communication full time*

41. All parties hereby agree that the trees on the jobsite are of extreme importance to the value of the property. All parties further agree that SUBCONTRACTOR shall be fully liable for any damage caused to these trees by this SUBCONTRACTOR including, but not limited to, consequential damages resulting therefrom.

42. All parties hereby agree that each item required by all Federal, State, and Local governing authorities may not be specifically shown on the Plans and Specifications, however, all requirements imposed by these governing authorities are hereby included in this Subcontract Agreement. Compliance with all governing laws, ordinances, rules, regulations, and lawful orders, inclusive of documentation and/or reporting of occurrences and/or conditions, enacted prior to execution of this Subcontract Agreement for the Work, or portions thereof, provided by this Subcontract, of any governing authority having jurisdiction over the performance of this Work, whether or not yet effective, is hereby included in this Subcontract.

43. All parties hereby agree that all required and necessary submittal data shall be submitted by SUBCONTRACTOR to CONTRACTOR within three (3) days of the signing of this Subcontract Agreement to allow sufficient time for approval.

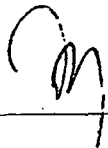
44. All parties hereby agree that SUBCONTRACTOR had in its possession at time of bid all Contract Documents necessary to supply CONTRACTOR a complete turnkey bid for SUBCONTRACTOR's scope of work included herein.

45. All parties hereby agree that SUBCONTRACTOR shall keep at the jobsite on a full-time basis at least one superintendent or foreman who speaks the English Language.

46. All parties hereby agree that all installed items on the project remain the responsibility of SUBCONTRACTOR until accepted by OWNER or OWNER'S representative.

47. All parties hereby agree that any required hoisting, scaffolding, lulls, forklifts or any other machinery of any kind, including labor for same, to unload, store, move around on jobsite, and handle SUBCONTRACTOR's materials to install this scope of work in any nature is included in this Subcontract Agreement. Further, SUBCONTRACTOR agrees to use properly certified personnel to operate equipment while on project site.

48. All parties hereby agree that SUBCONTRACTOR is not authorized to install a SUBCONTRACTOR job sign without written consent of CONTRACTOR.

Contractor Initials: 

18

Summit 00364

Subcontractor Initials: *TE*

ATTACHMENT "B"
SCOPE OF WORK

Roofing, Sheetmetal and Flashing

Furnish all labor, material, permits, equipment, supervision, services, labor taxes, material taxes, insurance, licenses, and any other related cost necessary for a complete execution of all Roofing, Sheetmetal and Flashing, all in their entirety and in strict accordance with the Contract Documents enumerated in Subcontractor Documents Acknowledgment to this Agreement, and in strict compliance with the requirements of all Federal, State and Local governing authorities. This Subcontract Agreement is also to be inclusive of, but not limited to, the following:

1. All parties hereby agree that SUBCONTRACTOR is to furnish and install eave drip and aluminum roof ventilation system as required for the project.
2. All parties hereby agree that SUBCONTRACTOR is to furnish and install all specified felt for the project.
3. Roofing material be 3 tab 25 year fungus resistant shingles in a color or colors as specified by the Owner. There will be no additional charge for multiple colors. Wind ratings testing must meet or exceed those required in the City of Charleston and the state of South Carolina 60 mph wind average / meets ASTM D-3015.
4. All parties hereby agree that SUBCONTRACTOR shall install all starter courses of shingles with doubled lower layer reversed and both layers overlapping eaves and rakes 1 1/2". All parties further agree that the shingles will be laid in straight butt design with weave shingles at valleys and crickets and any other required areas.
5. All parties hereby agree that SUBCONTRACTOR is to furnish and install all chimney flashing and peel and stick tape at the top of the chimney flashing. This is a very critical area and has had problems in the past. - dead valley behind chimney will be evaluated on site.
6. SUBCONTRACTOR to provide and install water dividers per drawings - none on drawings TE.
7. SUBCONTRACTOR to provide and install step flashing per drawings.
8. All parties hereby agree that at the direction of CONTRACTOR the SUBCONTRACTOR shall furnish and properly install and maintain shingle underlayment (roof felt) as soon as building roofs are framed in order to accelerate the start of CONTRACTOR rough-in trades within the building.
9. Submittals of all materials to be to the CONTRACTOR within 2 weeks of receiving contract.
10. All parties hereby agree that SUBCONTRACTOR shall properly flash the backs of all chimneys with tall edge flashing as directed by CONTRACTOR.
11. All parties hereby agree that SUBCONTRACTOR shall provide and properly install all roof ventilators as required.
12. SUBCONTRACTOR to install all plumbing vent boots provided by other.
13. SUBCONTRACTOR to provide and install roof hatches in the breezeways.
14. SUBCONTRACTOR to provide and install pitch pockets for the HVAC units mounted on the breezeways.
15. SUBCONTRACTOR to use a single sheet of roofing material - EPDM - on the breezeway to produce a monolithic sheet that will only be broken by the curb sets for the HVAC systems on the breezeways. Flash tops and sides of curbs. Curbs provided and installed by other SUBCONTRACTOR to waterproof.
16. All parties hereby agree that SUBCONTRACTOR shall notify CONTRACTOR of any problems associated with the substrate prior to the installation of his materials. Any materials installed over improper substrate will be corrected by SUBCONTRACTOR at no additional cost to CONTRACTOR.
17. All parties hereby agree that in CONTRACTOR's direction, SUBCONTRACTOR shall provide and properly install all metal flashing in all areas deemed necessary by CONTRACTOR - feet only TE.
18. All parties hereby agree that SUBCONTRACTOR shall install all corner flashing at chimneys and this corner flashing shall be set over a "patch" of bluthen where the cut in the flashing occurs.

Contractor Initials: _____

19

Summit 00365

Subcontractor Initials: TE

- 19 All parties hereby agree that SUBCONTRACTOR shall install all products in accordance with manufacturer's recommendations. All parties further agree that SUBCONTRACTOR will coordinate a pre-start up meeting with the manufacturer prior to starting work, and upon completion of the work, SUBCONTRACTOR will supply CONTRACTOR a letter from the manufacturer stating installation to be correct. *no manufacturer will do this TE.*
- 20 All parties hereby agree that SUBCONTRACTOR shall provide and properly seal all laps in joints at base flashing, utilizing product as approved by Project Architect.
- ~~21 All parties hereby agree that several mobilizations will be required to complete this scope of work and these mobilizations are hereby included in this Subcontract. *will not enough to minimize mobilization TE.*~~
- 22 All parties hereby agree that SUBCONTRACTOR shall maintain roof felt on roofs until shingles are installed.
- 23 All parties hereby agree that SUBCONTRACTOR shall install all shingles per manufacturer's recommendations, but in no event shall there be less than six (6) nails per shingle.
- 24 All parties hereby agree that SUBCONTRACTOR is to install roof felt with a minimum of a twelve inch (12") overlap.
- 25 All parties hereby agree that SUBCONTRACTOR shall furnish and install eave drip in the longest lengths possible.
- 26 All parties hereby agree that SUBCONTRACTOR is to bend all eave drip at all inside and outside corners as no miter joints will be allowed.
- 27 All parties hereby agree that SUBCONTRACTOR is to overlap eave drip ends a minimum of four inches (4").
- 28 All parties hereby agree that SUBCONTRACTOR is to install the bottom of eave drip ~~string line true~~ *right to face. TE.*
- 29 All parties hereby agree that SUBCONTRACTOR is to furnish and install roofing for all buildings, including but not limited to Clubhouse, Pool Pavilion, Storage Building and 10 Apartment Buildings.
- 30 The SUBCONTRACTOR is to provide the SUBCONTRACTOR'S jobsite foreman with a MEXTEL radio compatible ~~to the CONTRACTOR'S jobsite superintendent.~~ *cell # for use 34/1 TE.*
- 31 Framers will cut and block all roof vent openings. It is the responsibility of the SUBCONTRACTOR to provide locations of the roof vent openings prior to the framers cutting the openings. *see plans for vent locations. TE.*
- 32 Provide and install all required ice and water shields per plans and specifications.

Contractor Initials: 

20

Subcontractor Initials: TE

Summit 00366

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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),
Plaintiffs,

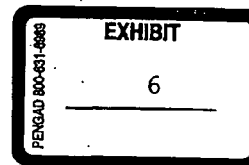
vs.

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 CONTRACTORS GROUP,
INC., SUMMIT CONTRACTORS, INC.,
FUGLEBERG KOCH ARCHITECTS,
INC., DEVELOPMENT, COMPLIANCE
& INSPECTIONS, INC., H2L
CONSULTING ENGINEERS, TWELVE
OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC., (from
August 8, 2006 to December 15, 2008,
PROFESSIONAL PLASTERING &
STUCCO, INC., JOHNSON
COMPANIES, INC., d/b/a JOHNSON
ROOFING, INC., LOS CAMPOS, INC.,
NORTH FLORIDA FRAMING, INC.,
BEST MASONRY & TOOL SUPPLY,
L.P as successor in interest to BEST
MASONRY & TOOL SUPPLY, INC., as
successor in interest to MAGNA WALL,
INC., ALL SOUTH VINYL PRODUCTS,
INC., MARQUEZ CONSTRUCTION,
INC., J.T. WALKER INDUSTRIES,

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-10-49

SETTLEMENT AND RELEASE
AGREEMENT BY AND BETWEEN
PLAINTIFFS, SUMMIT
CONTRACTORS, INC., SUMMIT
CONTRACTORS GROUP, INC., AND
FEDERAL INSURANCE COMPANY



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, CHRIS)
COBBS, individually, and FEDERAL)
INSURANCE COMPANY, MARIA)
ARIAS, MIQUEL ROSALES, APS)
ENTERPRISES UNLIMITED, INC., HR)
ELECTRIC, A.M. JACOBS, INC.,)
MICKEY MASON d/b/a MASON)
CONTRACTORS, KMAC OF THE)
CAROLINAS, INC., AND NEO)
CORPORATION,)

Defendants.

PROFESSIONAL PLASTERING &
STUCCO, INC.

Defendant/Third-Party Plaintiff,

vs.

LUIS MARTINEZ, VILLAGOMEZ
PAINTING, INC., AND D.M.
PAINTING.

Third-Party Defendants.

APS ENTERPRISES UNLIMITED, INC.

Defendant/Third-Party Plaintiff,

vs.

C&N STUCCO AND PLASTERING,
INC.

Third-Party Defendant.

THIS SETTLEMENT AND RELEASE AGREEMENT is made and entered
into as of the _____ day of _____, 2010, by and among Twelve Oaks at
Fenwick Property Owners Association, Inc. and Mark F. Teseniar and Nan M. Teseniar,

individually, and on behalf of all others similarly situated (hereinafter referred to as "Releasors") and Summit Contractors, Inc., Summit Contractors Group, Inc., and Federal Insurance Company (hereinafter referred to as "Releasees").

WHEREAS, the Releasors own, owned, or have/had an interest in real property and improvements consisting of a multi-building condominium property known as the Twelve Oaks at Fenwick Plantation, located on Johns Island, in Charleston County, South Carolina (the "Property"); and

WHEREAS, Summit Contractors, Inc., by and through subcontractors, served as the General Contractor and originally constructed the Property as an apartment complex for the original owner and subsequently oversaw and made repairs to the Property while still an apartment complex; and

WHEREAS, Summit Contractors Group, Inc., was alleged by Releasors to have been a successor corporation of Summit Contractors, Inc, which allegation is not admitted and is specifically denied by Releasees; and

WHEREAS, Federal Insurance Company was a surety at the time of original construction of the Property that issued a Performance Bond to Summit Contractors, Inc.; and

WHEREAS, the Releasors have alleged that there are problems and defects in the Property as it relates to, among other things, the original construction and the repairs performed prior to and up until the time the Property was converted to condominiums; and

WHEREAS, the Releasors allege damages resulting from the above problems, and that such claimed problems and defects are the responsibility of the Releasees, as well as others; and

WHEREAS, Releasees deny that such defects and problems exist and deny responsibility for any resulting damages; and

WHEREAS, Releasors have instituted a civil action in the Court of Common Pleas for Charleston County, South Carolina styled as shown in the caption hereinabove (the "Lawsuit"); and

WHEREAS, Releasees subsequently filed, in the same civil action, various answers, as well as cross-claims against Defendants which are not parties to this Agreement ; and

WHEREAS, Releasors and Releasees desire to fully, finally and forever compromise, release, void and forever settle all past or present claims made or capable of being made in the Lawsuit against Releasees and all future claims no matter when arising (resulting in past, present and future damages) or any other claims now existing or arising in the future against Releasees: (a) relating to any and all construction deficiencies or Code violations, whether known or unknown, from original construction and subsequent repairs as well as any resulting damages; (b) relating to defects in, or the design, manufacturing, sale, marketing, distribution, Code compliance, use of, or any other claim relating to the components used in the Property, whether known or unknown; (c) relating in any way to the Property; (d) arising under any implied or express warranties (all of which are referred to hereinafter as "Deficiencies") of which Releasors knew or, in the exercise of reasonable care, could have known, or which may arise in the future, whether known or unknown, including all claims for such Deficiencies set forth in the Lawsuit, and (e) relating to any obligations under the Bond issued by Federal Insurance Company.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

1. For and in consideration of the sum of Five Million and 0/100 (\$5,000,000.00) Dollars and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by or on behalf of the Releasees, Releasors do for themselves and their heirs and assigns, successors, subsequent buyers, affiliates or those claiming through them, hereby remise, release, acquit, void and forever discharge Releasees, their successors, assigns, partners, agents, insurers, sureties, affiliates, subsidiaries, parent companies, predecessor companies, attorneys, servants and employees and any other person or entity of any kind of any nature for which Releasees could be held liable or responsible of and from any and all past, present and future claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages), costs, causes of actions, warranties, guarantees, suits at law or in equity, claims for breach of express or implied warranty, expenses and fees of attorneys, expenses and fees of consultants and/or experts, physical injuries, and any and all claims of any nature or kind whatsoever, now existing or which may hereinafter arise or accrue, whether known or unknown, arising out of or related to (a) all claims made or capable of being made in the Lawsuit, whether known or unknown; (b) all construction deficiencies and violations of Building Codes, industry standards or practices, and product and component Deficiencies associated with the Property whether existing now or arising in the past or future and whether known or unknown; (c) all engineering or design related matters; (d) any claims arising or which may arise under express or implied warranties now or in the future; (e) all physical injuries suffered in the past or that may be suffered in the future by Releasors or any subsequent purchaser caused directly or indirectly by any construction issues or repair issues to the original construction (f) all past, present or future damages whether known or unknown arising from the construction or repair of the Property or

use of any components on the Property; (g) any claims for loss of use and/or diminution of value; and (h) any and all other claims of any nature whatsoever relating to the Releasee. Notwithstanding the generality of the foregoing releases, this Release is not intended to, nor shall it operate to, release any of the Releasors' claims or Releasees' claims against the remaining non-settling parties, whether they are parties to this action or not, nor shall it release Federal's rights and claims as reserved at paragraph 7 of this Agreement.

2. For the consideration set forth in paragraph one above, Releasors also agree to execute, or cause their counsel to execute, a stipulation, order, or other document required to dismiss with prejudice the Lawsuit and all specific claims therein or claims which could have been brought as to the Releasees and the entities identified above with prejudice.

3. Releasees and Amerisure Insurance Co. agree to assign to the Plaintiff Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA") all indemnity, contribution, cross-claims and unspecified claims against all sub-contractors, lower tier sub-contractors, material suppliers, material manufacturers and all other parties having any connection with the Project who are not being released by this Release and/or their insurers in the action or which might be brought into the action, except for the claims reserved by Federal at paragraph 7 of this Agreement.

4. Summit Contractors, Inc., Summit Contractors Group, Inc., and Amerisure Insurance Co. further agree to assign all contractual indemnity claims they may have to the POA for the POA to file a subrogation claim in Summit Contractors, Inc.'s name. POA, in consideration for this agreement, will defend, indemnify, and hold harmless Releasees and Amerisure Insurance Co. as to any cross claims or third party claims brought by any

parties as a result of the contractual indemnity subrogation claims filed in Summit Contractors, Inc.'s name.

5. POA will defend, indemnify, and hold harmless, including, but not limited to attorneys fees, any judgment, any settlements agreed upon, and costs, Releasees and their insurers as to any cross claims or third party claims brought by JR Hobbs Co. Atlanta, LLC f/k/a JRH Merger Co., LLC and APS Enterprises Unlimited, Inc. against Releasees.

6. POA will defend Releasees and their insurers at POA's expense and pay all costs associated in the defense as to any cross claims or third party claims brought by any present parties to the Lawsuit.

7. The Releasors agree to release all claims against Releasees and their insurance carriers and that each party will bear their own costs and attorneys fees. Provided, however, that Federal does not release any of Federal's Indemnity rights or claims for attorney fees and costs against the principal(s) on the surety bond(s) or against any signatories of whatever General Indemnity Agreement applies in connection with the surety bond.

8. Releasees and their insurers will authorize its consulting experts McGee Consulting, Construction, Science and Engineering, and Watkins Services to serve as consulting experts for Releasors. Releasors agree to pay all fees to the experts for consultation services from the date of this Release and forward. Releasees will be responsible for all costs incurred prior to the date of this Release.

9. It is specifically agreed that this Release does not release or dismiss any claims against the remaining parties who have not agreed to settle.

10. This Agreement shall cover and shall include, and does cover, and does include, any and all future damages which may arise as a result of Construction Deficiencies at

Twelve Oaks not now known to the Releasors against Releasees, but which may later develop or be discovered, including the effects or consequences thereof, and including all causes of action therefor.

11. The settlement is contingent upon approval of the class action settlement.

12. Releasors and Releasees hereby acknowledge that this settlement is the compromise of doubtful and disputed claims and that the payment of the settlement amount is not to be construed as an admission of liability on the part of the Releasees to this Lawsuit or any claim arising from the Lawsuit, but is entered into to avoid further litigation.

13. Releasors and Releasees 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 this instrument because of a mistake in fact or information or otherwise.

14. Releasors and Releasees declare and represent that they have read this agreement and acknowledge that they have the advice of counsel with respect to its execution. No promise, inducement, or agreement not herein expressed has been made to any party. This instrument contains the entire agreement between Releasors and Releasees hereto and oral representations or agreements, not referenced herein, are of no effect. The terms of this instrument are contractual and not a mere recital. If any paragraph or part of this agreement is found void or unenforceable, the remainder of this agreement shall not be affected.

15. Releasors represent and warrant that at the time this Settlement and Release Agreement is executed, they are the sole owners of the claims being released and that no other person, firm or entity owns any interest in the claims that are covered by this Settlement and Release Agreement whether by assignment, subrogation, purchase or otherwise. Should any person, firm or entity claim the ownership and right to these claims at the time the

Settlement and Release Agreement is executed or any claim which arises in the future, then Releasors will defend and indemnify and hold harmless Releasee from any and all such claims brought by the rightful owner, including, but not limited to, all attorneys fees and costs.

16. This instrument is binding on Releasors and the Releasees, their successors, buyers, partners, agents, insurers, parent companies, affiliates, servants, employees, heirs, purchasers and assigns and all past, present and future owners of the Property, including, but not limited to, individual units and/or the common areas. It is further agreed that the Order of Dismissal as to Releasees will set forth this provision.

17. This agreement shall be construed in accordance with the laws of the State of South Carolina.

18. The parties acknowledge and agree to the terms of the agreement and represent that the attorneys for the Releasees are authorized to sign this agreement for and on behalf of Releasees.

19. Summit Contractors, Inc. and Summit Contractors Group, Inc. further agree that Summit's employees shall cooperate with Releasors during the pendency of the Lawsuit and shall testify at trial at Releasors' request without the need for Releasors to serve subpoenas on these witnesses. Releasors agree to pay all costs associated with travel, lodging, and meals.

20. This settlement is intended to settle all the liability of Releasees with respect to these matters which are, or could have been, brought in the Lawsuit. The settlement amount was arrived at after lengthy and sometimes difficult settlement discussions, and paid in good faith and, therefore, prohibits any claims against the Releasees for contribution pursuant to the South Carolina Contribution Among Tortfeasors Act.

Signature pages to follow.

IN WITNESS WHEREOF, the parties have executed and delivered the foregoing
Settlement and Release Agreement as of the day and year first written above.

11/9, 2010

[Signature]
Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: HOA BOARD PRESIDENT

Its: [Signature]

WITNESSES:

[Signature]

[Signature]

[Signature]
Laurie M. Dwyer 11/9/2010
[Signature]
Nicholas S. Reicher 11-9-10

A copy of a Resolution of the Board of Directors of the POA or the meeting minutes
approving the terms of this Agreement is attached hereto and made a part hereof.

N/9/10, 2010

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

11-9, 2010

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

WITNESSES:

M. T. Teseniar
C. F. Teseniar

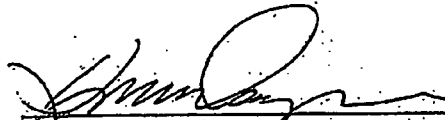
_____, 2010


Summit Contractors, Inc.
By: Chuck Davidson
Its: VP General Counsel

WITNESSES:

Diane M. Beal
J. M. Huest

12/8, 2010


Summit Contractors Group, Inc.
By: Chuck Davidson
Its: VP General Counsel

WITNESSES:

Diane M. Beal
J. M. Huest

NOVEMBER 18, 2010

Wayne R. Walton
Federal Insurance Company
By: WAYNE R. WALTON
Its: SURETY CLAIMS COUNSEL

WITNESSES:

Anthony Harwood
Christina L. Roms