

THE STATE OF SOUTH CAROLINA
In the 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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SC Court of Appeals

RECORD ON APPEAL VOLUME II of IV
(Pages 460 - 953)

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April 4, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

**Re: Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others
similarly situated v. H2L Consulting Engineers, et al
In the Court of Common Pleas for Charleston County
C.A. No: 2008-CP-10-49**

Dear Ms. Armstrong:

Enclosed herewith for filing in the referenced matter is *Settlement Agreement Among Plaintiffs, H2L Consulting Engineers, Inc., and APS Enterprises Unlimited, Inc.* Please file the original, mark the extra copy "filed" and return it to me in the return envelope provided. A copy of this letter and enclosure has today been served on all counsel of record by e-mail.

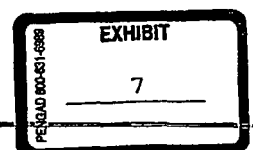
Thank you for your assistance in this matter.

Very truly yours,



Ellen S. Cheek
echeek@wilkesbowers.com

Enclosure.
cc with Enclosure to:
All Counsel of Record (Via Email Only)



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C.A. No.: 2008-CP-10-49

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),)

**SETTLEMENT AGREEMENT
AMONG PLAINTIFFS,
H2L CONSULTING ENGINEERS,
AND**

Plaintiffs,)

APS ENTERPRISES UNLIMITED, INC.

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, Inc.,
J.T. Industries D/B/A General Aluminum
Corporation and General Aluminum Company of
Texas, LP, and 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.)

Professional Plastering & Stucco, Inc.,	)
	)
Third-Party Plaintiffs,	)
v.	)
	)
Maria Arias, Miquel Rosales, and APS	)
Enterprises Unlimited, Inc.,	)
	)
Third-Party Defendants.	)
APS Enterprises Unlimited, Inc.,	)
	)
Third-Party Plaintiff,	)
v.	)
	)
C&N Stucco and Plastering, Inc.,	)
	)
Third-Party Defendant.	)

This Settlement Agreement ("Settlement Agreement") is made as of the 31st day of ~~February~~ ^{March}, 2011, by and among Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all other similarly situated (the "Plaintiff Class"), Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA"), Hendrix LeBlanc Lewis, Inc., d/b/a H2L Consulting Engineers ("H2L"), and APS Enterprises Unlimited, Inc. ("APS").

WHEREAS, the Plaintiff Class and the POA (collectively referred to herein as "Plaintiffs") own, owned, have or had an interest in real property and improvements consisting of a multi-building condominium property known as the Twelve Oaks at Fenwick Planation, located on John's Island, in Charleston County, South Carolina (the "Property"), which Property was originally designed, built and operated as an apartment complex; and

WHEREAS, H2L provided certain engineering consulting services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, APS provided certain stucco-related services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, Plaintiffs have alleged there to be design and construction defects, deficiencies, and/or problems in and with the Property allegedly relating to the Property's original construction, as well as to the repairs that were performed after the original construction was completed; and

WHEREAS, Plaintiffs have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of H2L, as well as others; and

WHEREAS, Plaintiffs and/or others now represented by Plaintiffs instituted two civil actions (collectively, the "Actions") in the Court of Common Pleas for Charleston County, South Carolina, which Actions were consolidated into the above-styled lawsuit (the "Lawsuit"); and

WHEREAS, H2L denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, APS has been sued in the Lawsuit as a direct Defendant by Plaintiffs, and as a Third-Party Defendant by a defending party that alleges as follows: (1) that it subcontracted with APS for APS to perform stucco-related work at the Property; (2) that APS agreed to indemnify, defend, and hold it harmless for any claim, liability, demand, suit or judgment entered against it with respect to the Property and the Lawsuit; and (3) that APS negligently performed its work at the Property; and

WHEREAS, APS denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, APS has asserted a cross-claim against H2L, alleging that APS is entitled to full equitable and contractual indemnity and contribution from H2L with respect to any costs incurred by APS in relation to the Lawsuit, including defense costs, attorneys fees, settlement payments and any judgment entered against it; and

WHEREAS, H2L denies any obligation to defend or indemnify APS; and

WHEREAS, Plaintiffs, H2L and APS (collectively, the "Parties") have agreed as follows:

1. Plaintiffs will promptly petition the court for approval of a settlement with H2L as stated in the Receipt, Release and Indemnity Agreement (the "Release Agreement") attached hereto as Exhibit 1.

2. If the court approves the proposed settlement and H2L tenders the payment required by the Release Agreement, Plaintiffs will execute the Release Agreement and deliver it to H2L's counsel in the Lawsuit, together with a dismissal with prejudice of Plaintiffs' claims against H2L in the Lawsuit. If the court does not approve this settlement, this Settlement Agreement shall be void as to Plaintiffs and H2L.

3. If the court approves the proposed settlement, APS will deliver to H2L's counsel a dismissal without prejudice of its Cross-Claim against H2L.

4. This Settlement Agreement is without prejudice to Plaintiffs' claims against APS, all of which are specifically preserved and which Plaintiffs continue to prosecute.

5. It is fully agreed by the parties hereto that this Settlement Agreement does not constitute an admission of liability by H2L, nor is it an admission of any fact or circumstance out of which the Lawsuit arises, but is made solely for the purpose of avoiding further litigation.

6. The parties further declare and represent that no promise, inducement or agreement not herein expressed has been made to any of the parties and that this Settlement Agreement contains the entire agreement between the parties hereto and the terms of this Settlement Agreement are contractual, and not mere recitals.

7. This Settlement Agreement shall be construed and enforced in accordance with the laws of South Carolina.

8. This Settlement Agreement may be executed by delivery of copies of signature pages by facsimile or electronic mail.

*Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.*

*Justin Lucey
by [Signature]*

Justin Lucey
JUSTIN O'TOOLE LUCEY, PA
PO Box 806
Mount Pleasant, SC 29465
Attorney for Plaintiffs

March 21
February , 2011

WITNESSES:

[Signature]

[Signature]

[Signature]

Mark Teseniar, individually, and on behalf of all
others similarly situated

Date: 3/28/11

[Signature]

Nan Teseniar, individually, and on behalf of all
others similarly situated

Date: 3/28/11

*Settlement Agreement Among Plaintiffs,
HLL Consulting Engineers, and
APS Enterprises Unlimited, Inc.*

WITNESS:

[Signature]

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: *[Signature]* 3/22/11

Its: *Secretary*

Date: 3/22/11

[Signature]

BOARD PRESIDENT
2011, MARCH-23

[Signature]
Vice President

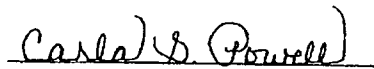
*Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.*



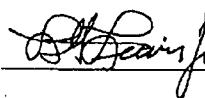
Michael B.T. Wilkes
WILKES BOWERS, P.A.
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
Attorney for Defendant
Hendrix LeBlanc Lewis, Inc.
d/b/a H2L Consulting Engineers, Inc.

February 16, 2011

WITNESS:



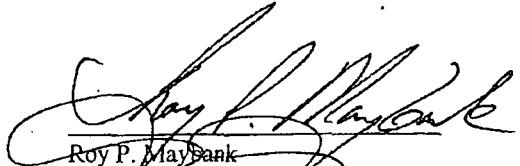
Hendrix LeBlanc Lewis, Inc.
d/b/a H2L Consulting Engineers, Inc.

By:  PE, FASPE

Its: Chairman

Date: 16 February 2011

Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.

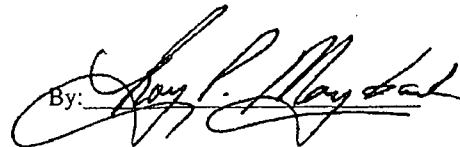

Roy P. Maybank
MAYBANK LAW FIRM, LLC
PO Box 12579
Charleston, SC 29422
Attorney for APS Enterprises Unlimited, Inc.

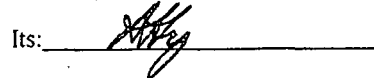
March
February 30th, 2011

WITNESS:



APS Enterprises, Unlimited, Inc.

By: 

Its: 

Date: 3/30/2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C.A. No.: 2008-CP-10-49

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

**RECEIPT, RELEASE
AND INDEMNITY
AGREEMENT**

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, Inc.,)
J.T. Industries D/B/A General Aluminum)
Corporation and General Aluminum Company of)
Texas, LP, and 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.)

EXHIBIT 1

1 of 9

Professional Plastering & Stucco, Inc.,	)
	)
Third-Party Plaintiffs,	)
v.	)
	)
Maria Arias, Miquel Rosales, and APS	)
Enterprises Unlimited, Inc.,	)
	)
Third-Party Defendants.	)
APS Enterprises Unlimited, Inc.,	)
	)
Third-Party Plaintiff,	)
v.	)
	)
C&N Stucco and Plastering, Inc.,	)
	)
Third-Party Defendant.	)

This Receipt, Release and Indemnity Agreement ("Agreement") is made as of the ____ day of _____, 2011, by Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all other similarly situated (the "Plaintiff Class"), and Twelve Oaks at Fenwick Property Owners Association, Inc. (the "POA").

WHEREAS, the Plaintiff Class and the POA (collectively referred to herein as "Plaintiffs") own, owned, have or had an interest in real property and improvements consisting of a multi-building condominium property known as the Twelve Oaks at Fenwick Planation, located on John's Island, in Charleston County, South Carolina (the "Property"), which Property was originally designed, built and operated as an apartment complex; and

WHEREAS, Hendrix LeBlanc Lewis, Inc., d/b/a H2L Consulting Engineers ("H2L") provided certain engineering consulting services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, Plaintiffs have alleged there to be design and construction defects, deficiencies, and/or problems in and with the Property allegedly relating to the Property's original construction, as

well as to the repairs that were performed after the original construction was completed; and

WHEREAS, Plaintiffs have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of H2L, as well as others; and

WHEREAS, Plaintiffs and/or others now represented by Plaintiffs instituted two civil actions (collectively, the "Actions") in the Court of Common Pleas for Charleston County, South Carolina, which Actions were consolidated into the above-styled lawsuit (the "Lawsuit"); and

WHEREAS, H2L denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, Plaintiffs reached a compromise settlement in this case with Summit Contractors, Inc., Summit Contractors Group, Inc., and Federal Insurance Company (hereinafter referred to as "Summit and Federal") in which Summit and Federal, among other things, assigned to Plaintiffs any and all indemnity, contribution, cross-claims and unspecified claims against all subcontractors, material suppliers, material manufacturers and all other parties having any connection with the Property who were not released by Plaintiffs' settlement and release agreement with Summit and Federal; and

WHEREAS, Plaintiffs, for themselves and as the assignees of Summit and Federal, now desire to forever compromise and settle all claims that were asserted by Plaintiffs against H2L, or that could have been asserted against H2L, rather than pursue this Lawsuit. The Parties enter into this Agreement to provide for certain promises and covenants in full settlement, compromise and discharge of any and all claims relating to any work performed by H2L at or with respect to the Property, and to any rights to contribution or indemnity that arguably arose in relation to such work, and/or damages relating to H2L's work with respect to the Property, including all claims which were asserted, or which could have been asserted, by Plaintiffs, for themselves or as the assignees of Summit and Federal, against H2L in this Lawsuit, and which are resolved by this Agreement.

NOW, THEREFORE, in consideration of the promises, conditions, undertakings and representations contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiffs hereby agree as follows:

1. Release and Indemnity by Plaintiffs: For and in receipt of the consideration in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) paid to Plaintiffs by H2L and the mutual covenants of this Agreement, Plaintiffs, and Plaintiffs as the assignees of Summit and Federal (hereinafter collectively referred to as the "Releasers"), do hereby remise, release, acquit, absolve, and forever discharge H2L and its respective successors, purchasers, assigns, officers, directors, partners (general or limited), shareholders, parents, subsidiaries, affiliates, agents, attorneys, employees, contractors, consultants, servants, heirs, executors, administrators, predecessors, sureties and insurers (including without limitation Continental Casualty Insurance Company, but only as to its Policy AEH 006161988 issued to H2L, under which it has defended and indemnified H2L in the Lawsuit), and all other persons, firms, corporations, associations or partnerships, whether herein named or referenced, and who together with H2L may be liable to Releasers and their heirs, successors, purchasers and assigns (hereinafter, "Releasees"), from and against: (a) any and all past or present claims, actions, causes of action, suits, rights, damages, or demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature whatsoever, whether known or unknown, that were asserted or could have been asserted in the Lawsuit or that relate in any way to the Property; and (b) future claims, actions, causes of action, suits, rights, damages, or demands of every nature and/or kind whatsoever, whether known or unknown, that accrue, arise or are otherwise acquired as a result of actions or events that occurred or transpired in whole or in part prior to the execution of this Agreement, for alleged injuries, losses or damages, expenses, liability and obligations of every kind or character (including consequential damages and any attorneys' fees or expenses of litigation) that were asserted or could have been

asserted in the Lawsuit or that relate in any way to the Property. Releasors agree to indemnify Releasees for (1) all claims made by or through Releasors' rights, by assignment, subrogation, or otherwise, relating to claims which were made or could have been made in this Lawsuit being settled herewith; and (2) all claims made by owners of an interest in the Property and their successors which relate in any manner to the foregoing claims. For any claim upon which Releasees are entitled to indemnity, the indemnity shall include, without limitation, defense of said claim and indemnity for attorneys' fees incurred in defending said indemnified claim. Notwithstanding the generality of the foregoing releases, this Agreement is not intended to release, nor shall it operate to release, any other party to the Lawsuit other than H2L.

2. Warranties by Releasors: Releasors further represent and warrant that they have not assigned, and will not hereafter assign, to any person or entity, all or any portion of any claim whatsoever which they may have, or may have had, or may claim in the future, against Releasees. Releasors further represent and warrant that they are the sole proper parties to assert those claims referenced above, and/or to receive any proceeds paid pursuant to this Agreement, and that they have the right and authority to execute this Agreement on behalf of the parties for whom each signs.

3. Dismissal of Claims by Plaintiffs: By virtue of the execution of this Agreement, Plaintiffs also agree to execute or cause their counsel to execute and file a Stipulation of Dismissal, or equivalent order or document, as required to dismiss, with prejudice, all claims by Plaintiffs against H2L within the Lawsuit and to deliver same to H2L's counsel for filing.

4. No Admission of Liability: The terms of this Agreement represent a compromise of doubtful and disputed claims, and any monetary payment or other consideration tendered pursuant to its terms shall not be considered an admission of liability on the part of H2L, which expressly denies all liability.

5. Coverage of Future Damages. This Agreement shall cover and include, and does cover and

include, any and all future damages which may arise as a result of construction deficiencies at the Property, which are not now known to Releasors, but which may later develop or be discovered, including the consequences thereof and any causes of action therefore.

6. Entire Agreement. This Agreement contains the entire agreement with respect to any claim whatsoever which Releasors may have, may have had, or may claim in the future to have, against Releasees; and this Agreement may be pled as a defense in any action or other proceeding which may be brought or instigated arising out of the such claims, demands, actions, and/or causes of action. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, assigns, affiliates, subsidiaries, purchasers, and parent corporations of Releasors and Releasees. Releasors agree that any and all representations or warranties of any kind, whether express or implied, that ever existed with respect to H2L's work in relation to the Property or with respect to the claims that were asserted, or could have been asserted, in this Lawsuit are hereby null and void. Releasors further agree that there are and were no oral or written representations, warranties, understandings, stipulations, agreements or other promises pertaining to this Agreement that are not incorporated in writing in this documents. Neither this Agreement nor any of its terms shall be amended, modified, or abrogated, except upon written agreement executed by Releasors and H2L.

7. Full and Final Release. The promises and undertakings set forth herein are the sole consideration for this Agreement, and the conditions stated herein are contractual and not a mere recital. This Agreement shall be effective as a full and final accord and satisfaction and mutual release of Releasees by Releasors, as set forth herein, and all agreements and undertakings on the subject matter hereof are expressed and embodied herein.

8. Voluntary Release. Releasors declare that, prior to executing this Agreement, they have apprised themselves with sufficient relevant information, through sources of their own selection, in

order to exercise their own judgment in deciding whether to execute this Agreement. Releasors further declare and represent that this Agreement is executed voluntarily and with full knowledge of its consequences, and that each party executing this Agreement is authorized to do so.

9. Attorneys' Fees and Costs. Releasors shall bear their own attorneys' fees and costs arising from this Lawsuit, the actions of their counsel, any litigation between these parties, and this Agreement.

10. Construction of Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

11. Severability. If any paragraph, subparagraph, sentence or clause of this Agreement is adjudged illegal, invalid or unenforceable, the balance and remainder of this Agreement shall remain in full force and effect, with the exception that the Agreement and the settlement upon which it is based shall be null and void if the Court does not approve the Plaintiff Class' settlement herein.

12. Voluntary Acceptance. Releasors represent that (i) they have relied upon the advice of their attorney(s) and other advisor(s) of their own choosing; (ii) they have not relied on any advice from any other party, or from any attorney(s) or advisor(s) of any other party; and (iii) they have completely read and understand the terms of this Agreement, and that they fully accept those terms. Releasors further acknowledge and agree that this Agreement is the result of negotiations between and among the parties, each having its own counsel, and that no legal presumption will arise against any party as the drafter of this Agreement.

13. Cross-claims and Third Party Claims. Releasors agree that the POA will defend, indemnify and hold harmless H2L and its insurers at the POA's expense, and that the POA will pay all costs associated with the defense of H2L, as to any cross-claim or third party claim brought against H2L by any past, present or future party to the Lawsuit.

14. Prohibition of Contribution Claims. This Agreement is intended to settle any and all liability

of H2L with respect to the claims and matters which have, or could have been, asserted in the Lawsuit. The settlement amount was arrived at after lengthy, arms-length negotiations, and is paid in good faith; therefore, it prohibits any claims against H2L for contribution pursuant to the South Carolina Contribution Among Tortfeasors Act.

Tesceniar, et al v. H2L, et al
Receipt, Release and Indemnity Agreement

WITNESSES:

CL P...

J. J. H.

WITNESSES:

CL P...

J. J. H.

Mark Tesceniar

Mark Tesceniar, individually, and on behalf of all others similarly situated

Nan Tesceniar

Nan Tesceniar, individually, and on behalf of all others similarly situated

[Additional Signature Page to Follow]

WITNESSES:

AM 7M
CL Pitt

CL Pitt

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: Edwards 3/22/11

Its: Secretary

President
Vice President

WITNESSES:

M. J. M.
C. P. T.

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: Edwary 3/22/11

Its: Secretary

[Signature]
BOARD PRESIDENT
2011, MARCH 23

CERTIFICATE OF SERVICE

I certify that on April 4, 2011, I caused to be served a true and correct copy of the following document on counsel of record by electronic mail on all other parties as noted below:

Documents Served:

1. *Settlement Agreement Among Plaintiffs, H2L Consulting Engineers, and APS Enterprises Unlimited, Inc.*

Attorneys for Plaintiffs:

W. Jefferson Leath, Jr., Esquire
Leath, Bouch & Crawford, LLP
92 Broad Street (29401)
PO Box 59
Charleston, SC 29402

John T. Chakeris, Esquire
The Chakeris Law Firm
PO Box 397
Charleston, SC 29402

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Blvd., Suite A
Mt. Pleasant, SC 29464

Jesse A. Kirchner, Esquire
Thurmond Kirchner Timbes & Yelverton, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401

Justin Lucey, Esquire
Justin O'Toole Lucey, PA
PO Box 806
Mount Pleasant, SC 29465

Attorneys for Fugleberg Koch:

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M. Elizabeth Jowers, Esquire
Carlock Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531

Attorney for KMAC of the Carolinas, Inc.:

Robert D. Waltz, Esquire
445 Folly Road
Charleston, SC 29412

Attorney for Development

Compliance & Inspection:
J. Blanton O'Neal, IV, Esquire
Hood Law Firm, LLC
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Charleston, SC 29401

Attorney for All South Vinyl Products, Inc.

Michal C. Jones, Esquire
Kelley S. Cannon, Esquire
Howser, Newman & Besley, LLC
PO Box 12009
Columbia, SC 29211

Attorney for J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
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Charleston, SC 29413
40 Calhoun St., Ste 200
Charleston, SC 29401

Attorney for Twelve Oaks at Fenwick Property Owners Association, Inc.

Andrew S. Halio, Esquire
Halio & Halio, PA
PO Box 747
Charleston, SC 29402

Attorney for Best Masonry & Tool Supply, L.P. as successor in interest to Magna Wall, Inc.

R. Bryan Barnes, Esquire
J. Geoff Osborn, Jr., Esquire
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

Attorney for APS Enterprises Unlimited, Inc.:

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
PO Box 12579
Charleston, SC 29422

Attorney for C&N Stucco & Plastering, Inc.:

William A. Scott, Esquire
Pedersen & Scott, PC
775 St. Andrews Boulevard
Charleston, SC 29407

Attorney for North Florida Framing, Inc.

M. Dawes Cooke, Jr., Esquire
Randell C. Stoney, Jr., Esquire
Barbara J. Wagner, Esquire
Barnwell Whaley Patterson & Helms, LLC
885 Island Park Drive
Charleston, SC 29492

Attorney for Johnson Companies, Inc. d/b/a Johnson Roofing, Inc.

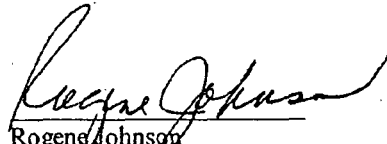
Charles G. Blackburn, Esquire
PO Box 6648
Columbia, SC 29260

Attorney for Los Campos, Inc.

Dunn D. Hollingsworth, Esquire
Robertson & Hollingsworth
Wachovia Center
177 Meeting Street, Suite 300
Charleston, SC 29401

Attorney for Nava Guzman Construction, Inc.:

M. Brittain Travis
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402


Rogene Johnson
Paralegal

SETTLEMENT, RELEASE and CONFIDENTIALITY AGREEMENT

THIS SETTLEMENT, RELEASE and CONFIDENTIALITY AGREEMENT is made this ____ day of _____, 2010, by and between **Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated** (hereinafter referred to as "RELEASORS"); and **All South Vinyl Products, Inc. ("All South")**; (hereinafter referred to as "RELEASEE").

WHEREAS, RELEASORS owned certain property consisting of condominium dwelling units, consisting of real property and improvements located in Charleston County, South Carolina, commonly known as Twelve Oaks at Fenwick Plantation.

WHEREAS, various entities were involved in the design, development and construction the property, including Fenwick Plantation Tarragon, LLC; Charleston Tarragon Manager, LLC, Tarragon Development Corporation, Summit Contractor's Group, Inc., and Fugelberg Koch Architects, Inc. (hereinafter collectively referred to as "Builder Defendants"); and

WHEREAS, Builder Defendants subcontracted with various subcontractors to complete construction of different phases of the buildings comprising the Properties; and

WHEREAS, All South Vinyl Products, Inc. manufactured and installed the railings at the breezeways and balconies on the Properties pursuant to a subcontract with the Builder Defendants; and

WHEREAS, RELEASORS have alleged that there are problems and defects in the Properties; that said problems and defects are a result of the improper design, construction, application, manufacture, installation, and/or sale of the Properties and their components, including without limitation the railings at the breezeways and balconies of the Properties; and

WHEREAS, the RELEASEE denies that such defects and problems exist; and

WHEREAS, RELEASORS have asserted claims against Builder Defendants for damages allegedly incurred as a result of the alleged design and construction defects in the Properties; and

WHEREAS, RELEASORS have instituted a civil action in the Circuit Court for Charleston County, South Carolina, styled "*Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated v. Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A Fenwick Terragon Apartments, LLC, A South Carolina Limited Liability Company, et al.*," Civil Action No. 2008-CP-10-49, (the "Lawsuit").

WHEREAS, RELEASEE subsequently filed, in the Lawsuit, various answers, cross-claims and/or counterclaims against other parties to the action;

WHEREAS, RELEASORS reached a settlement agreement with certain of the Builder Defendants, including specifically Summit Contractors Group wherein all rights, causes of action and cross-claims against the Releasee were assigned to the Releasors;

WHEREAS, all Parties to this Agreement desire to fully, finally and forever compromise and settle all past, present and future claims against one another involving, in any way, the Properties, including, but not limited to, all claims which were raised or which could have been raised in the Lawsuit, all claims related to the design, construction, manufacture, marketing, and/or sale of the Properties and any of their component parts by RELEASEES, and any and all claims related to any and all alleged design or construction problems and defects in the House, whether such problems and defects are now known or are hereafter discovered;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

1. RELEASOR, for and in consideration of the sum of Seventy-five Thousand and No/100 (\$75,000.00) Dollars (the "Settlement Amount"), to be paid by or on behalf of the RELEASEE, the receipt and sufficiency of which is hereby acknowledged, does for itself, its successors, heirs, purchasers and assigns, hereby remise, release, acquit, and forever discharge RELEASEE, their successors, assigns, partners, agents, insurers, sureties, subcontractors, servants and employees, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together with the RELEASEE may be liable to RELEASORS, its successors, heirs, purchasers and assigns, 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 action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue, and all known and unknown, discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from, any and all matters or things done, omitted or suffered to be done by RELEASEE in connection with the Properties, including, but without limiting the above in any way, of and from:

All claims which were raised, or which could have been raised, in the Lawsuit, including those claims assigned by other parties; as to the Release

All past, present and future claims related to the design, construction, manufacture, marketing, and/or sale of the Properties and any of its component parts; as to the Release

All past, present and future claims involving, in any way, any alleged construction problems and defects in the Properties, whether such problems and defects are now known or are hereafter discovered, including any latent defects; as to the Release and

All past, present and future claims involving, in any way, the Properties. As to the Release

It is the express intent of the RELEASORS to fully, completely and forever release RELEASEE from any and all claims now existing, or which may hereafter arise, having anything to do, in any way, with the Properties. Notwithstanding the generality of the foregoing releases, this Release is not intended, nor shall it operate, to bar any claims against any other parties.

2. For the consideration set forth in Paragraph 1 above, the RELEASORS also, for themselves, their successors, heirs, purchasers and assigns, specifically release the RELEASEE from any and all express warranties and from any and all implied warranties related to the Properties and any of its components imposed under South Carolina law.

3. For the consideration set forth in Paragraph 1 above, the RELEASORS also agree to execute, or to cause their counsel to execute, a stipulation, order, or other document required to dismiss the Lawsuit and/or Arbitration, and all claims therein, with prejudice as relates to Releasee only. Further, as to all crossclaims or counterclaims filed against the Releasee and assigned to the Releasors, the Releasors will agree to execute, or cause their counsel to execute, a stipulation, order or other document required to dismiss said crossclaims or counterclaims, and all claims therein, with prejudice; provided, however, that such dismissal shall not adversely affect any remaining claims the Releasors may have against Defendants not released herein.

4. The Parties hereby acknowledge that this settlement is the compromise of a doubtful and disputed claim and that payment of the Settlement Amount is not to be construed as an admission of liability on the part of the RELEASEE, but is entered into in order to avoid further litigation.

5. The Parties 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 otherwise.

6. The undersigned Parties declare and represent that they have read this Agreement and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that this instrument contains the entire agreement between the parties hereto and that the terms of this instrument are contractual and not a mere recital, and further, that if any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall not be affected.

7. RELEASORS further represent and warrant that they have not heretofore assigned to any other person or entity all or any portion of any claims or causes of action whatsoever which they may or may have had or may assert in the future to have against RELEASEE or any other party or entity arising out of or related to

the Properties, Lawsuit or Arbitration, and they represent and warrant that they are the proper parties to receive the Settlement Amount.

8. RELEASORS agree to indemnify and hold harmless the RELEASEE, its subsidiaries or assigns against any loss, cause, damages, liens, expenses, (including attorney's fees), or other liability or claims imposed upon the RELEASORS, by reason of any third person or entity claiming to have an interest in the matters referred to herein, or claiming to be an assignee or subrogee of any the claims or causes of action made in the Lawsuit and/or Arbitration, or claiming a right of indemnity or contribution against the RELEASORS, or any of them.

9. This full and final release shall cover and shall include and does cover and does include, any and all future damages and/or damages not now known to the RELEASORS, but which may later develop or be discovered, including the effects and consequences thereof, and including all causes of action therefor.

10. This instrument shall be binding on all the Parties' successors in interest, heirs, purchasers and assignees.

11. This Agreement shall be construed in accordance with the laws of the State of South Carolina.

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

Mark F. Teseniar

Nan M. Teseniar

Board of Directors for Twelve Oaks POA

By: _____

Its: _____

This the ____ day of _____, 2010

Settlement, Release and Confidentiality Agreement, page 4
Mark F. Teseniar and Nan M. Teseniar, Releasors

SETTLEMENT AGREEMENT AND COMPLETE RELEASE

The undersigned have entered this Settlement Agreement and Complete Release (the "Agreement") on the dates set forth next to their signatures below.

WITNESSETH

WHEREAS Mark F. and Nan M. Teseniar on behalf of themselves and other similarly situated and the Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to the present) (collectively the "Plaintiffs") filed that certain lawsuit in the Court of Common Pleas in Charleston County, South Carolina entitled Mark F. Teseniar, et al v. Fenwick Plantation Tarragon, LLC, et al, and bearing case number 2008-CP-10-49 (the "Lawsuit") alleging defects and deficiencies in the development, design, construction, management, conversion to condominiums, inspection, and repairs at the property commonly known as Twelve Oaks at Fenwick Plantation (the "Project"); and

WHEREAS the Defendants in the Lawsuit included the general contractor for the Project, Summit Contractors Group, Inc. ("Summit") and its performance bond surety, Federal Insurance Company ("Federal"); and

WHEREAS the Defendants also included A.M. Jacobs, Inc. ("A.M. Jacobs"), which was a subcontractor during the conversion and/or repair of the Project; and

WHEREAS in the Lawsuit the Plaintiffs asserted numerous causes of action against A.M. Jacobs and alleged that the work performed by A.M. Jacobs at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS Summit and Federal asserted numerous Cross-Claims against A.M. Jacobs and alleged that work performed by A.M. Jacobs at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS the Plaintiffs reached a compromise settlement in which Summit and Federal, among other things, assigned to the Plaintiffs their Cross-Claims against A.M. Jacobs and any and all other rights, demands, causes of action, losses, costs, and expenses of every nature and kind, including attorney's fees arising out of or related in any manner whatsoever to allegedly defective work of A.M. Jacobs at the Project and any and all loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS A.M. Jacobs has denied the allegations of the Plaintiff and the allegations of Summit and Federal; and

WHEREAS the Plaintiffs, for themselves and as the assignees of Summit and Federal, desire to fully and forever resolve any and all claims which were or which could have been asserted against A.M. Jacobs arising out of or in connection with the Project; now, therefore,

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual promises set forth herein, the undersigned do hereby agree as follows:

1. A.M. Jacobs has remitted payment to the Plaintiffs in the amount of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS, which is being held in trust pending the execution of this Agreement, approval of the partial class settlement and the filing of an Order of Dismissal as to A.M. Jacobs, Inc.
2. In consideration of the funds paid pursuant hereto, the Plaintiffs and all its members, officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, insurers, heirs, successors, and assigns, and the Plaintiffs as the assignees of Summit and Federal (collectively the "Releasing Parties"), shall and do hereby fully and forever absolve, acquit discharge, and release A.M. Jacobs and its officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, attorneys, insurers, sureties, heirs, successors, and assigns (the "Released Parties") of and from any and all claims, demands, actions, suits, and causes of action of every nature and kind, whether at law or in equity, whether known or unknown, and whether past, present, or future arising out of or in any manner whatsoever related to the claims which were or which could have been asserted against A.M. Jacobs arising out of or in connection with the Project.
3. In consideration of the funds paid pursuant hereto, the Releasing Parties shall and do hereby agree to defend and hold A.M. Jacobs harmless up to the amount of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS for any claims, demands, suits, causes of action, lawsuits, or other actions against A.M. Jacobs by any person or entity arising out of or in any matter whatsoever related to the matters which were or which could have been raised in the Lawsuit.

IT IS SPECIFICALLY UNDERSTOOD, ACKNOWLEDGED, AND AGREED that this Agreement is entered by the undersigned in order to resolve doubted and disputed claims, and that nothing herein shall constitute an admission of liability of any kind by an party hereto; that this Agreement is an accord and satisfaction and not a mere recital; that this Agreement was drafted by counsel for A.M. Jacobs as an accommodation and shall not be construed against or in favor of any party; that this Agreement is entered pursuant and subject to the law of the State of South Carolina; that the individuals whose signatures appear below are fully authorized to execute this Agreement on behalf of the party for which they have signed; and, that this Agreement shall inure to and be binding upon the successors and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth as indicated below:

(Signatures on the Following Page)

**MARK F. AND NAN M. TESENIAR
ON BEHALF OF THEMSELVES
AND OTHER SIMILARLY
SITUATED**

Mark F. Teseniar

Nan F. Teseniar

Date:

**TWELVE OAKS AT FENWICK
PROPERTY OWNERS
ASSOCIATION, INC. (FROM
DECEMBER 16, 2008 TO THE
PRESENT)**

By: (Sign/Print Name)

Its: (Print Title)

Date:

A.M. JACOBS, INC.

By: (Sign/Print Name)

Its: (Print Title)

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT AND COMPLETE RELEASE

The undersigned have entered this Settlement Agreement and Complete Release (the "Agreement") on the dates set forth next to their signatures below.

WITNESSETH

WHEREAS Mark F. and Nan M. Teseniar on behalf of themselves and others similarly situated and the Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to the present) (collectively the "Plaintiffs") filed that certain lawsuit in the Court of Common Pleas in Charleston County, South Carolina entitled Mark F. Teseniar, et al. v. Fenwick Plantation Tarragon, LLC, et al. and bearing case number 2008-CP-10-49 (the "Lawsuit") alleging defects and deficiencies in the development, design, construction, management, conversion to condominiums, inspection, and repairs at the property commonly known as Twelve Oaks at Fenwick Plantation (the "Project"); and

WHEREAS the Defendants in the Lawsuit included the general contractor for the Project, Summit Contractors Group, Inc. ("Summit") and its performance bond surety, Federal Insurance Company ("Federal"); and

WHEREAS the Defendants also included Los Campos, Inc. ("Los Campos"), which was a subcontractor to Summit during the original construction of the Project; and

WHEREAS in the Lawsuit the Plaintiffs asserted numerous causes of action against Los Campos and alleged that the work performed by Los Campos at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS Summit and Federal asserted numerous Cross-Claims against Los Campos and alleged that the work performed by Los Campos at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS the Plaintiffs reached a compromise settlement in which Summit and Federal, among other things, assigned to the Plaintiffs their Cross-Claims against Los Campos and any and all other rights, demands, causes of action, losses, costs, and expenses of every nature and kind, including attorney's fees arising out of or related in any manner whatsoever to the allegedly defective work of Los Campos at the Project and any and all loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property which resulted therefrom; and

WHEREAS Los Campos has denied the allegations of the Plaintiff and the allegations of Summit and Federal; and

WHEREAS the Plaintiffs, for themselves and as the assignees of Summit and Federal, desire to fully and forever resolve any and all claims which were or which could have been asserted against Los Campos arising out of or in connection with the Project; now, therefore,

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual promises set forth herein, the undersigned do hereby agree as follows:

1. Within thirty (30) days after the complete execution of this Agreement, Los Campos shall remit payment to the Plaintiffs in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

2. Upon its receipt of the funds to be paid pursuant hereto, the Plaintiffs and its all its members, officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, insurers, heirs, successors, and assigns, and the Plaintiffs as the assignees of Summit and Federal (collectively the "Releasing Parties"), shall and do hereby fully and forever absolve, acquit, discharge, and release Los Campos and its officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, attorneys, insurers, sureties, heirs, successors, and assigns (the "Released Parties") of and from any and all claims, demands, actions, suits, and causes of action of every nature and kind, whether at law or in equity, whether known or unknown, and whether past, present, or future arising out of or in any manner whatsoever related to the claims which were or which could have been asserted against Los Campos arising out of or in connection with the Project.
3. Upon its receipt of the funds to be paid pursuant hereto, the Releasing Parties shall and do hereby agree to defend and hold Los Campos harmless up to the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS for any claims, demands, suits, causes of action, lawsuits, or other actions against Los Campos by any person or entity arising out of or in any manner whatsoever related to the matters which were or which could have been raised in the Lawsuit.

IT IS SPECIFICALLY UNDERSTOOD, ACKNOWLEDGED, AND AGREED that this Agreement is entered by the undersigned in order to resolve doubted and disputed claims, and that nothing herein shall constitute an admission of liability of any kind by any party hereto; that this Agreement is an accord and satisfaction and not a mere recital; that this Agreement was drafted by counsel for Los Campos as an accommodation and shall not be construed against or in favor of any party; that this Agreement is entered pursuant and subject to the law of the State of South Carolina; that the individuals whose signatures appear below are fully authorized to execute this Agreement on behalf of the party for which they have signed; and, that this Agreement shall inure to and be binding upon the successors and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth as indicated below:

**MARK F. AND NAN M. TESENIAR
ON BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED**

**TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (FROM
DECEMBER 16, 2008 TO THE PRESENT)**

Mark F. Teseniar

By: _____
(Sign/Print Name)

Nan M. Teseniar

Its: _____
(Print Title)

Date: _____

Date: _____

LOS CAMPOS, INC.

By: _____
(Sign/Print Name)

Its: _____
(Print Title)

Date: _____

STATE OF SOUTH CAROLINA)
) RELEASE
COUNTY OF CHARLESTON)

WHEREAS, Plaintiffs Mark F. Teseniar and Nan M. Teseniar filed a class action lawsuit in the Charleston County Court of Common Pleas, Civil Action No. 2008-CP-10-49, on behalf of themselves and the other co-owners of the Twelve Oaks at Fenwick Horizontal Property Regime, seeking damages against various Defendants, including Twelve Oaks at Fenwick Property Owners Association, Inc. and its alleged individual board members, Jamie Helman, Chris Cobbs and Scott Ferguson (collectively "POA"), for negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, breach of warranty of habitability, breach of warranty against latent defects, breach of warranty of workmanlike service, breach of warranty of fitness for a particular purpose, breach of warranty of merchantability and serviceability, breach of fiduciary duty, and unfair trade practices arising out of the construction, repair, conversion, marketing, sale, management and maintenance of Twelve Oaks at Fenwick Horizontal Property Regime, all of which is set forth in the Fourth Amended Complaint in the lawsuit referenced above; and

WHEREAS, the Court certified the lawsuit as a class action by order filed October 20, 2008; and

WHEREAS, Twelve Oaks at Fenwick Property Owners Association, Inc. joined the lawsuit as a named Plaintiff, differentiating itself from the POA by designating itself as "Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present)" and designating POA as "Twelve Oaks at Fenwick Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008)," seeking damages arising

out of its statutory duties to repair and maintain the common elements of the horizontal property regime; and

WHEREAS, the Plaintiffs have settled all claims against the POA, including the class action claims and the claims of Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) for a total payment of One Hundred Thousand and 00/100 (\$100,000.00) Dollars (\$75,000 paid by the insurance carrier for the POA, and \$25,000 paid on behalf of Helman, Cobbs and Ferguson); and

WHEREAS, a partial settlement of the class action claims was preliminarily approved by the Court on September 8, 2010 and finally approved on November 1, 2010, which included the approval and authorization of this settlement against POA, approving this Release of all claims against POA, and authorizing the dismissal with prejudice of all claims against POA.

NOW, THEREFORE, in consideration of the payment of One Hundred Thousand and 00/100 (\$100,000.00) Dollars by or on behalf of Twelve Oaks at Fenwick Property Owners Association, Inc., Jamie Helman, Chris Cobbs and Scott Ferguson, and all other officers and directors of the Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA"), the receipt of which is hereby acknowledged, Mark F. Teseniar and Nan M. Teseniar, individually and on behalf of all persons, firms, corporations, partnerships, associations, trusts, or legal entities owning condominiums at Twelve Oaks at Fenwick Horizontal Property Regime, their heirs personal representatives, successors and assigns, and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) ("Plaintiffs"), do release and discharge and by these presents for themselves, their heirs, personal representatives, successors and assigns, release and

forever discharge said POA, their officers, directors, employees, agents, heirs, personal representatives, successors and assigns, and their insurers and indemnitors, of and from any and all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, for or because of any act or omission by anyone prior to and including the date hereof on account of any and all damages resulting or to result from construction, repair, conversion, marketing, sale, and maintenance of the property known as Twelve Oaks at Fenwick Horizontal Property Regime including all claims that were or could have been set forth against POA in Civil Action No. 2008-CP-10-49. As part of this Release and settlement agreement, Plaintiffs agree to dismiss POA, Helman, Cobbs and Ferguson from said lawsuit with prejudice.

This Release is a release as to the POA only and does not release any claims against any other person, firm or corporation not mentioned herein.

Plaintiffs understand that said POA, by reason of agreeing to this compromise payment, does not admit liability of any sort, and said POA has made no agreement or promise to do or omit to do any act or thing not herein set forth, and Plaintiffs further understand that this Release is made as a compromise to avoid and/or minimize expenses and litigation and to terminate all controversies and/or claims for damages of whatsoever nature, known or unknown.

Plaintiffs further understand and agree that they rely upon their own judgment, as well as the judgment and advice of their attorneys, Jesse A. Kirchner, W. Jefferson Leath, John T. Chakeris and Philip W. Segui, as to the losses they have suffered and the potential recovery therefor, and they have not been influenced to any extent whatsoever in making this Release by any representations or statements regarding said damages or the legal

liability therefor, or regarding any other matters, made by persons, firms or corporations who are hereby released, or by any person or persons representing them and that Plaintiffs accept the above mentioned sum in full settlement and satisfaction of all claims or demands whatsoever for damages sustained by them whether known or unknown.

Plaintiffs admit that no representation of fact or opinion has been made by said POA or anyone on their behalf to induce this compromise agreement with respect to the extent, nature or permanency of damages and that the sum paid to them and herewith accepted by them is solely by way of settlement, compromise and final disposition of a disputed claim and that in determining said sum there has been specifically taken into consideration the fact that serious and unexpected consequences or complications might result from the present damage known or now unknown from said damages, and it is therefore specifically agreed that this Release shall forever be a final and complete bar to and full settlement of all claims.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2010.

WITNESSES:

Mark F. Teseniar

Nan M. Teseniar

Twelve Oaks at Fenwick POA
(December 16, 2008 to present)

By: _____

Its: _____

I, the undersigned attorney for Plaintiffs, hereby certify that the contents, meanings and effects of the foregoing Release have been carefully and fully explained by me and I recommend the execution of said Release for the consideration therein expressed.

Jesse A. Kirchner, Esq.
Attorney for Plaintiffs

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),

RELEASORS,

vs.

FENWICK PLANTATION TARRAGON,
LLC, s 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 16, 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,)

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2008-CP-10-49
)

**SETTLEMENT AGREEMENT
AND RELEASE**

Individually, CHRIS COBBS, Individually,)
AND FEDERAL INSURANCE COMPANY,)
MARIA ARIAS, MIQUEL ROSALES, APS)
ENTERPRISES UNLIMITED, INC., HR)
ELECTRIC, A.M. JACOBS, INC., MICKEY)
MASON CONTRACTORS, KMAC OF THE)
CAROLINAS, INC. AND NEO)
CORPORATION,)

Defendants.)

This Settlement and Release Agreement ("Agreement") is made as of the ____ day of _____ 2010, by and among Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA") (together being hereinafter collectively referred to as "RELEASORS") and Fugleberg Koch Architects, Inc. (hereinafter "RELEASEE").

WHEREAS, 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 (hereinafter "the Property"); and

WHEREAS, RELEASEE provided certain professional architectural services related to the original design and construction for the Property, which was originally designed, built and operated as an apartment complex; and

WHEREAS, RELEASORS have alleged there to be design and construction defects, deficiencies, and/or problems to the Property allegedly related to the original design and construction as well as certain repairs performed after original construction of the Property up to and including such time as it was converted and operated as the condominium complex known as Twelve Oaks at Fenwick Plantation; and

WHEREAS, RELEASORS have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of the RELEASEE, as well as others; and

WHEREAS, RELEASEE denies the existence or extent of any such alleged defects and specifically denies responsibility for any such alleged damages; and

WHEREAS, RELEASORS and/or others now represented by RELEASORS instituted two civil actions (collectively "Actions") in the Court of Common Pleas for Charleston County, South Carolina, in which they asserted claims for damages to the Property. One of those actions was originally in the name of, "Robert Koenig, derivatively and on behalf of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc., and Twelve Oaks at Fenwick Plantation Horizontal Property Regime," and was designated as civil action number 2008-CP-10-1758. The other is captioned, as indicated above on this Agreement, in the name of, "Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.," and is designated as civil action number 2008-CP-10-49. These two Actions were consolidated pursuant to an Order executed by Judge Roger M. Young, Sr., and filed with the Clerk of Court of Charleston County on or about October 20, 2008, and RELEASORS have pursued the actions under the above-captioned matter, that being civil action number 2008-CP-10-49 ("Lawsuit"); and

WHEREAS, RELEASEE denies the existence, extent of, and any alleged liability for any damages alleged to the Property, and RELEASEE specifically denies all allegations asserted against it in the above-mentioned Actions; and

WHEREAS, a resolution of all claims against RELEASEE has been reached in the spirit of compromise; and

WHEREAS, RELEASORS and RELEASEE now desire to forever compromise and settle all claims against RELEASEE rather than pursue the above-mentioned Lawsuit. RELEASORS and RELEASEE enter into this Settlement and Release Agreement (hereinafter "Agreement") to provide for certain promises and covenants in full settlement, compromise and discharge of any and all claims relating to any work performed by RELEASEE and/or alleged damages relating to the performance of any work and/or services performed by RELEASEE relative to the Property, including all such claims which were asserted, or which could have been asserted, by RELEASORS in the above captioned Actions, now or formerly pending, and which are resolved by this Agreement.

NOW, THEREFORE, in consideration of the promises, condition, undertakings and representations contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the RELEASORS and RELEASEE hereby agree as follows:

1. For and in receipt of the consideration in the amount of Five Hundred Thousand Dollars (\$500,000.00) to be paid to RELEASORS and the mutual covenants of this Agreement, RELEASORS do hereby remise, release, acquit, absolve, and forever discharge RELEASEE and its respective successors, purchasers, assigns, officers, directors, partners (general or limited), shareholders, parents, subsidiaries, affiliates, agents, attorneys, employees, contractors, consultants, servants, heirs, executors, administrators, predecessors, sureties and insurers, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred or not, and who together with RELEASEE may be liable to RELEASORS and their heirs, successors, purchasers and assigns, from and against: (a) any and all past or present claims, actions, causes of action, suits, rights, damages, demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature

whatsoever, whether known or unknown, that were asserted or could have been asserted in the above-captioned Actions or that relate in any way to the Property; and (b) future claims, actions, causes of action, suits, rights, damages, demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature whatsoever, whether known or unknown, that accrue, arise or are otherwise acquired as a result of actions or events that occurred or transpired in whole or in part prior to the execution of this Agreement, for alleged injuries, losses or damages, expenses, liability and obligations of every kind or character (including consequential damages and any attorneys' fees or expenses of litigation) that were asserted or could have been asserted in the above captioned actions or that relate in any way to the Property. RELEASORS agree to indemnify and hold RELEASEE harmless from any and all claims which may have been or may hereinafter be made by any private insurance company or any other entity, by way of any subrogation, lien or otherwise, for services or work provided by RELEASEE in connection with this matter. Furthermore, RELEASORS agree to indemnify and hold RELEASEE harmless from any and all future claims by any person or entity, including any other party to the Lawsuit and/or any claim by any subsequent purchasers (or other persons who have or may acquire an interest in the property), which claims are being released by this document and were made or could have been made in the Lawsuit, including, but not limited to, all attorneys' fees and costs. Notwithstanding the generality of the foregoing releases, this Agreement is not intended to, nor shall it operate to release any other party to the Lawsuit other than RELEASEE.

2. Each of the RELEASORS to this Agreement further represent and warrant that they have not heretofore assigned, and will not hereafter assign, to any person or entity, all or any portion of any claim whatsoever which they may have or may have had or may claim in the

future to have against RELEASEE, and RELEASORS further represent and warrant that they are the sole proper parties to assert those claims referenced hereinabove, and/or to receive any proceeds paid pursuant to the within Agreement, and that they have the right and authority to execute this Agreement on behalf of the parties for whom each signs.

3. By virtue of the execution of this Agreement, RELEASORS also agree to execute or cause their counsel to execute and file a Stipulation of Dismissal, or equivalent order or document as required to dismiss, with prejudice, all Actions within the Lawsuit and/or any and all claims of RELEASORS against RELEASEE. RELEASORS agree to promptly execute and file the aforementioned Stipulation of Dismissal, with prejudice, upon signing of this agreement and receipt of the consideration agreed upon herein.

4. The terms of this Agreement represent a compromise of doubtful and disputed claims, and any monetary payment or other consideration herein is not to be considered as an admission of liability on the part of RELEASEE, by whom all liability is expressly denied.

5. 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 the Property not now known to the RELEASORS, but which may later develop or be discovered, including the effects or consequences thereof, and including all causes of action therefore.

6. This Agreement is contingent upon the Court's approval of the settlement of the class action portion of the Lawsuit.

7. This Agreement contains the entire agreement by, between, and/or among the parties hereto with respect to any claim whatsoever which RELEASORS may have or may have had or may claim in the future to have against RELEASEE, and this instrument may be pled as a defense in any action or other proceeding which may be brought or instigated arising out of the

claims, demands, actions, and/or causes of action recited hereinabove. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, assigns, affiliates, subsidiaries, purchasers, and parent corporations of the parties to this Agreement. The parties to this Agreement agree that any and all representations or warranties of any kind, whether express or implied, that ever existed with respect to RELEASEE are hereby null and void. The parties to this Agreement further agree that there are and were no oral or written representations, warranties, understandings, stipulations, agreements or other promises pertaining to this Agreement that are not incorporated in writing in this Agreement. Neither this Agreement itself nor any terms or provisions hereof shall be amended, modified, or abrogated, except upon written agreement executed by the parties.

8. The promises and undertakings set forth herein are the sole consideration for this agreement, the conditions stated herein are contractual and not a mere recital, this Agreement shall be effective as a full and final accord and satisfaction and mutual release of RELEASEE by RELEASORS as set forth herein, and all agreements and undertakings on the subject matter hereof are expressed and embodied herein.

9. The parties to this Agreement declare that, prior to the execution of this Settlement Agreement and Release, they have apprised themselves with sufficient relevant information, through sources of their own selection, in order to exercise their own judgment in deciding whether to execute the within agreement. The parties to this Agreement further declare and represent that this Agreement is executed voluntarily and with full knowledge of its consequences, and that each party executing this Agreement is authorized to do so.

10. Each party to this Agreement shall bear its own attorneys' fees and costs arising from the actions of its own counsel, any litigation between these parties, this Agreement, and the

matters and documents referred to herein, and any and all other related matters as needed to conclude the Litigation (except as otherwise set out in Paragraphs 1 and 15 herein).

11. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

12. The within Agreement and the documents contemplated hereby and/or referenced herein, may be executed in counterparts, each of which shall be deemed an original and, together, shall constitute one and the same agreement.

13. If any paragraph, subparagraph, sentence or clause of this Agreement is adjudged illegal, invalid or unenforceable, the balance and remainder of this Agreement shall remain in full force and effect with the exception that the Agreement and the settlement upon which the Agreement is based are null and void if settlement of the class action portion of the Lawsuit is not approved by the Court.

14. In entering into this Agreement each of the parties represents to the others (i) that it has relied upon the advice of its respective attorney(s) and other advisor(s) of its own choosing, (ii) that it has not relied on any advice from the other or from any attorney or other advisor of the other, and (iii) that it has completely read and understands the terms of this Agreement and that those terms are fully understood and voluntarily accepted by it. The parties to this Agreement further acknowledge and agree that this Agreement is the result of negotiations between the parties, each having its own legal counsel, and that no legal presumption will arise against any party as the drafter.

15. RELEASORS agree that POA will defend and indemnify and hold harmless RELEASEE and its insurers at POA's expense and POA will pay all costs associated with the

defense of RELEASEE as to any cross-claims or third party claims brought by any parties to the above captioned Actions.

16. This settlement is intended to settle all the liability of RELEASEE with respect to these matters which are, or could have been, brought in the Lawsuit. The settlement amount was arrived at after lengthy, arms length negotiations, and paid in good faith and, therefore, prohibits any claims against the RELEASEE for contribution pursuant to the South Carolina Contribution Among Tortfeasors Act.

IN WITNESS WHEREOF, the Parties have set forth their signatures and executed this Agreement this ____ day of _____, 2010.

WITNESSES:

FOR RELEASORS

Mark Teseniar, individually, and on behalf of all
others similarly situated

Nan Teseniar, individually, and on behalf of all
others similarly situated

[additional signature pages to follow]

WITNESSES:

FOR RELEASORS

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

[additional signature page to follow]

WITNESSES:

FOR RELEASEE

Fugleberg Koch Architects, Inc.

By: _____

Its: _____

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 MOTION FOR SET-
OFF**

FILED
2011 MAY 23 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Defendant Professional Plastering & Stucco, Inc. respectfully moves for a
set-off against the damages awarded to Plaintiffs.

"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.

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 Fugelberg 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).

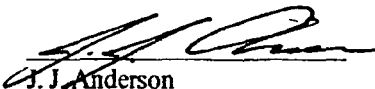
Professional Plastering is also entitled to a set-off from the settlement paid by Summit, who was the general contractor for the project. As the general contractor,

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.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



J. J. Anderson
37 1/2 Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

SWEENEY WINGATE
& BARROW, PA
Everett A. Kendall
Christy E. Mahon
1515 Lady Street
P O Box 12129
Columbia, SC 29211
803-256-2233

*Attorneys for Defendant
Professional Plastering & Stucco, Inc.*

Charleston, South Carolina

May 23, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR, ET AL.

☒ Plaintiff

v.

FENWICK PLANTATION TARRAGON, LLC,
ET AL.

☐ Defendant.

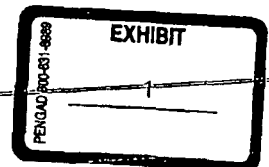
IN THE COURT OF COMMON PLEAS

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, SCRCP) ☐ 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 JRE 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

IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT

2008-CP-10- 49

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.

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

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 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 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

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 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.

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.

SEGUI LAW FIRM, LLC

By: *Phillip W. Segui, Jr.*
Phillip W. Segui, Jr.
864 Lowcountry Blvd., Ste. A
Charleston, SC 29464
(843) 884-1865
pseguilawfirm.com

THE CHAKERIS LAW FIRM

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john@chakerislawfirm.com

LEATH BOUCH CRAWFORD & von
KELLER, LLP

By: *W. Jefferson Leath, Jr.*
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P. O. Box 59
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Attorneys for Plaintiffs
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and

THURMOND KIRCHNER, TIMBES &
YELVERTSON, P.A.

By: *Jesse A. Kirchner*
Jesse A. Kirchner
15 Middle Atlantic Wharf,
Suite 101
Charleston, SC 29401
(843) 937-8000
jkirchner@tktlawfirm.com

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

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

FILED

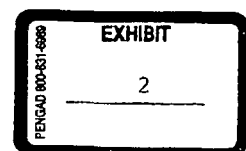
Personally appeared before me Myles I. Glick, who being duly sworn on oath deposes

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.

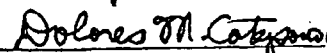
6. That the construction of the buildings at issue with a "Magna-Wall" system installed as a barrier system, and consequently causing the problems above stated was not in accordance with the Contract Documents, was not in conformance with the design concept, and any such certification to the Owner to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

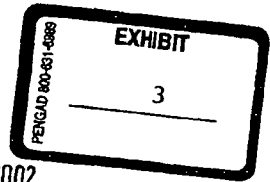
7. That in his opinion Fugelberg Koch was negligent in failing to exercise its duties to ensure that the actual construction of the buildings at issue met the design concept it had designed, in failing to ensure that such construction was in conformance with the Contract Documents, and in certifying 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, CIA

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

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 3-11-13



MAR 29 2002

FILE COPY

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. 01031-19, 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.#: LOS CAMPOS OF GEORGIA, INC. MC MILTON CAMPOS 770 MC
56-2005439 890 PARK AVENUE Phone: 404-268-1177 401-2402
YOUNGVILLE NC 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

2. 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 REQUIRED BY STATE LAW OF SOUTH CAROLINA. AND
Contractor Initials: MC Subcontractor Initials: MC

CONTRACTOR AGREE TO COOPERATE FULLY 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~~ *monthly*

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~~ *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~~ *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 EXTENT AS REQUIRED BY STATE LAW OF SOUTH CAROLINA AND CONTRACTOR AGREES TO CO-OPERATE WHOLLY IN PURSUIT OF FULL PAYMENT TO SUB CONTRACTOR~~ *ONLY TO 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 GRANTED BY ANY/ALL LAWS OF SOUTH CAROLINA PERTAINING TO RIGHTFUL PAYMENT COLLECTIONS.~~ *SUBCONTRACTOR RETAINS ALL RIGHT GRANTED BY ANY/ALL 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: *[Signature]*

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Summit 16163

Subcontractor Initials: *ML*

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 REQUESTING 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 SUPPLY COMPLETE LIST OF ANY SUB-SUB (IF ANY) USED IN PROJECT. ONLY THESE SUB-SUB (IF ANY) WILL BE APPLIED WITHOUT QUESTION.*

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	High Hazard Occupations	\$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.
	Low Hazard Occupations	\$ 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.
		\$ 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

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)

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

IF CAUSED BY SUB-CONTRACTOR
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 or other 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: *MC*

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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 it's actions or inactions or those under his Subcontract whether or not in direct privity with SUBCONTRACTOR shall be unlimited, limited to contract amount as per 5/14

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 INCLUDED IN ARTICLE 18
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) ninety-six (96) 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: JA

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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. ~~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.~~

c. CONTRACTOR May Terminate for Convenience

Upon ~~Contractor~~ ^{ninety-day} 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, ~~ONLY IF CAUSED BY SUBCONTRACTOR~~.

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:

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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 settle and offset monies due and owing on any other contracts 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.~~ ^{South Carolina} ~~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

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: Milton Campos

NAME/TITLE

Date: 4/18/02

Date: 3-27-02

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).

<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

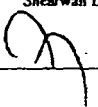
No Site Specification Book was available for the bidding process.

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 Summit 161C9

Contractor Initials: 

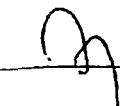
8

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: 

<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
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
A2.04B	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
A6.02	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: 

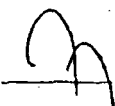
11

Subcontractor Initials: 

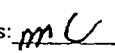
DOCUMENTSTITLEDATED

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 Pavillion 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

Summit 76173

Contractor Initials: 

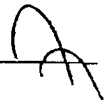
12

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

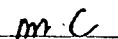
Summit 16174

Contractor Initials:



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 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

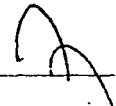
Geotechnical Investigation Report dated August 29, 2001 provided by Wright Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211".

BY: Milton Campos 

COMPANY NAME/TITLE: LOS CAMPOS CONSULTING, INC. NCMC

DATE: 3-27-02

Summit 16175

Contractor Initials: 

14

Subcontractor Initials: AMC

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, 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: 

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.~~ *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 costs 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 yet effective.~~ *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 GONZALEZ

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: *M*

16

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 ~~for~~ taxes, licenses, freight, unloading, project distribution, hoisting and any other needed items to complete the scope of work as listed herein. *MS*

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 THROUGH CONTRACT WITH CONTRACTOR* *MA*

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 loose 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. *REQUIRE A CHANGE ORDER* *MA*

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 CONTRACTORS consent. *TO THE EXTENT THAT SUBCONTRACTOR HAS ABILITY TO CONTROL PERSONNEL.* *MC*

Summit 1617P

Contractor Initials: *MA*

17

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. *mc*
ALL ITEMS SHOWN ON PLANS TO BE PAINTED
7. Clubhouse to have a minimum of six different colors.
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 1618J

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 this Subcontract Agreement. Minimum of 3 dents over 3 to be compensated. 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. 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

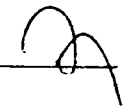
Contractor Initials: M

20

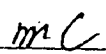
Subcontractor Initials: MC

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.

RECEIVED MAR 8 12002
MAR 20 2002

FILE COPY

PURCHASE ORDER

VENDOR: North Florida Framing, Inc. P.O. Box 73 Bostwick, Florida 32177 Contact: David Anderson PHONE: 904-328-9400 FAX: 904-284-7496	REMIT TO ADDRESS: _____ _____ _____	ORDER NO. 2271 DATE March 4, 2002 JOB NO. 01-033 COST CODE: 06-10-01 JOB NAME: Vintage @ Fenwick Plantation R.O.B.: Jobsite

Sales Tax Registration No. _____	State _____	Terms <u>Net 30 days</u> 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

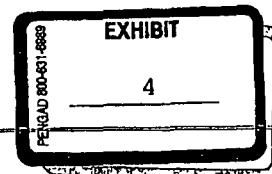
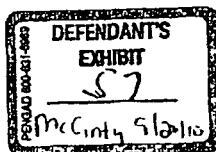
NORTH FLORIDA FRAMING, INC.
Vendor
by: [Signature] Secretary (Signature)
Printed Name Title

DM: [Signature]
Contractors Initials. [Signature]

1 of 6

Summit 00573

Subcontractors Initials JA



PURCHASE ORDER TERMS & CONDITIONS

1. **ENTIRE CONTRACT** The foregoing is the entire Purchase Order and there are no representations, promises, warranties or understandings of any kind or nature from either party to the other except as set out herein and in the plans, specifications, shop drawings and other documents which are a part hereof.

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's, project Owner's 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 obtain 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 exonerate 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 notices 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 tax laws, 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 and from 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 intended 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 to 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 satisfied 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 (for 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 damage, including damages that may become due to the project Owner, for any extra expenses incurred by VENDEE that result from 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 releases 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, mechanically, 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 warranties, 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 lien or other claim 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, judgments, other claims for damages, and expenses 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 BRING SUIT** VENDOR expressly agrees as an absolute condition precedent to bring any claim or bring 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 both the time that the proceeding was commenced until all appeals, if any, are final. This paragraph shall apply where the proceeding seeks a declaration of rights, damages for default, damages for misrepresentation or other legal or equitable remedies.

19. **CHOICE OF LAW AND VENUE** The 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 this 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:

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

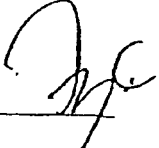
Auto

\$ 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: 

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 1 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, clips, caulks, rods, epoxies etc. as required for the entire project.
7. All parties hereby agree that VENDER shall furnish lulls 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

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Summit 00576

Subcontractors Initials KSA

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

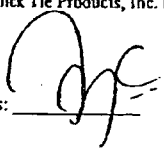
Furnish all material, fire caulks, material taxes, insurance, licenses, and any other related cost necessary for of COMPLETE BUILDING HARDWARE & TIE-DOWN SYSTEM in its entirety and in strict accordance with the Contract Documents enumerated in VENDER Documents Acknowledgment to this Agreement, and in 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 

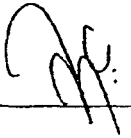
8. The Subcontract's intent is to provide a turn key materials with the correct accessories i.e. fastners, caulks, clips, epoxy etc. to complete all required hardware and structural hardware.

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 fastners, lumber.

6 of 6

Summit 00578

Contractors Initials: 

Subcontractors Initials BSA

152062
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., Suite 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)

Federal ID # SUMMIT CONTRACTORS, INC. TACY MCGINTY
69-2947787 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)

Federal ID #: JOHNSON ROOFING BRENT ATKINSON
62-143356 847 Springfield Hwy, Suite 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

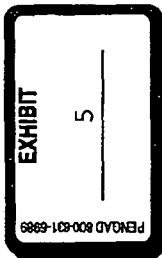
a. It is the intent of the parties that as an absolute condition precedent to Progress Payments to SUBCONTRACTOR, CONTRACTOR must receive corresponding payment from the OWNER for SUBCONTRACTOR's work. The foregoing takes precedence over any conflicting provision or language appearing in any of the contract 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: M

1

Summit 00347
Subcontractor Initials: TC



Submit invoice by the 20th to receive payment by the 20th of next month
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. *TE*

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 hold 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: *an*

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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> (Example: Mech., Plumbing, HVAC, Elect., Roofing, Framing, Painting, Sitework, Masonry, Stucco, Steel Erection, Utilities, Concrete)	\$1,000,000.00 General Aggregate
		\$ 500,000.00 Products
		\$ 500,000.00 Personal & Adv. Injury
		\$ 500,000.00 Each Occurrence
		\$ 50,000.00 Fire Damage
	<u>Low Hazard Occupations</u> (Example: Flooring, Tile, Paving, Pool)	\$ 1,000.00 Med Exp.
		\$ 500,000.00 General Aggregate
		\$ 500,000.00 Products
		\$ 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
	1st	STATUTORY requirements for Each State
	2nd 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: 

3

Summit 00349

Subcontractor Initials: 

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 or 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 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

Contractor Initials. _____

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 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.

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: TZ

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 my workers - others will be billed as a 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: *M*

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]*

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

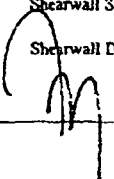
No Site Specification Book was available for the bidding process.

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

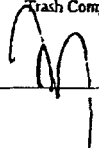
Contractor Initials: 

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Subcontractor Initials: TL

Summit 00354

<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 Pavilion	Undated, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01

Contractor Initials: 

9

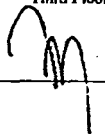
Subcontractor Initials: TL

Summit 00355

DOCUMENTSTITLEDATED

SS 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"	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"	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"	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"	Dated 05-01-01, Revised 08-01-01, Revised 08-15-01, Rev.#1 dated 09-12-01, Rev.#2 dated 12-11-01
A2.02B	Building Plan 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
A2 02C	Building Plan 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
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
A2 03A	Building Plan 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
A2.03B	Building Plan 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 03C	Building Plan 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

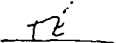
Contractor Initials:



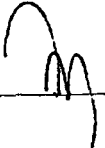
10

Summit 00356

Subcontractor Initials:



<u>DOCUMENTS</u>	<u>TITLE</u>	<u>DATED</u>
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	1 st & 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
A2.05A	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
A2.05B	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
A2.05C	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
A4.03	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
A4.04	Elevation Views Bldg. Type "3"	Dated 05-01-01, Revised 08-10-01
A4.05B	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
A5.01	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
A5.02	Building Type 1, Stair/ 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
A5.03	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
A5.04B	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	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
A5.06	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	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
A5.08	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
A6.01	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
A6.02	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
A6.03	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
	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
	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	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.



12

Summit 00358

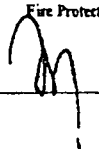
Subcontractor Initials:



DOCUMENTSTITLEDATED

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
B6.02	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
F3.01	Flat A Plumbing Plan	Dated 05-01-01, Revised 08-15-01
F3.02	Flat B Plumbing Plan	Dated 05-01-01, Revised 08-15-01
F3.03	Flat C Plumbing Plan	Dated 05-01-01, Revised 08-15-01
F3.04	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

Contractor Initials.



13

Summit 00359

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 Wight Christopher Engineering & Construction Services entitled, "Geotechnical Investigation, Vintage at Fenwick Plantation Apartment Complex, John's Island, SC, WPC Project #2001-211"

BY:

COMPANY NAME/TITLE: JOHNSON ROOFING / Vice President

DATE: 02-21-02

Contractor Initials:

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.

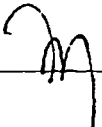
7 All parties hereby agree that all technical questions, submittals, clarifications, schedules and procedures will be submitted, in writing, by SUBCONTRACTOR to CONTRACTOR. Further, the cost of any work performed or reliance on information other than in compliance with instructions or information provided 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: TC

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. *Blain Snyder will be the contact but not on site 105% 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 10% of time*

Subcontractor Designated Representative: Blain Snyder *every meeting, 100%*

(Optional Representative) Ty Epley *TC*

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: *M*

16

Summit 00362

Subcontractor Initials: *TC*

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. *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. *TE*

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: *SM*

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 10 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 valleys behind chimneys will be evaluated on site.
6. SUBCONTRACTOR to provide and install water diverters 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 at CONTRACTOR's direction, SUBCONTRACTOR shall provide and properly install all metal flashing in all areas deemed necessary by CONTRACTOR. - feel 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 bitumen 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. *TE.*
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 just enough to minimize mobilizations 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 Tight 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 *NEVEL* radio compatible to the CONTRACTOR'S jobsite superintendent *cell # for use 24/7 TE.*
31. ~~Framer 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 framer 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-subcontractors, 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. Dill 11/9/2010
[Signature]
Nicholas S. Reeder 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

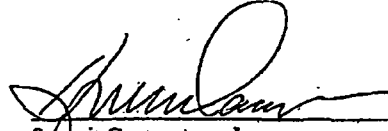
Nan M. Teseniar, individually, and on
behalf of all others similarly situated

WITNESSES:

M. J. M.

C. L. L.

_____, 2010


Summit Contractors, Inc.
By: Chris Dawson
Its: VP General Counsel

WITNESSES:

Diane M. Beal
J. M. Hurst

12/8, 2010


Summit Contractors Group, Inc.
By: Chris Dawson
Its: VP General Counsel

WITNESSES:

Diane M. Beal
J. M. Hurst

November 18, 2010

Wayne R. Walton
Federal Insurance Company
By: WAYNE R. WALTON
Its: SURETY CLAIMS COUNSEL

WITNESSES:

Anthony Habowski
Christin L. Roms

**WILKES
BOWERS**
ATTORNEYS AT LAW

MICHAEL B.T. WILKES*
H. MICHAEL BOWERS*
ELLEN S. CHEEK*
LAURA JOHNSON EVANS*
MELISSA M. NICHOLS*
J. DERHAM COLE, JR.
C. DANIEL ATKINSON*
NEIL D. THOMSON*
DEREK M. NEWBERRY

• CHARLESTON OFFICE
• ALSO MEMBER GEORGIA BAR
• ALSO MEMBER NORTH CAROLINA BAR
• ALSO MEMBER VIRGINIA AND D.C. BARS

WILKES BOWERS, P.A.
Reply To: SPARTANBURG OFFICE:
127 DUNBAR STREET, SUITE 200
SPARTANBURG, SOUTH CAROLINA 29306
864.591.2355
TOLL FREE 866.920.1113
FAX 864.591.1767

CHARLESTON OFFICE:
171 CHURCH STREET, SUITE 210
CHARLESTON, SOUTH CAROLINA 29401
843.577.9888
TOLL FREE 866.921.1113
FAX 843.577.9566

WWW.WILKESBOWERS.COM

April 4, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

**Re: Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others
similarly situated v. H2L Consulting Engineers, et al
In the Court of Common Pleas for Charleston County
C.A. No: 2008-CP-10-49**

Dear Ms. Armstrong:

Enclosed herewith for filing in the referenced matter is *Settlement Agreement Among Plaintiffs, H2L Consulting Engineers, Inc., and APS Enterprises Unlimited, Inc.* Please file the original, mark the extra copy "filed" and return it to me in the return envelope provided. A copy of this letter and enclosure has today been served on all counsel of record by e-mail.

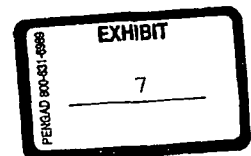
Thank you for your assistance in this matter.

Very truly yours,



Ellen S. Cheek
echeck@wilkesbowers.com

Enclosure.
cc with Enclosure to:
All Counsel of Record (Via Email Only)



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C.A. No.: 2008-CP-10-49

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),)

**SETTLEMENT AGREEMENT
AMONG PLAINTIFFS,
H2L CONSULTING ENGINEERS,
AND
APS ENTERPRISES UNLIMITED, INC.**

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, Inc.,
J.T. Industries D/B/A General Aluminum
Corporation and General Aluminum Company of
Texas, LP, and 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.)

Professional Plastering & Stucco, Inc.,	)
	)
Third-Party Plaintiffs,	)
v.	)
	)
Maria Arias, Miquel Rosales, and APS	)
Enterprises Unlimited, Inc.,	)
	)
Third-Party Defendants.	)
APS Enterprises Unlimited, Inc.,	)
	)
Third-Party Plaintiff,	)
v.	)
	)
C&N Stucco and Plastering, Inc.,	)
	)
Third-Party Defendant.	)

This Settlement Agreement ("Settlement Agreement") is made as of the 31st day of ~~February~~ ^{March}, 2011, by and among Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all other similarly situated (the "Plaintiff Class"), Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA"), Hendrix LeBlanc Lewis, Inc., d/b/a H2L Consulting Engineers ("H2L"), and APS Enterprises Unlimited, Inc. ("APS").

WHEREAS, the Plaintiff Class and the POA (collectively referred to herein as "Plaintiffs") own, owned, have or had an interest in real property and improvements consisting of a multi-building condominium property known as the Twelve Oaks at Fenwick Planation, located on John's Island, in Charleston County, South Carolina (the "Property"), which Property was originally designed, built and operated as an apartment complex; and

WHEREAS, H2L provided certain engineering consulting services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, APS provided certain stucco-related services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, Plaintiffs have alleged there to be design and construction defects, deficiencies, and/or problems in and with the Property allegedly relating to the Property's original construction, as well as to the repairs that were performed after the original construction was completed; and

WHEREAS, Plaintiffs have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of H2L, as well as others; and

WHEREAS, Plaintiffs and/or others now represented by Plaintiffs instituted two civil actions (collectively, the "Actions") in the Court of Common Pleas for Charleston County, South Carolina, which Actions were consolidated into the above-styled lawsuit (the "Lawsuit"); and

WHEREAS, H2L denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, APS has been sued in the Lawsuit as a direct Defendant by Plaintiffs, and as a Third-Party Defendant by a defending party that alleges as follows: (1) that it subcontracted with APS for APS to perform stucco-related work at the Property; (2) that APS agreed to indemnify, defend, and hold it harmless for any claim, liability, demand, suit or judgment entered against it with respect to the Property and the Lawsuit; and (3) that APS negligently performed its work at the Property; and

WHEREAS, APS denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, APS has asserted a cross-claim against H2L, alleging that APS is entitled to full equitable and contractual indemnity and contribution from H2L with respect to any costs incurred by APS in relation to the Lawsuit, including defense costs, attorneys fees, settlement payments and any judgment entered against it; and

WHEREAS, H2L denies any obligation to defend or indemnify APS; and

WHEREAS, Plaintiffs, H2L and APS (collectively, the "Parties") have agreed as follows:

1. Plaintiffs will promptly petition the court for approval of a settlement with H2L as stated in the Receipt, Release and Indemnity Agreement (the "Release Agreement") attached hereto as Exhibit 1.

2. If the court approves the proposed settlement and H2L tenders the payment required by the Release Agreement, Plaintiffs will execute the Release Agreement and deliver it to H2L's counsel in the Lawsuit, together with a dismissal with prejudice of Plaintiffs' claims against H2L in the Lawsuit. If the court does not approve this settlement, this Settlement Agreement shall be void as to Plaintiffs and H2L.

3. If the court approves the proposed settlement, APS will deliver to H2L's counsel a dismissal without prejudice of its Cross-Claim against H2L.

4. This Settlement Agreement is without prejudice to Plaintiffs' claims against APS, all of which are specifically preserved and which Plaintiffs continue to prosecute.

5. It is fully agreed by the parties hereto that this Settlement Agreement does not constitute an admission of liability by H2L, nor is it an admission of any fact or circumstance out of which the Lawsuit arises, but is made solely for the purpose of avoiding further litigation.

6. The parties further declare and represent that no promise, inducement or agreement not herein expressed has been made to any of the parties and that this Settlement Agreement contains the entire agreement between the parties hereto and the terms of this Settlement Agreement are contractual, and not mere recitals.

7. This Settlement Agreement shall be construed and enforced in accordance with the laws of South Carolina.

8. This Settlement Agreement may be executed by delivery of copies of signature pages by facsimile or electronic mail.

Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.

*Justin Lucey
by [Signature]*

Justin Lucey
JUSTIN O'TOOLE LUCEY, PA
PO Box 806
Mount Pleasant, SC 29465
Attorney for Plaintiffs

March 31
February _____, 2011

WITNESSES:

[Signature]

[Signature]

[Signature]

Mark Teseniar, individually, and on behalf of all
others similarly situated

Date: *3/28/11*

[Signature]

Nan Teseniar, individually, and on behalf of all
others similarly situated

Date: *3/28/11*

Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.

WITNESS:

Ann T. Win

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: Edward 3/22/11

Its: Secretary

Date: 3/22/11

[Signature]

BOARD PRESIDENT
2011, MARCH-23

[Signature]
Vice President

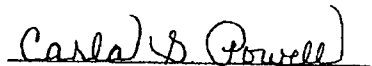
*Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.*



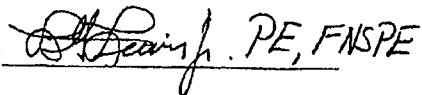
Michael B.T. Wilkes
WILKES BOWERS, P.A.
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
Attorney for Defendant
Hendrix LeBlanc Lewis, Inc.
d/b/a H2L Consulting Engineers, Inc.

February 16, 2011

WITNESS:



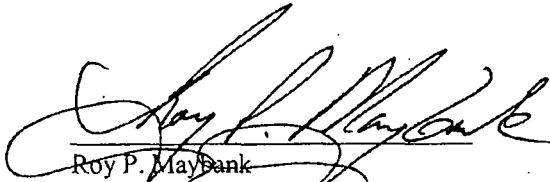
Hendrix LeBlanc Lewis, Inc.
d/b/a H2L Consulting Engineers, Inc.

By:  PE, FNSPE

Its: Chairman

Date: 16 February 2011

*Settlement Agreement Among Plaintiffs,
H2L Consulting Engineers, and
APS Enterprises Unlimited, Inc.*



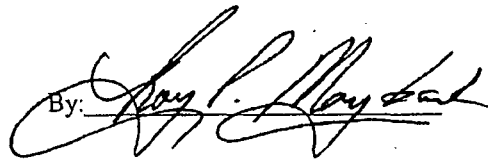
Roy P. Maybank
MAYBANK LAW FIRM, LLC
PO Box 12579
Charleston, SC 29422
Attorney for APS Enterprises Unlimited, Inc.

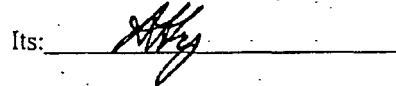
March
~~February~~ *30th*, 2011

WITNESS:



APS Enterprises, Unlimited, Inc.

By: 

Its: 

Date: *3/30/2011*

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C.A. No.: 2008-CP-10-49

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),)

**RECEIPT, RELEASE
AND INDEMNITY
AGREEMENT**

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, Inc.,
J.T. Industries D/B/A General Aluminum
Corporation and General Aluminum Company of
Texas, LP, and 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.)

EXHIBIT 1

1 of 9

Professional Plastering & Stucco, Inc.,	)
	)
Third-Party Plaintiffs,	)
v.	)
	)
Maria Arias, Miquel Rosales, and APS	)
Enterprises Unlimited, Inc.,	)
	)
Third-Party Defendants.	)
APS Enterprises Unlimited, Inc.,	)
	)
Third-Party Plaintiff,	)
v.	)
	)
C&N Stucco and Plastering, Inc.,	)
	)
Third-Party Defendant.	)

This Receipt, Release and Indemnity Agreement ("Agreement") is made as of the ____ day of _____, 2011, by Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all other similarly situated (the "Plaintiff Class"), and Twelve Oaks at Fenwick Property Owners Association, Inc. (the "POA").

WHEREAS, the Plaintiff Class and the POA (collectively referred to herein as "Plaintiffs") own, owned, have or had an interest in real property and improvements consisting of a multi-building condominium property known as the Twelve Oaks at Fenwick Planation, located on John's Island, in Charleston County, South Carolina (the "Property"), which Property was originally designed, built and operated as an apartment complex; and

WHEREAS, Hendrix LeBlanc Lewis, Inc., d/b/a H2L Consulting Engineers ("H2L") provided certain engineering consulting services relating to the repair of the Property, when the Property was an apartment complex; and

WHEREAS, Plaintiffs have alleged there to be design and construction defects, deficiencies, and/or problems in and with the Property allegedly relating to the Property's original construction, as

well as to the repairs that were performed after the original construction was completed; and

WHEREAS, Plaintiffs have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of H2L, as well as others; and

WHEREAS, Plaintiffs and/or others now represented by Plaintiffs instituted two civil actions (collectively, the "Actions") in the Court of Common Pleas for Charleston County, South Carolina, which Actions were consolidated into the above-styled lawsuit (the "Lawsuit"); and

WHEREAS, H2L denies the existence, extent of, and any alleged liability for any damages to the Property, and specifically denies all allegations asserted against it in the Lawsuit; and

WHEREAS, Plaintiffs reached a compromise settlement in this case with Summit Contractors, Inc., Summit Contractors Group, Inc., and Federal Insurance Company (hereinafter referred to as "Summit and Federal") in which Summit and Federal, among other things, assigned to Plaintiffs any and all indemnity, contribution, cross-claims and unspecified claims against all subcontractors, material suppliers, material manufacturers and all other parties having any connection with the Property who were not released by Plaintiffs' settlement and release agreement with Summit and Federal; and

WHEREAS, Plaintiffs, for themselves and as the assignees of Summit and Federal, now desire to forever compromise and settle all claims that were asserted by Plaintiffs against H2L, or that could have been asserted against H2L, rather than pursue this Lawsuit. The Parties enter into this Agreement to provide for certain promises and covenants in full settlement, compromise and discharge of any and all claims relating to any work performed by H2L at or with respect to the Property, and to any rights to contribution or indemnity that arguably arose in relation to such work, and/or damages relating to H2L's work with respect to the Property, including all claims which were asserted, or which could have been asserted, by Plaintiffs, for themselves or as the assignees of Summit and Federal, against H2L in this Lawsuit, and which are resolved by this Agreement.

NOW, THEREFORE, in consideration of the promises, conditions, undertakings and representations contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiffs hereby agree as follows:

1. Release and Indemnity by Plaintiffs: For and in receipt of the consideration in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) paid to Plaintiffs by H2L and the mutual covenants of this Agreement, Plaintiffs, and Plaintiffs as the assignees of Summit and Federal (hereinafter collectively referred to as the "Releasers"), do hereby remise, release, acquit, absolve, and forever discharge H2L and its respective successors, purchasers, assigns, officers, directors, partners (general or limited), shareholders, parents, subsidiaries, affiliates, agents, attorneys, employees, contractors, consultants, servants, heirs, executors, administrators, predecessors, sureties and insurers (including without limitation Continental Casualty Insurance Company, but only as to its Policy AEH 006161988 issued to H2L, under which it has defended and indemnified H2L in the Lawsuit), and all other persons, firms, corporations, associations or partnerships, whether herein named or referenced, and who together with H2L may be liable to Releasers and their heirs, successors, purchasers and assigns (hereinafter, "Releasees"), from and against: (a) any and all past or present claims, actions, causes of action, suits, rights, damages, or demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature whatsoever, whether known or unknown, that were asserted or could have been asserted in the Lawsuit or that relate in any way to the Property; and (b) future claims, actions, causes of action, suits, rights, damages, or demands of every nature and/or kind whatsoever, whether known or unknown, that accrue, arise or are otherwise acquired as a result of actions or events that occurred or transpired in whole or in part prior to the execution of this Agreement, for alleged injuries, losses or damages, expenses, liability and obligations of every kind or character (including consequential damages and any attorneys' fees or expenses of litigation) that were asserted or could have been

asserted in the Lawsuit or that relate in any way to the Property. Releasors agree to indemnify Releasees for (1) all claims made by or through Releasors' rights, by assignment, subrogation, or otherwise, relating to claims which were made or could have been made in this Lawsuit being settled herewith; and (2) all claims made by owners of an interest in the Property and their successors which relate in any manner to the foregoing claims. For any claim upon which Releasees are entitled to indemnity, the indemnity shall include, without limitation, defense of said claim and indemnity for attorneys' fees incurred in defending said indemnified claim. Notwithstanding the generality of the foregoing releases, this Agreement is not intended to release, nor shall it operate to release, any other party to the Lawsuit other than H2L.

2. Warranties by Releasors: Releasors further represent and warrant that they have not assigned, and will not hereafter assign, to any person or entity, all or any portion of any claim whatsoever which they may have, or may have had, or may claim in the future, against Releasees. Releasors further represent and warrant that they are the sole proper parties to assert those claims referenced above, and/or to receive any proceeds paid pursuant to this Agreement, and that they have the right and authority to execute this Agreement on behalf of the parties for whom each signs.

3. Dismissal of Claims by Plaintiffs: By virtue of the execution of this Agreement, Plaintiffs also agree to execute or cause their counsel to execute and file a Stipulation of Dismissal, or equivalent order or document, as required to dismiss, with prejudice, all claims by Plaintiffs against H2L within the Lawsuit and to deliver same to H2L's counsel for filing.

4. No Admission of Liability. The terms of this Agreement represent a compromise of doubtful and disputed claims, and any monetary payment or other consideration tendered pursuant to its terms shall not be considered an admission of liability on the part of H2L, which expressly denies all liability.

5. Coverage of Future Damages. This Agreement shall cover and include, and does cover and

include, any and all future damages which may arise as a result of construction deficiencies at the Property, which are not now known to Releasors, but which may later develop or be discovered, including the consequences thereof and any causes of action therefore.

6. Entire Agreement. This Agreement contains the entire agreement with respect to any claim whatsoever which Releasors may have, may have had, or may claim in the future to have, against Releasees; and this Agreement may be pled as a defense in any action or other proceeding which may be brought or instigated arising out of the such claims, demands, actions, and/or causes of action. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, assigns, affiliates, subsidiaries, purchasers, and parent corporations of Releasors and Releasees. Releasors agree that any and all representations or warranties of any kind, whether express or implied, that ever existed with respect to H2L's work in relation to the Property or with respect to the claims that were asserted, or could have been asserted, in this Lawsuit are hereby null and void. Releasors further agree that there are and were no oral or written representations, warranties, understandings, stipulations, agreements or other promises pertaining to this Agreement that are not incorporated in writing in this documents. Neither this Agreement nor any of its terms shall be amended, modified, or abrogated, except upon written agreement executed by Releasors and H2L.

7. Full and Final Release. The promises and undertakings set forth herein are the sole consideration for this Agreement, and the conditions stated herein are contractual and not a mere recital. This Agreement shall be effective as a full and final accord and satisfaction and mutual release of Releasees by Releasors, as set forth herein, and all agreements and undertakings on the subject matter hereof are expressed and embodied herein.

8. Voluntary Release. Releasors declare that, prior to executing this Agreement, they have apprised themselves with sufficient relevant information, through sources of their own selection, in

order to exercise their own judgment in deciding whether to execute this Agreement. Releasors further declare and represent that this Agreement is executed voluntarily and with full knowledge of its consequences, and that each party executing this Agreement is authorized to do so.

9. Attorneys' Fees and Costs. Releasors shall bear their own attorneys' fees and costs arising from this Lawsuit, the actions of their counsel, any litigation between these parties, and this Agreement.

10. Construction of Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

11. Severability. If any paragraph, subparagraph, sentence or clause of this Agreement is adjudged illegal, invalid or unenforceable, the balance and remainder of this Agreement shall remain in full force and effect, with the exception that the Agreement and the settlement upon which it is based shall be null and void if the Court does not approve the Plaintiff Class' settlement herein.

12. Voluntary Acceptance. Releasors represent that (i) they have relied upon the advice of their attorney(s) and other advisor(s) of their own choosing; (ii) they have not relied on any advice from any other party, or from any attorney(s) or advisor(s) of any other party; and (iii) they have completely read and understand the terms of this Agreement, and that they fully accept those terms. Releasors further acknowledge and agree that this Agreement is the result of negotiations between and among the parties, each having its own counsel, and that no legal presumption will arise against any party as the drafter of this Agreement.

13. Cross-claims and Third Party Claims. Releasors agree that the POA will defend, indemnify and hold harmless H2L and its insurers at the POA's expense, and that the POA will pay all costs associated with the defense of H2L, as to any cross-claim or third party claim brought against H2L by any past, present or future party to the Lawsuit.

14. Prohibition of Contribution Claims. This Agreement is intended to settle any and all liability

of H2L with respect to the claims and matters which have, or could have been, asserted in the Lawsuit. The settlement amount was arrived at after lengthy, arms-length negotiations, and is paid in good faith; therefore, it prohibits any claims against H2L for contribution pursuant to the South Carolina Contribution Among Tortfeasors Act.

Teseniar, et al v. H2L, et al
Receipt, Release and Indemnity Agreement

WITNESSES:

[Signature]
J. J. H.

[Signature]
Mark Teseniar, individually, and on behalf of all
others similarly situated

WITNESSES:

[Signature]
J. J. H.

[Signature]
Nan Teseniar, individually, and on behalf of all
others similarly situated

[Additional Signature Page to Follow]

WITNESSES:

Twelve Oaks at Fenwick Property Owners
Association, Inc.

MJM
CLP

By: [Signature] 3/22/11
Its: Secretary

CLP

[Signature]
Vice President

WITNESSES:

M. W. M.
C. P. H.

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: Edwards 3/22/11

Its: Secretary

[Signature]
BOARD PRESIDENT
2011, MARCH 23

CERTIFICATE OF SERVICE

I certify that on April 4, 2011, I caused to be served a true and correct copy of the following document on counsel of record by electronic mail on all other parties as noted below:

Documents Served:

1. *Settlement Agreement Among Plaintiffs, H2L Consulting Engineers, and APS Enterprises Unlimited, Inc.*

Attorneys for Plaintiffs:

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Mt. Pleasant, SC 29464

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Thurmond Kirchner Timbes & Yelverton, P.A.
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Charleston, SC 29401

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Attorney for Development

Compliance & Inspection:
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Hood Law Firm, LLC
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Charleston, SC 29401

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Michal C. Jones, Esquire
Kelley S. Cannon, Esquire
Howser, Newman & Besley, LLC
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Columbia, SC 29211

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Charleston, SC 29413
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Charleston, SC 29401

Attorney for North Florida Framing, Inc.

M. Dawes Cooke, Jr., Esquire
Randell C. Stoney, Jr., Esquire
Barbara J. Wagner, Esquire
Barnwell Whaley Patterson & Helms, LLC
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Charleston, SC 29492

Attorney for Twelve Oaks at Fenwick Property Owners Association, Inc.

Andrew S. Halio, Esquire
Halio & Halio, PA
PO Box 747
Charleston, SC 29402

Attorney for Johnson Companies, Inc. d/b/a Johnson Roofing, Inc.

Charles G. Blackburn, Esquire
PO Box 6648
Columbia, SC 29260

Attorney for Best Masonry & Tool Supply, L.P. as successor in interest to Magna Wall, Inc.

R. Bryan Barnes, Esquire
J. Geoff Osborn, Jr., Esquire
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

Attorney for Los Campos, Inc.

Dunn D. Hollingsworth, Esquire
Robertson & Hollingsworth
Wachovia Center
177 Meeting Street, Suite 300
Charleston, SC 29401

Attorney for APS Enterprises Unlimited, Inc.:

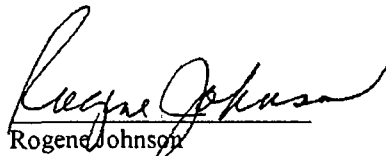
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Jason A. Daigle, Esquire
Maybank Law Firm, LLC
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Attorney for Nava Guzman Construction, Inc.:

M. Brittain Travis
Young Clement Rivers, LLP
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Charleston, SC 29402

Attorney for C&N Stucco & Plastering, Inc.:

William A. Scott, Esquire
Pedersen & Scott, PC
775 St. Andrews Boulevard
Charleston, SC 29407


Rogene Johnson
Paralegal

SETTLEMENT, RELEASE and CONFIDENTIALITY AGREEMENT

THIS SETTLEMENT, RELEASE and CONFIDENTIALITY AGREEMENT is made this ____ day of _____, 2010, by and between Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated (hereinafter referred to as "RELEASORS"); and All South Vinyl Products, Inc. ("All South"); (hereinafter referred to as "RELEASEE").

WHEREAS, RELEASORS owned certain property consisting of condominium dwelling units, consisting of real property and improvements located in Charleston County, South Carolina, commonly known as Twelve Oaks at Fenwick Plantation.

WHEREAS, various entities were involved in the design, development and construction the property, including Fenwick Plantation Tarragon, LLC, Charleston Tarragon Manager, LLC, Tarragon Development Corporation, Summit Contractor's Group, Inc., and Fugelberg Koch Architects, Inc. (hereinafter collectively referred to as "Builder Defendants"); and

WHEREAS, Builder Defendants subcontracted with various subcontractors to complete construction of different phases of the buildings comprising the Properties; and

WHEREAS, All South Vinyl Products, Inc. manufactured and installed the railings at the breezeways and balconies on the Properties pursuant to a subcontract with the Builder Defendants; and

WHEREAS, RELEASORS have alleged that there are problems and defects in the Properties; that said problems and defects are a result of the improper design, construction, application, manufacture, installation, and/or sale of the Properties and their components, including without limitation the railings at the breezeways and balconies of the Properties; and

WHEREAS, the RELEASEE denies that such defects and problems exist; and

WHEREAS, RELEASORS have asserted claims against Builder Defendants for damages allegedly incurred as a result of the alleged design and construction defects in the Properties; and

WHEREAS, RELEASORS have instituted a civil action in the Circuit Court for Charleston County, South Carolina, styled "*Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated v. Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A Fenwick Terragon Apartments, LLC, A South Carolina Limited Liability Company, et al.*," Civil Action No. 2008-CP-10-49, (the "Lawsuit").

WHEREAS, RELEASEE subsequently filed, in the Lawsuit, various answers, cross-claims and/or counterclaims against other parties to the action;

WHEREAS, RELEASORS reached a settlement agreement with certain of the Bullder Defendants, including specifically Summit Contractors Group wherein all rights, causes of action and cross-claims against the Releasee were assigned to the Releasors;

WHEREAS, all Parties to this Agreement desire to fully, finally and forever compromise and settle all past, present and future claims against one another involving, in any way, the Properties, including, but not limited to, all claims which were raised or which could have been raised in the Lawsuit, all claims related to the design, construction, manufacture, marketing, and/or sale of the Properties and any of their component parts by RELEASEES, and any and all claims related to any and all alleged design or construction problems and defects in the House, whether such problems and defects are now known or are hereafter discovered;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

1. RELEASOR, for and in consideration of the sum of Seventy-five Thousand and No/100 (\$75,000.00) Dollars (the "Settlement Amount"), to be paid by or on behalf of the RELEASEE, the receipt and sufficiency of which is hereby acknowledged, does for itself, its successors, heirs, purchasers and assigns, hereby remise, release, acquit, and forever discharge RELEASEE, their successors, assigns, partners, agents, insurers, sureties, subcontractors, servants and employees, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred to or not, and who, together with the RELEASEE may be liable to RELEASORS, its successors, heirs, purchasers and assigns, 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 action, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, now existing or which may hereafter accrue, and all known and unknown, discovered and undiscovered, foreseen and unforeseen, losses and damages resulting from, or which may in any way be alleged to have resulted from, any and all matters or things done, omitted or suffered to be done by RELEASEE in connection with the Properties, including, but without limiting the above in any way, of and from:

All claims which were raised, or which could have been raised, in the Lawsuit, including those claims assigned by other parties; as to the Release

All past, present and future claims related to the design, construction, manufacture, marketing, and/or sale of the Properties and any of its component parts; as to the Release

All past, present and future claims involving, in any way, any alleged construction problems and defects in the Properties, whether such problems and defects are now known or are hereafter discovered, including any latent defects; as to the Release and

All past, present and future claims involving, in any way, the Properties. As to the Release

It is the express intent of the RELEASORS to fully, completely and forever release RELEASEE from any and all claims now existing, or which may hereafter arise, having anything to do, in any way, with the Properties. Notwithstanding the generality of the foregoing releases, this Release is not intended, nor shall it operate, to bar any claims against any other parties.

2. For the consideration set forth in Paragraph 1 above, the RELEASORS also, for themselves, their successors, heirs, purchasers and assigns, specifically release the RELEASEE from any and all express warranties and from any and all implied warranties related to the Properties and any of its components imposed under South Carolina law.

3. For the consideration set forth in Paragraph 1 above, the RELEASORS also agree to execute, or to cause their counsel to execute, a stipulation, order, or other document required to dismiss the Lawsuit and/or Arbitration, and all claims therein, with prejudice as relates to Releasee only. Further, as to all crossclaims or counterclaims filed against the Releasee and assigned to the Releasors, the Releasors will agree to execute, or cause their counsel to execute, a stipulation, order or other document required to dismiss said crossclaims or counterclaims, and all claims therein, with prejudice; provided, however, that such dismissal shall not adversely affect any remaining claims the Releasors may have against Defendants not released herein.

4. The Parties hereby acknowledge that this settlement is the compromise of a doubtful and disputed claim and that payment of the Settlement Amount is not to be construed as an admission of liability on the part of the RELEASEE, but is entered into in order to avoid further litigation.

5. The Parties 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 otherwise.

6. The undersigned Parties declare and represent that they have read this Agreement and acknowledge that they have had the advice of counsel and that no promise, inducement, or agreement not herein expressed has been made to them and that this instrument contains the entire agreement between the parties hereto and that the terms of this instrument are contractual and not a mere recital, and further, that if any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall not be affected.

7. RELEASORS further represent and warrant that they have not heretofore assigned to any other person or entity all or any portion of any claims or causes of action whatsoever which they may or may have had or may assert in the future to have against RELEASEE or any other party or entity arising out of or related to

the Properties, Lawsuit or Arbitration, and they represent and warrant that they are the proper parties to receive the Settlement Amount.

8. RELEASORS agree to indemnify and hold harmless the RELEASEE, its subsidiaries or assigns against any loss, cause, damages, liens, expenses, (including attorney's fees), or other liability or claims imposed upon the RELEASORS, by reason of any third person or entity claiming to have an interest in the matters referred to herein, or claiming to be an assignee or subrogee of any the claims or causes of action made in the Lawsuit and/or Arbitration, or claiming a right of indemnity or contribution against the RELEASORS, or any of them.

9. This full and final release shall cover and shall include and does cover and does include, any and all future damages and/or damages not now known to the RELEASORS, but which may later develop or be discovered, including the effects and consequences thereof, and including all causes of action therefor.

10. This instrument shall be binding on all the Parties' successors in interest, heirs, purchasers and assignees.

11. This Agreement shall be construed in accordance with the laws of the State of South Carolina.

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

Mark F. Teseniar

Nan M. Teseniar

Board of Directors for Twelve Oaks POA

By: _____

Its: _____

This the _____ day of _____, 2010

Settlement, Release and Confidentiality Agreement, page 4
Mark F. Teseniar and Nan M. Teseniar, Releasors

SETTLEMENT AGREEMENT AND COMPLETE RELEASE

The undersigned have entered this Settlement Agreement and Complete Release (the "Agreement") on the dates set forth next to their signatures below.

WITNESSETH

WHEREAS Mark F. and Nan M. Teseniar on behalf of themselves and other similarly situated and the Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to the present) (collectively the "Plaintiffs") filed that certain lawsuit in the Court of Common Pleas in Charleston County, South Carolina entitled Mark F. Teseniar, et al v. Fenwick Plantation Tarragon, LLC, et al, and bearing case number 2008-CP-10-49 (the "Lawsuit") alleging defects and deficiencies in the development, design, construction, management, conversion to condominiums, inspection, and repairs at the property commonly known as Twelve Oaks at Fenwick Plantation (the "Project"); and

WHEREAS the Defendants in the Lawsuit included the general contractor for the Project, Summit Contractors Group, Inc. ("Summit") and its performance bond surety, Federal Insurance Company ("Federal"); and

WHEREAS the Defendants also included A.M. Jacobs, Inc. ("A.M. Jacobs"), which was a subcontractor during the conversion and/or repair of the Project; and

WHEREAS in the Lawsuit the Plaintiffs asserted numerous causes of action against A.M. Jacobs and alleged that the work performed by A.M. Jacobs at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS Summit and Federal asserted numerous Cross-Claims against A.M. Jacobs and alleged that work performed by A.M. Jacobs at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS the Plaintiffs reached a compromise settlement in which Summit and Federal, among other things, assigned to the Plaintiffs their Cross-Claims against A.M. Jacobs and any and all other rights, demands, causes of action, losses, costs, and expenses of every nature and kind, including attorney's fees arising out of or related in any manner whatsoever to allegedly defective work of A.M. Jacobs at the Project and any and all loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS A.M. Jacobs has denied the allegations of the Plaintiff and the allegations of Summit and Federal; and

WHEREAS the Plaintiffs, for themselves and as the assignees of Summit and Federal, desire to fully and forever resolve any and all claims which were or which could have been asserted against A.M. Jacobs arising out of or in connection with the Project; now, therefore,

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual promises set forth herein, the undersigned do hereby agree as follows:

1. A.M. Jacobs has remitted payment to the Plaintiffs in the amount of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS, which is being held in trust pending the execution of this Agreement, approval of the partial class settlement and the filing of an Order of Dismissal as to A.M. Jacobs, Inc.
2. In consideration of the funds paid pursuant hereto, the Plaintiffs and all its members, officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, insurers, heirs, successors, and assigns, and the Plaintiffs as the assignees of Summit and Federal (collectively the "Releasing Parties"), shall and do hereby fully and forever absolve, acquit discharge, and release A.M. Jacobs and its officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, attorneys, insurers, sureties, heirs, successors, and assigns (the "Released Parties") of and from any and all claims, demands, actions, suits, and causes of action of every nature and kind, whether at law or in equity, whether known or unknown, and whether past, present, or future arising out of or in any manner whatsoever related to the claims which were or which could have been asserted against A.M. Jacobs arising out of or in connection with the Project.
3. In consideration of the funds paid pursuant hereto, the Releasing Parties shall and do hereby agree to defend and hold A.M. Jacobs harmless up to the amount of THIRTY-FIVE THOUSAND (\$35,000.00) DOLLARS for any claims, demands, suits, causes of action, lawsuits, or other actions against A.M. Jacobs by any person or entity arising out of or in any matter whatsoever related to the matters which were or which could have been raised in the Lawsuit.

IT IS SPECIFICALLY UNDERSTOOD, ACKNOWLEDGED, AND AGREED that this Agreement is entered by the undersigned in order to resolve doubted and disputed claims, and that nothing herein shall constitute an admission of liability of any kind by an party hereto; that this Agreement is an accord and satisfaction and not a mere recital; that this Agreement was drafted by counsel for A.M. Jacobs as an accommodation and shall not be construed against or in favor of any party; that this Agreement is entered pursuant and subject to the law of the State of South Carolina; that the individuals whose signatures appear below are fully authorized to execute this Agreement on behalf of the party for which they have signed; and, that this Agreement shall inure to and be binding upon the successors and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth as indicated below:

(Signatures on the Following Page)

**MARK F. AND NAN M. TESENIAR
ON BEHALF OF THEMSELVES
AND OTHER SIMILARLY
SITUATED**

Mark F. Teseniar

Nan F. Teseniar

Date:

A.M. JACOBS, INC.

By: (Sign/Print Name)

Its: (Print Title)

Date:

**TWELVE OAKS AT FENWICK
PROPERTY OWNERS
ASSOCIATION, INC. (FROM
DECEMBER 16, 2008 TO THE
PRESENT)**

By: (Sign/Print Name)

Its: (Print Title)

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SETTLEMENT AGREEMENT AND COMPLETE RELEASE

The undersigned have entered this Settlement Agreement and Complete Release (the "Agreement") on the dates set forth next to their signatures below.

WITNESSETH

WHEREAS Mark F. and Nan M. Teseniar on behalf of themselves and others similarly situated and the Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to the present) (collectively the "Plaintiffs") filed that certain lawsuit in the Court of Common Pleas in Charleston County, South Carolina entitled Mark F. Teseniar, et al. v. Fenwick Plantation Tarragon, LLC, et al. and bearing case number 2008-CP-10-49 (the "Lawsuit") alleging defects and deficiencies in the development, design, construction, management, conversion to condominiums, inspection, and repairs at the property commonly known as Twelve Oaks at Fenwick Plantation (the "Project"); and

WHEREAS the Defendants in the Lawsuit included the general contractor for the Project, Summit Contractors Group, Inc. ("Summit") and its performance bond surety, Federal Insurance Company ("Federal"); and

WHEREAS the Defendants also included Los Campos, Inc. ("Los Campos"), which was a subcontractor to Summit during the original construction of the Project; and

WHEREAS in the Lawsuit the Plaintiffs asserted numerous causes of action against Los Campos and alleged that the work performed by Los Campos at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS Summit and Federal asserted numerous Cross-Claims against Los Campos and alleged that the work performed by Los Campos at the Project was defective and deficient in numerous particulars and that loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property resulted therefrom; and

WHEREAS the Plaintiffs reached a compromise settlement in which Summit and Federal, among other things, assigned to the Plaintiffs their Cross-Claims against Los Campos and any and all other rights, demands, causes of action, losses, costs, and expenses of every nature and kind, including attorney's fees arising out of or related in any manner whatsoever to the allegedly defective work of Los Campos at the Project and any and all loss of use and/or diminution in value and/or stigma and/or physical injury to tangible property which resulted therefrom; and

WHEREAS Los Campos has denied the allegations of the Plaintiff and the allegations of Summit and Federal; and

WHEREAS the Plaintiffs, for themselves and as the assignees of Summit and Federal, desire to fully and forever resolve any and all claims which were or which could have been asserted against Los Campos arising out of or in connection with the Project; now, therefore,

KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual promises set forth herein, the undersigned do hereby agree as follows:

1. Within thirty (30) days after the complete execution of this Agreement, Los Campos shall remit payment to the Plaintiffs in the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

2. Upon its receipt of the funds to be paid pursuant hereto, the Plaintiffs and its all its members, officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, insurers, heirs, successors, and assigns, and the Plaintiffs as the assignees of Summit and Federal (collectively the "Releasing Parties"), shall and do hereby fully and forever absolve, acquit, discharge, and release Los Campos and its officers, directors, owners, partners, affiliates, subsidiaries, parents, agents, employees, attorneys, insurers, sureties, heirs, successors, and assigns (the "Released Parties") of and from any and all claims, demands, actions, suits, and causes of action of every nature and kind, whether at law or in equity, whether known or unknown, and whether past, present, or future arising out of or in any manner whatsoever related to the claims which were or which could have been asserted against Los Campos arising out of or in connection with the Project.
3. Upon its receipt of the funds to be paid pursuant hereto, the Releasing Parties shall and do hereby agree to defend and hold Los Campos harmless up to the amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS for any claims, demands, suits, causes of action, lawsuits, or other actions against Los Campos by any person or entity arising out of or in any manner whatsoever related to the matters which were or which could have been raised in the Lawsuit.

IT IS SPECIFICALLY UNDERSTOOD, ACKNOWLEDGED, AND AGREED that this Agreement is entered by the undersigned in order to resolve doubted and disputed claims, and that nothing herein shall constitute an admission of liability of any kind by any party hereto; that this Agreement is an accord and satisfaction and not a mere recital; that this Agreement was drafted by counsel for Los Campos as an accommodation and shall not be construed against or in favor of any party; that this Agreement is entered pursuant and subject to the law of the State of South Carolina; that the individuals whose signatures appear below are fully authorized to execute this Agreement on behalf of the party for which they have signed; and, that this Agreement shall inure to and be binding upon the successors and assigns of the undersigned.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates set forth as indicated below:

**MARK F. AND NAN M. TESENIAR
ON BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED**

**TWELVE OAKS AT FENWICK PROPERTY
OWNERS ASSOCIATION, INC. (FROM
DECEMBER 16, 2008 TO THE PRESENT)**

Mark F. Teseniar

By: _____
(Sign/Print Name)

Nan M. Teseniar

Its: _____
(Print Title)

Date: _____

Date: _____

LOS CAMPOS, INC.

By: _____
(Sign/Print Name)

Its: _____
(Print Title)

Date: _____

STATE OF SOUTH CAROLINA)
) RELEASE
COUNTY OF CHARLESTON)

WHEREAS, Plaintiffs Mark F. Teseniar and Nan M. Teseniar filed a class action lawsuit in the Charleston County Court of Common Pleas, Civil Action No. 2008-CP-10-49, on behalf of themselves and the other co-owners of the Twelve Oaks at Fenwick Horizontal Property Regime, seeking damages against various Defendants, including Twelve Oaks at Fenwick Property Owners Association, Inc. and its alleged individual board members, Jamie Helman, Chris Cobbs and Scott Ferguson (collectively "POA"), for negligence, gross negligence, carelessness, recklessness, willfulness and wantonness, breach of warranty of habitability, breach of warranty against latent defects, breach of warranty of workmanlike service, breach of warranty of fitness for a particular purpose, breach of warranty of merchantability and serviceability, breach of fiduciary duty, and unfair trade practices arising out of the construction, repair, conversion, marketing, sale, management and maintenance of Twelve Oaks at Fenwick Horizontal Property Regime, all of which is set forth in the Fourth Amended Complaint in the lawsuit referenced above; and

WHEREAS, the Court certified the lawsuit as a class action by order filed October 20, 2008; and

WHEREAS, Twelve Oaks at Fenwick Property Owners Association, Inc. joined the lawsuit as a named Plaintiff, differentiating itself from the POA by designating itself as "Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present)" and designating POA as "Twelve Oaks at Fenwick Property Owners Association, Inc. (from August 8, 2006 to December 15, 2008)," seeking damages arising

out of its statutory duties to repair and maintain the common elements of the horizontal property regime; and

WHEREAS, the Plaintiffs have settled all claims against the POA, including the class action claims and the claims of Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) for a total payment of One Hundred Thousand and 00/100 (\$100,000.00) Dollars (\$75,000 paid by the insurance carrier for the POA, and \$25,000 paid on behalf of Helman, Cobbs and Ferguson); and

WHEREAS, a partial settlement of the class action claims was preliminarily approved by the Court on September 8, 2010 and finally approved on November 1, 2010, which included the approval and authorization of this settlement against POA, approving this Release of all claims against POA, and authorizing the dismissal with prejudice of all claims against POA.

NOW, THEREFORE, in consideration of the payment of One Hundred Thousand and 00/100 (\$100,000.00) Dollars by or on behalf of Twelve Oaks at Fenwick Property Owners Association, Inc., Jamie Helman, Chris Cobbs and Scott Ferguson, and all other officers and directors of the Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA"), the receipt of which is hereby acknowledged, Mark F. Teseniar and Nan M. Teseniar, individually and on behalf of all persons, firms, corporations, partnerships, associations, trusts, or legal entities owning condominiums at Twelve Oaks at Fenwick Horizontal Property Regime, their heirs personal representatives, successors and assigns, and Twelve Oaks at Fenwick Property Owners Association, Inc. (from December 16, 2008 to present) ("Plaintiffs"), do release and discharge and by these presents for themselves, their heirs, personal representatives, successors and assigns, release and

forever discharge said POA, their officers, directors, employees, agents, heirs, personal representatives, successors and assigns, and their insurers and indemnitors, of and from any and all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, for or because of any act or omission by anyone prior to and including the date hereof on account of any and all damages resulting or to result from construction, repair, conversion, marketing, sale, and maintenance of the property known as Twelve Oaks at Fenwick Horizontal Property Regime including all claims that were or could have been set forth against POA in Civil Action No. 2008-CP-10-49. As part of this Release and settlement agreement, Plaintiffs agree to dismiss POA, Helman, Cobbs and Ferguson from said lawsuit with prejudice.

This Release is a release as to the POA only and does not release any claims against any other person, firm or corporation not mentioned herein.

Plaintiffs understand that said POA, by reason of agreeing to this compromise payment, does not admit liability of any sort, and said POA has made no agreement or promise to do or omit to do any act or thing not herein set forth, and Plaintiffs further understand that this Release is made as a compromise to avoid and/or minimize expenses and litigation and to terminate all controversies and/or claims for damages of whatsoever nature, known or unknown.

Plaintiffs further understand and agree that they rely upon their own judgment, as well as the judgment and advice of their attorneys, Jesse A. Kirchner, W. Jefferson Leath, John T. Chakeris and Philip W. Segui, as to the losses they have suffered and the potential recovery therefor, and they have not been influenced to any extent whatsoever in making this Release by any representations or statements regarding said damages or the legal

liability therefor, or regarding any other matters, made by persons, firms or corporations who are hereby released, or by any person or persons representing them and that Plaintiffs accept the above mentioned sum in full settlement and satisfaction of all claims or demands whatsoever for damages sustained by them whether known or unknown.

Plaintiffs admit that no representation of fact or opinion has been made by said POA or anyone on their behalf to induce this compromise agreement with respect to the extent, nature or permanency of damages and that the sum paid to them and herewith accepted by them is solely by way of settlement, compromise and final disposition of a disputed claim and that in determining said sum there has been specifically taken into consideration the fact that serious and unexpected consequences or complications might result from the present damage known or now unknown from said damages, and it is therefore specifically agreed that this Release shall forever be a final and complete bar to and full settlement of all claims.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2010.

WITNESSES:

Mark F. Teseniar

Nan M. Teseniar

Twelve Oaks at Fenwick POA
(December 16, 2008 to present)

By: _____

Its: _____

I, the undersigned attorney for Plaintiffs, hereby certify that the contents, meanings and effects of the foregoing Release have been carefully and fully explained by me and I recommend the execution of said Release for the consideration therein expressed.

Jesse A. Kirchner, Esq.
Attorney for Plaintiffs

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),

RELEASORS,

vs.

FENWICK PLANTATION TARRAGON,
LLC, s 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 16, 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,)

) IN THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2008-CP-10-49
)

**SETTLEMENT AGREEMENT
AND RELEASE**

Individually, CHRIS COBBS, Individually,)
AND FEDERAL INSURANCE COMPANY,)
MARIA ARIAS, MIQUEL ROSALES, APS)
ENTERPRISES UNLIMITED, INC., HR)
ELECTRIC, A.M. JACOBS, INC., MICKEY)
MASON CONTRACTORS, KMAC OF THE)
CAROLINAS, INC. AND NEO)
CORPORATION,)

Defendants.)

This Settlement and Release Agreement ("Agreement") is made as of the ____ day of _____ 2010, by and among Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc. ("POA") (together being hereinafter collectively referred to as "RELEASORS") and Fugleberg Koch Architects, Inc. (hereinafter "RELEASEE").

WHEREAS, 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 (hereinafter "the Property"); and

WHEREAS, RELEASEE provided certain professional architectural services related to the original design and construction for the Property, which was originally designed, built and operated as an apartment complex; and

WHEREAS, RELEASORS have alleged there to be design and construction defects, deficiencies, and/or problems to the Property allegedly related to the original design and construction as well as certain repairs performed after original construction of the Property up to and including such time as it was converted and operated as the condominium complex known as Twelve Oaks at Fenwick Plantation; and

WHEREAS, RELEASORS have alleged damages resulting from the above problems, and that such alleged problems and defects are allegedly the responsibility of the RELEASEE, as well as others; and

WHEREAS, RELEASEE denies the existence or extent of any such alleged defects and specifically denies responsibility for any such alleged damages; and

WHEREAS, RELEASORS and/or others now represented by RELEASORS instituted two civil actions (collectively "Actions") in the Court of Common Pleas for Charleston County, South Carolina, in which they asserted claims for damages to the Property. One of those actions was originally in the name of, "Robert Koenig, derivatively and on behalf of Twelve Oaks at Fenwick Plantation Property Owners Association, Inc., and Twelve Oaks at Fenwick Plantation Horizontal Property Regime," and was designated as civil action number 2008-CP-10-1758. The other is captioned, as indicated above on this Agreement, in the name of, "Mark F. Teseniar and Nan M. Teseniar, individually, and on behalf of all others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc.," and is designated as civil action number 2008-CP-10-49. These two Actions were consolidated pursuant to an Order executed by Judge Roger M. Young, Sr., and filed with the Clerk of Court of Charleston County on or about October 20, 2008, and RELEASORS have pursued the actions under the above-captioned matter, that being civil action number 2008-CP-10-49 ("Lawsuit"); and

WHEREAS, RELEASEE denies the existence, extent of, and any alleged liability for any damages alleged to the Property, and RELEASEE specifically denies all allegations asserted against it in the above-mentioned Actions; and

WHEREAS, a resolution of all claims against RELEASEE has been reached in the spirit of compromise; and

WHEREAS, RELEASORS and RELEASEE now desire to forever compromise and settle all claims against RELEASEE rather than pursue the above-mentioned Lawsuit. RELEASORS and RELEASEE enter into this Settlement and Release Agreement (hereinafter "Agreement") to provide for certain promises and covenants in full settlement, compromise and discharge of any and all claims relating to any work performed by RELEASEE and/or alleged damages relating to the performance of any work and/or services performed by RELEASEE relative to the Property, including all such claims which were asserted, or which could have been asserted, by RELEASORS in the above captioned Actions, now or formerly pending, and which are resolved by this Agreement.

NOW, THEREFORE, in consideration of the promises, condition, undertakings and representations contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the RELEASORS and RELEASEE hereby agree as follows:

1. For and in receipt of the consideration in the amount of Five Hundred Thousand Dollars (\$500,000.00) to be paid to RELEASORS and the mutual covenants of this Agreement, RELEASORS do hereby remise, release, acquit, absolve, and forever discharge RELEASEE and its respective successors, purchasers, assigns, officers, directors, partners (general or limited), shareholders, parents, subsidiaries, affiliates, agents, attorneys, employees, contractors, consultants, servants, heirs, executors, administrators, predecessors, sureties and insurers, and all other persons, firms, corporations, associations or partnerships, whether herein named or referred or not, and who together with RELEASEE may be liable to RELEASORS and their heirs, successors, purchasers and assigns, from and against: (a) any and all past or present claims, actions, causes of action, suits, rights, damages, demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature

whatsoever, whether known or unknown; that were asserted or could have been asserted in the above-captioned Actions or that relate in any way to the Property; and (b) future claims, actions, causes of action, suits, rights, damages, demands of every nature and/or kind whatsoever, whether known or unknown, and all other expenses or compensation of any nature whatsoever, whether known or unknown, that accrue, arise or are otherwise acquired as a result of actions or events that occurred or transpired in whole or in part prior to the execution of this Agreement, for alleged injuries, losses or damages, expenses, liability and obligations of every kind or character (including consequential damages and any attorneys' fees or expenses of litigation) that were asserted or could have been asserted in the above captioned actions or that relate in any way to the Property. RELEASORS agree to indemnify and hold RELEASEE harmless from any and all claims which may have been or may hereinafter be made by any private insurance company or any other entity, by way of any subrogation, lien or otherwise, for services or work provided by RELEASEE in connection with this matter. Furthermore, RELEASORS agree to indemnify and hold RELEASEE harmless from any and all future claims by any person or entity, including any other party to the Lawsuit and/or any claim by any subsequent purchasers (or other persons who have or may acquire an interest in the property), which claims are being released by this document and were made or could have been made in the Lawsuit, including, but not limited to, all attorneys' fees and costs. Notwithstanding the generality of the foregoing releases, this Agreement is not intended to, nor shall it operate to release any other party to the Lawsuit other than RELEASEE.

2. Each of the RELEASORS to this Agreement further represent and warrant that they have not heretofore assigned, and will not hereafter assign, to any person or entity, all or any portion of any claim whatsoever which they may have or may have had or may claim in the

future to have against RELEASEE, and RELEASORS further represent and warrant that they are the sole proper parties to assert those claims referenced hereinabove, and/or to receive any proceeds paid pursuant to the within Agreement, and that they have the right and authority to execute this Agreement on behalf of the parties for whom each signs.

3. By virtue of the execution of this Agreement, RELEASORS also agree to execute or cause their counsel to execute and file a Stipulation of Dismissal, or equivalent order or document as required to dismiss, with prejudice, all Actions within the Lawsuit and/or any and all claims of RELEASORS against RELEASEE. RELEASORS agree to promptly execute and file the aforementioned Stipulation of Dismissal, with prejudice, upon signing of this agreement and receipt of the consideration agreed upon herein.

4. The terms of this Agreement represent a compromise of doubtful and disputed claims, and any monetary payment or other consideration herein is not to be considered as an admission of liability on the part of RELEASEE, by whom all liability is expressly denied.

5. 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 the Property not now known to the RELEASORS, but which may later develop or be discovered, including the effects or consequences thereof, and including all causes of action therefore.

6. This Agreement is contingent upon the Court's approval of the settlement of the class action portion of the Lawsuit.

7. This Agreement contains the entire agreement by, between, and/or among the parties hereto with respect to any claim whatsoever which RELEASORS may have or may have had or may claim in the future to have against RELEASEE, and this instrument may be pled as a defense in any action or other proceeding which may be brought or instigated arising out of the

claims, demands, actions, and/or causes of action recited hereinabove. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, assigns, affiliates, subsidiaries, purchasers, and parent corporations of the parties to this Agreement. The parties to this Agreement agree that any and all representations or warranties of any kind, whether express or implied, that ever existed with respect to RELEASEE are hereby null and void. The parties to this Agreement further agree that there are and were no oral or written representations, warranties, understandings, stipulations, agreements or other promises pertaining to this Agreement that are not incorporated in writing in this Agreement. Neither this Agreement itself nor any terms or provisions hereof shall be amended, modified, or abrogated, except upon written agreement executed by the parties.

8. The promises and undertakings set forth herein are the sole consideration for this agreement, the conditions stated herein are contractual and not a mere recital, this Agreement shall be effective as a full and final accord and satisfaction and mutual release of RELEASEE by RELEASORS as set forth herein, and all agreements and undertakings on the subject matter hereof are expressed and embodied herein.

9. The parties to this Agreement declare that, prior to the execution of this Settlement Agreement and Release, they have apprised themselves with sufficient relevant information, through sources of their own selection, in order to exercise their own judgment in deciding whether to execute the within agreement. The parties to this Agreement further declare and represent that this Agreement is executed voluntarily and with full knowledge of its consequences, and that each party executing this Agreement is authorized to do so.

10. Each party to this Agreement shall bear its own attorneys' fees and costs arising from the actions of its own counsel, any litigation between these parties, this Agreement, and the

matters and documents referred to herein, and any and all other related matters as needed to conclude the Litigation (except as otherwise set out in Paragraphs 1 and 15 herein).

11. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

12. The within Agreement and the documents contemplated hereby and/or referenced herein, may be executed in counterparts, each of which shall be deemed an original and, together, shall constitute one and the same agreement.

13. If any paragraph, subparagraph, sentence or clause of this Agreement is adjudged illegal, invalid or unenforceable, the balance and remainder of this Agreement shall remain in full force and effect with the exception that the Agreement and the settlement upon which the Agreement is based are null and void if settlement of the class action portion of the Lawsuit is not approved by the Court.

14. In entering into this Agreement each of the parties represents to the others (i) that it has relied upon the advice of its respective attorney(s) and other advisor(s) of its own choosing, (ii) that it has not relied on any advice from the other or from any attorney or other advisor of the other, and (iii) that it has completely read and understands the terms of this Agreement and that those terms are fully understood and voluntarily accepted by it. The parties to this Agreement further acknowledge and agree that this Agreement is the result of negotiations between the parties, each having its own legal counsel, and that no legal presumption will arise against any party as the drafter.

15. RELEASORS agree that POA will defend and indemnify and hold harmless RELEASEE and its insurers at POA's expense and POA will pay all costs associated with the

defense of RELEASEE as to any cross-claims or third party claims brought by any parties to the above captioned Actions.

16. This settlement is intended to settle all the liability of RELEASEE with respect to these matters which are, or could have been, brought in the Lawsuit. The settlement amount was arrived at after lengthy, arms length negotiations, and paid in good faith and, therefore, prohibits any claims against the RELEASEE for contribution pursuant to the South Carolina Contribution Among Tortfeasors Act.

IN WITNESS WHEREOF, the Parties have set forth their signatures and executed this Agreement this ____ day of _____, 2010.

WITNESSES:

FOR RELEASORS

Mark Teseniar, individually, and on behalf of all
others similarly situated

Nan Teseniar, individually, and on behalf of all
others similarly situated

[additional signature pages to follow]

WITNESSES:

FOR RELEASORS

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

Twelve Oaks at Fenwick Property Owners
Association, Inc.

By: _____

Its: _____

[additional signature page to follow]

WITNESSES:

FOR RELEASEE

Fugleberg Koch Architects, Inc.

By: _____

Its: _____

2631367v.1

-11-

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 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 MOTION FOR
JUDGMENT NOTWITHSTANDING THE
VERDICT**

The Defendant Professional Plastering & Stucco, Inc. respectfully moves for a
Judgment Notwithstanding the Verdict.

The evidence submitted at trial was insufficient to support a verdict for the Plaintiffs, and the evidence shows that the Defendant is entitled to a judgment as a matter of law. The Plaintiffs failed to prove the essential elements of their claims against the Defendant.

Plaintiffs have failed to establish that the actions of Professional Plastering were the proximate cause of Plaintiffs' damages. The only reasonable inference that can be drawn from the evidence presented at trial was that the Plaintiffs failed, as a matter of law, to prove that the Defendant was the proximate cause of the Plaintiffs damages, which is necessary to establish liability.

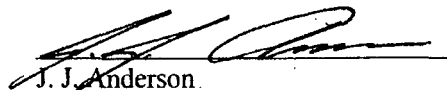
The mere existence of damages does not establish liability. Gillant v. Peters Dry Cleaning Co., 195 S.C. 417, 11 S.E.2d 857 (1941). The violation of a building code establishes only that a legal duty for which a builder can be held liable in tort for proximately caused losses has been violated. The party 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 Plaintiffs

are required to prove that the Defendant was the proximate cause of the damages, and they have failed to do so in this case.

The Plaintiffs have failed to prove the essential elements of their claims against the Defendant, and therefore the verdict of the jury should be reversed and judgment entered in favor of the Defendant.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



J. J. Anderson
37 ½ Broad Street
P O Box 87
Charleston, SC 29402
843-723-0185

SWEENEY WINGATE & BARROW, PA
Everett A. Kendall
Christy E. Mahon
1515 Lady Street
P O Box 12129
Columbia, SC 29211
803-256-2233

*Attorneys for Defendant
Professional Plastering & Stucco, Inc.*

Charleston, South Carolina

May 23, 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 MOTION FOR NEW
TRIAL *NISI REMITTITUR***

The Defendant Professional Plastering & Stucco, Inc., as an alternative to its
motions for a new trial absolute and for judgment notwithstanding the verdict, moves for
a New Trial *Nisi Remittitur*.

"A motion for a new trial *nisi remittitur* asks the trial court to reduce the verdict because the verdict is merely excessive." James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "If the amount of the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial court must grant a new trial absolute." Id. See also Sanders v. Prince, 304 S.C. 236, 238, 403 S.E.2d 640, 642 (1991) ("When a verdict is 'grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice, or other consideration not founded on the evidence, it becomes the duty of this Court, as well as the trial court, to set aside the verdict.' ") (quoting Small v. Springs Indus., 292 S.C. 481, 487, 357 S.E.2d 452, 455 (1987)). "The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented." Proctor v. Dep't of Health & Envtl. Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006).

The jury returned a verdict in favor of the Plaintiffs, awarding damages in the amount of \$7,723,225.00. The evidence presented at trial does not support the amount of damages awarded by the jury. The verdict reached by the jury in this case was excessive and should be reduced.

The verdict form used 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 removing 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. The jury was required to award the Plaintiffs over and above the \$8 million

that the Plaintiffs had received in settlement. By removing the Defendant's right to set-off, the damages awarded by the jury are clearly excessive and should be reduced.

Other parties besides the Defendant share in the responsibility for damages to the Twelve Oaks Condominiums. The damage award should be reduced by the amount that was received in settlement from all of the building envelope defendants. Los Campos was tasked with applying sealant at the project as well as the final layer of the stucco system, the elastomeric paint. 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. North Florida Framing was also responsible for flashing. Johnson Roofing was the roofer for the project and would have been tasked with installing the kickout flashing, if it was in the plans. Additionally, the architect was responsible for inspecting and Summit, the general contractor, was responsible for approving and supervising the installation of the stucco. Looking at the damages at Twelve Oaks, it is nearly impossible to separate them by building trade or subcontractor.

In light of the evidence presented which demonstrated other parties involvement in work which affected the building envelope, the jury's award of damages of \$7,723,225.00 in excess of the settlements received by Plaintiffs is unreasonable and excessive. The damages awarded by the Plaintiffs should be reduced by the amount that the Plaintiffs have already received in settlement from the building envelope defendants or, in the alternative, by the amount received which is related to the stucco.

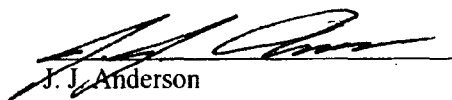
Additionally the exclusion of the Defendant's repair estimate requires the granting of a new trial *nisi remittitur*. The jury was not provided with an estimate by the Defendant to compare to the Plaintiff's stucco estimate. The only estimate provided to

the jury relating only to the stucco was Plaintiffs' repair estimate. Plaintiffs estimate was the only one in the jury room. By having no other estimate related to the stucco besides the Plaintiff's stucco-only estimate, the jury was likely influenced by the lack of a comparable estimate by the Defendant and this resulted in an excessive verdict.

Considering the evidence presented, the verdict of \$7,723,225.00 is excessive and should therefore be reduced.

Respectfully submitted,

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Charleston, South Carolina

May 23, 2011

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.

PROFESSIONAL PLASTERING &
STUCCO, INC.,

Defendant.

PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO THE DEFENDANT'S
POST TRIAL MOTIONS

FILED
MAY 27 PM 3:58
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, by and through their undersigned counsel, herewith submit this memorandum in opposition to the following post trial motions filed by the Defendant, Professional Plastering & Stucco, Inc. (hereinafter "Professional Plastering"):

1. Motion for New Trial Absolute;
2. Motion for Judgment Notwithstanding the Verdict;
3. Motion for New Trial *Nisi Remittitur*, and
4. Motion for Set-Off

1. Motion for New Trial Absolute.

"The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and the trial court's decision will not be disturbed absent an abuse of discretion." Fields v. J. Haynes Waters Builders, Inc., et al., 376 SC 545 at 569, 658 S.E.2d 80 (2008)(internal citations omitted).

A. Jury Charges.

It appears Professional Plastering is complaining primarily of the Plaintiffs' **proposed** requests to charge rather than what was actually charged to the jury by Judge Harrington. Additionally, Professional Plastering is complaining of charges it

requested that were not given but is ignoring the charges given as a whole by the trial judge.

Judge Harrington correctly charged the jury with the applicable law in South Carolina as it relates to the elements of negligence. The court gave its own charges (requested by neither party) on negligence and proximate cause. There was nothing misleading about the trial court's charges to the jury and the charges were the correct statement of the law in South Carolina.

As it relates to the charges on Implied Warranty of Workmanlike Service, Professional Plastering mischaracterizes the charges by stating that "[t]here was no evidence of any specialty qualification or expert qualification on the part of the Defendant in this matter." Professional Plastering & Stucco, Inc.'s Memorandum in Support of Its Motion for New Trial Absolute, p. 8. First, there was evidence presented that the Defendant held itself out as a professional stucco installer. Its name is "**Professional** Plastering & Stucco." Further, there was also uncontroverted evidence introduced that Professional Plastering held itself out to be a "certified installer" of the Magna Wall stucco product installed on the Plaintiffs' buildings. For Professional Plastering to suggest that the charges read to the jury suggest some "heightened duty" or "fiduciary relationship" on the part of Professional Plastering is a mischaracterization of the charge and the law on implied warranty in South Carolina. The charges merely state that when a contractor or subcontractor holds itself out as specially qualified to perform certain work, there is an implied warranty that the work he undertakes to do shall be of proper workmanship. Again, the uncontroverted evidence introduced at trial was the Defendant held itself out to be a professional stucco applicator who was specially certified to install the stucco product at issue. As such, there was nothing

misleading about the trial court's charges to the jury and the charges were the correct statement of the law.

To the extent that a charge was actually given as to the "Cost to Repair to Existing Code," such charges were the correct statement of the law in South Carolina and, in any event, were harmless error (if error at all) because the jury awarded the Plaintiffs actual compensatory damages, not any betterments.

To the extent that a charge was actually given as to "Depreciation Charge", it was harmless error (if error at all) because the jury awarded the Plaintiffs the exact dollar figure of its actual damages which included no depreciation or diminution in value damages.

The charges given to the jury on punitive damages were a correct statement of the law in South Carolina. To the extent any error may be assigned to the punitive damages charges, the error was harmless because the jury awarded no punitive damages.

With respect to the charges Professional Plastering alleges in its memorandum as being requested but not charged, the Defendant's requests were either charged or there was no evidence presented at trial to support such a charge. By way of example (rather than individually discussing the fourteen or more charges about which the Defendant complains), the Defendant suggests that it was error for the Court not to charge their request number 12 on mitigation, when the uncontroverted evidence presented at trial was that these damages could not have been mitigated.

"A jury charge is correct if the charge, **when read as a whole**, adequately covers the current and correct law. To warrant reversal on appeal, the trial court's instructions must be not only erroneous, but must also be prejudicial." Fields v. J. Haynes Waters Builders, Inc., et al., 376 SC 545 at 560, 658 S.E.2d 80 (2008) (emphasis added)

(internal citations omitted). In the instant matter, the charges, particularly when read as a whole, were correct and adequately covered the current law in South Carolina. The charges were neither erroneous nor prejudicial and to the extent any error could be found with a particular charge, it was harmless error.

B. Verdict Form.

"The determination of whether a special verdict should be submitted to the jury is within the sound discretion of the trial judge, and an appellate court will only reverse upon a finding of an abuse of that discretion. An abuse of discretion occurs when a ruling is based on an error of law or a factual conclusion without evidentiary support." SC DOT v. First Carolina Corporation of SC, 372 SC 295 at 300, 641 S.E.2d 903 at 907 (2007) (internal citations omitted).

Professional Plastering argues that the verdict form used by the Court was in error because it included the amount that had been previously paid to the Plaintiffs and somehow removed the Defendant's right to set-off. This argument is inapposite to the manner in which this case was tried ***by consent of the Defendant***. In their opening statement the Plaintiffs told the jury how much they had received in prior settlements. Evidence was submitted by both Jeff Jessup, Board President, and Mark Teseniar, Class Representative, as to how much money was received by the Plaintiffs in settlement prior to trial. At no time did the Defendant ever object to this evidence. Professional Plastering is unable to show any prejudice that resulted from the Plaintiff essentially conceding Professional Plastering's request for a set-off and trying the case in such a manner where the set-off was addressed and dealt with, by the consent of Professional Plastering, before the jury.

Evidence of the cost of repair was also submitted through Plaintiffs' expert, Robert Gallagher. Mr. Gallagher opined that the total cost of repair to the project was

\$15,748,225.00. The jury, armed with the evidence that Plaintiffs had already received \$8,025,000.00 in settlements, awarded the Plaintiffs the exact difference between the total cost of repair and the settlement amounts (\$15,748,225.00 - \$8,025,000.00 = \$7,723,225.00, the exact amount of the jury award). The jury could have awarded zero damages if they thought the Plaintiffs had been adequately compensated for their damages by the settling parties.

The verdict form conformed to the evidence as presented at trial, to which there was no objection raised by the Defendant. The verdict form was neither misleading nor unduly suggestive. To the extent the Court should find that the verdict form was suggestive or misleading, the very case cited by the Defendant in its memorandum holds that a verdict form must be read in conjunction with the jury instructions and that any such error in the verdict form may be corrected by clear instructions to the jury. "Reading the verdict form in conjunction with the jury instructions, we find that any possible confusion or misapprehension caused by the verdict form was remedied by the instructions from the court." *Id.* at 304.

C. Exclusion of Defendant's Purported Expert

In its memorandum, Professional Plastering complains that it was error for the Court to refuse to qualify Chris Dawkins as an expert on the grounds he is not a licensed professional engineer in South Carolina. This oversimplification clearly mischaracterizes the Court's ruling in this regard. Mr. Dawkins was not disqualified solely on the basis that he was not a licensed professional engineer in South Carolina. The Court properly considered this fact as one of many grounds for refusing to qualify Mr. Dawkins as an expert. "While *Baggerly* makes it clear that non-compliance with licensing requirements ... should not require, *a fortiori*, a trial court to refuse to qualify a witness as an expert, *Baggerly* does not stand for the proposition that a trial court

should not consider these factors when judging a purported expert's qualifications." Fields v. J. Haynes Waters Builders, Inc., 376 SC 545 at 556, 658 S.E.2d 80 at 86 (2008).

In Fields, the trial court only "considered the fact that [the purported expert] did not have the required license from the State of South Carolina" and the Supreme Court held that the trial court "cannot have such a solitary focus." Id. To the contrary, in the instant case, the trial judge did not have a solitary focus and, rather, correctly made an inquiry in "broad scope" as instructed by the Supreme Court in Fields. The trial judge properly considered the fact that Mr. Dawkins was not a licensed professional engineer in South Carolina and was being offered to provide expert testimony in violation of SC Code Ann. §§ 40-22-20(23), 40-22-30, and 40-22-200. Additionally, however, the trial court properly considered the following facts brought out in Mr. Dawkin's *voire dire*:

1. That Mr. Dawkins had never designed or performed engineering work on a project such as the one at issue – a twelve building, multi-family condominium project;
2. That Mr. Dawkins was from Duluth, GA and had never designed or performed engineering work on any kind of building in Charleston, South Carolina;
3. That Mr. Dawkins was from Duluth, GA and had never designed or performed engineering work on any kind of building in Coastal South Carolina;
4. That Mr. Dawkins was from Duluth, GA and had never designed or performed engineering work on any kind of building anywhere in South Carolina;
5. That Mr. Dawkins had never been qualified as an expert of any kind in any court of law in South Carolina;
6. That Mr. Dawkins was not a licensed professional engineer in the state of South Carolina;
7. That Mr. Dawkins was not a licensed architect in any state;
8. That Mr. Dawkins was not a licensed general contractor in any state;
9. That Mr. Dawkins had no certifications or training whatsoever for the self-proclaimed title of "Construction Consultant"; and

10. That Mr. Dawkins did NO testing of his own at the Plaintiffs' condominium project at issue in the litigation.

The qualification of a witness as an expert and the admissibility of the expert's testimony are each matters resting largely within the trial judge's discretion¹. An appellate court "will not disturb a ruling made pursuant to the trial judge's discretion absent an abuse of discretion and a showing of prejudice to the party complaining." Strange v. SC Dep't of Highways, 307 SC 161 at 163, 414 S.E.2d 138 at 139 (1992) (emphasis added).

Additionally, Professional Plastering's Expert Witness Designation² identifies Wade Anderson of Engineered Solutions International, LLC. Professional Plastering could have called Mr. Anderson, who is a licensed professional engineer in the state of South Carolina³, to testify at trial, but chose not to. In essence, Professional Plastering created its own problem in this regard. In addition, Professional Plastering's Expert Witness Designation identifies, "Donnie King, formerly of Professional Plastering & Stucco, as an expert to testify in this matter within his scope of expertise." See Exhibit 1. Nonetheless, the Defendant chose not to proffer Mr. King as an expert at trial.

Additionally, as evidenced by the proffer of Mr. Dawkin's opinion testimony, the decision to exclude his testimony was harmless. The crux of Mr. Dawkin's proffered testimony was that others were responsible for the damage. The Plaintiffs conceded this fact during trial and were very up front with the jury in this regard. Further, the trial judge properly charged to the jury that in order to be liable in South Carolina a Defendant did not have to be the sole cause of the Plaintiffs' damage, but rather a contributing cause.

¹ See e.g. Strange v. SC Dep't of Highways, 307 SC 161 at 163 (1992); and McMillan v. Durant, 312 SC 200 at 204 (1993)

² See Exhibit 1, Professional Plastering & Stucco's Designation of Expert Witness

³ See p. 2 of Curriculum Vitae of Wade T. Anderson, PE attached to Exhibit 1 (SC Professional Engineer registration number SC 25734)

As additional sustaining grounds, the trial court's discretionary decision to exclude the expert testimony of Chris Dawkins was proper due to discovery abuse on the part of Professional Plastering. There is a continuing duty on the part of a party from whom information is sought through discovery to supplement its responses to discovery with documents or information⁴. A party's disclosure of information and documents before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing.

Plaintiffs' Requests for Production to the Defendant Professional Plastering & Stucco, Inc. reads as follows:

9. Copies of any and all written notes, memos and/or reports of any expert witnesses retained for use at trial or identified as a witness in response to the party's Interrogatories, including but not limited to the following:

- (a) All documents, including draft notes, preliminary reports and/or final reports, prepared in whole or in part by the expert on the subject matter, an in connection with those matters about which the expert is expected to testify at trial;
- (b) All documents sent to the expert by the party or the party's counsel in reference to this litigation;
- (c) All documents upon which the expert will rely for the opinion or opinions that the expert will express at trial;
- (d) All documents utilized, relied upon, consulted with and/or reviewed by the expert in connection with this litigation;
- (e) All documents setting forth any compensation agreement between the party and the expert;
- (f) Identification by court, term, number and date, any and all litigation wherein the expert was either a party or testified as a witness;
- (g) All documents used or relied upon by the expert in preparing answers to expert interrogatories;

⁴ See e.g. Bensch v. Davidson, 354 SC 173, 580 S.E.2d 128 (2003).

- (h) All documents that have been or will be shown to the expert during or in preparation of the expert's testimony at deposition or trial; and
- (i) All documents, including curriculum vitae, that the party contends will establish the expert's qualifications for trial purposes.

As the Court is aware, the only documents produced by Professional Plastering prior to trial in response to this request for production was a two-page curriculum vitae of Christian Dawkins and a two-page curriculum vitae for Wade Anderson.

"When it appears a violation of SC Rule of Civil Procedure 33 has occurred, it lies within the discretion of a trial court to decide what sanction, if any, should be imposed."

Bensch v. Davidson, 354 SC 173 at 182, 580 S.E.2d 128 at 133 (2003).

D. Exclusion of Defendant's Stucco Only Cost Estimate

In its memorandum, Professional Plastering complains that the Court excluded the Defendant's "stucco only cost estimate." This assertion by Professional Plastering is a mischaracterization of what actually happened at trial. Professional Plastering was in no way precluded by the Court from submitting a "stucco only" estimate. In fact, Professional Plastering's expert, Robert Puschek, testified at length about his opinions concerning a stucco only cost estimate. In addition, Mr. Puschek's comparative analysis between the Plaintiffs' stucco only cost estimate and his own was displayed before the jury as a demonstrative exhibit on the Court's ELMO and discussed at length by Professional Plastering's counsel.

To the extent Professional Plastering is complaining that the actual document produced by Mr. Puschek was precluded from being admitted into evidence, such preclusion was appropriate because the document as drafted (i.e., a comparative

analysis rather than a straight estimate) improperly pitted witnesses⁵. In addition, the document was not simply a "stucco only" cost estimate as the Defendant has characterized it. Rather, as testified to by Mr. Puscheck, the estimate included windows and other items unrelated to the stucco.

E. Objections to Dawkins' Lay Testimony.

Professional Plastering believes it was error for the Court to instruct Mr. Dawkins not to use technical terms during his testimony. As an initial matter, Professional Plastering is incorrect that Mr. Dawkins' use of the term "z-flashing" drew an objection from the Plaintiffs. To the contrary, Mr. Dawkins testified at length concerning "z-flashing" and why it is called "z-flashing."

Further, contrary to Professional Plastering's assertions, there is no evidence before the Court that the technical names attempted to be utilized by Mr. Dawkins in his testimony were, in fact, the actual product names of the various building materials which he was trying to describe. Additionally, referencing a particular building product's **function** (not simply the technical name), which Mr. Dawkins attempted to do on numerous occasions, is absolutely expert opinion testimony for which one must possess special knowledge, skill, expertise or training and, as such, his lay testimony in this regard was properly excluded by the trial judge.

F. SET-OFF.

As correctly pointed out by Professional Plastering in its memorandum, the purpose of a set-off is to prevent an injured party from obtaining a second recovery for damages already paid to the party. In the instant case, the evidence overwhelmingly supports the fact that the damage award given by the jury is in **addition to** the settlement money previously received. As such, it strains credibility to argue that the

⁵ State v. Kelsey, 331 SC 50, 502 S.E.2d 63 (1998) (improper "pitting" constitutes reversible error).

Plaintiffs have somehow recovered twice for the same damages. Evidence was presented to the jury that the overall repairs to the project were going to cost \$15,748,225.00. As such, the jury award of \$7,723,225.00 is in no way a double recovery. The jury could have awarded zero damages if they thought the Plaintiffs had been adequately compensated for their damages by the settling parties.

Additionally, assuming *arguendo* that Professional Plastering was entitled to some set-off⁶, it has already received one. Robert Gallagher testified that the cost to repair damage related to the stucco deficiencies would cost \$8,761,443.92. By awarding only \$7,723,225.00, Professional Plastering has effectively received a set-off of \$1,038,218.92.

G. Thirteenth Juror Doctrine

As an initial matter, Professional Plastering did not assert this doctrine when it articulated its grounds for post-trial motions to the Court after the jury verdict. As such, the Court should not consider this argument at all. Nonetheless, under this doctrine, the trial court may grant a new trial if the judge determines the jury's verdict is contrary to the fair preponderance of the evidence. As set forth above, the jury verdict conforms to the evidence presented at trial and the manner in which the case was tried by consent of the Defendant. There is ample evidence in the record to support the jury's verdict.

CONCLUSION

"The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court, and the trial court's decision will not be disturbed absent an abuse of discretion." Fields v. J. Haynes Waters Builders, Inc., et al., 376 SC 545 at 569, 658 S.E.2d 80 (2008)(internal citations omitted).

⁶ Incidentally, Plaintiffs would point out to the Court that the total amount of settlements represented to the Court in Professional Plastering's memorandum is incorrect.

"No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice." SCRCP Rule 61.

For the reasons set forth above, Professional Plastering's Motion for a New Trial Absolute should be denied.

2. Motion for Judgment Notwithstanding the Verdict.

Professional Plastering argues that the Plaintiffs failed to prove the essential elements of their causes of action against Professional Plastering, namely proximate cause. To the contrary, the Plaintiffs overwhelmingly proved the essential elements of their claims.

As to negligence, the evidence established that Professional Plastering owed the Plaintiff a duty to use due care and to following the applicable building code and the Magna Wall installation instructions. Not only did Plaintiffs prove Professional Plastering breached these duties but Professional Plastering itself, through the testimony of Donnie King, **admitted** it breached these duties in no less than seven particulars: (1) no casing bead installed where the stucco intersects the jamb of a window; (2) kick-out flashings at roof terminations should have been installed; (3) stucco was installed in contact with roofing shingles in violation of Magna Wall's prohibition against the same; (4) absence of weep screeds at the floor terminations were a violation of NER 459 and Magna Wall's installation instructions; (5) variable thickness – admitted that less than ¼" is too thin in violation of NER 459 and Magna Wall's installation instructions; (6) the reverse weather lap of the felt is a violation of the building code; and (7) it was a

violation of the paper backed lathe manufacturer's installation instructions not to remove the 4" paper lap where lathe met so it could be keyed together properly.

The evidence that the multiple breaches of the standard of care and code violations on the part of Professional Plastering proximately caused the Plaintiffs' damages was overwhelming and, for the most part, was uncontroverted. Most importantly, as to proximate cause, the Plaintiffs' expert, Myles Glick, testified that the stucco application deficiencies on the part of Professional Plastering were the proximate cause of the Plaintiffs' damages – his testimony was unwavering in this regard. Finally, Plaintiffs' expert, Robert Gallagher, and the Plaintiffs themselves testified as to the cost to repair those damages.

As to breach of the implied warranty of workmanlike service, it is the law of this State that when one undertakes construction work, he impliedly warrants that the work will be done in a careful, diligent, and workmanlike manner⁷. As set forth above, the evidence clearly demonstrates that the work performed by Professional Plastering was anything but careful, diligent, and workmanlike. Further, Mr. Glick's testimony proved that Professional Plastering's breach of the implied warranty of workmanlike service was the proximate cause of the Plaintiffs' damages.

For the reasons set forth above, Professional Plastering's Motion for JNOV should be denied.

3. Motion for New Trial Nisi Remittitur.

A remittitur motion requires the trial judge to consider the adequacy of the verdict in light of the evidence presented at trial. In the instant matter, the jury verdict mirrors the evidence presented at trial. As set forth above, the jury verdict is equal to the actual repair costs of the Plaintiffs' buildings – i.e., the Plaintiffs' actual damages. It is in no

⁷ See e.g. Kennedy v. Columbia Lumber & Mfg. Co., 299 SC 335, 384 S.E.2d 730 (1989).

way "shockingly disproportionate" to the Plaintiffs' injuries / damages. As such a remittitur is inappropriate.

4. Motion for Set-Off.

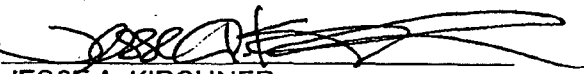
In an effort to keep this Memorandum as brief as possible, Plaintiffs hereby incorporate by reference the arguments set forth in sections 1(B) and 1(F) of this Memorandum.

CONCLUSION

Based on the foregoing, all of Professional Plastering's Post-Trial Motions should be denied.

Respectfully submitted,

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Attorneys for the Plaintiffs

May 27, 2011

Charleston, South Carolina.

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

DESIGNATION OF EXPERT WITNESS

v.)
)
)
Luis Martinez, Villagomez Painting, Inc.,)
and D.M. Painting)
)
Third-Party Defendants.)

TO: ALL COUNSEL OF RECORD:

Pursuant to the Court's Scheduling Order in this case, below please find the information regarding the expert witnesses to be used by Defendant Professional Plastering & Stucco, Inc.:

Chris Dawkins
Engineered Solutions International, LLC
3883 Rogers Bridge Road, Suite 401A
Duluth, Georgia 30097

A copy of Mr. Dawkins' CV is attached. The Defendant reserves the right to conduct destructive and non-destructive testing.

Mr. Dawkins is expected to testify as to those facts and matters observed by him in the course of his field investigation and to the opinions and conclusions he has drawn. This witness' testimony is expected to relate to both liability and damage issues.

Wade Anderson
Engineered Solutions International, LLC
659 Auburn Avenue, Suite 249
Atlanta, Georgia 30312

A copy of Mr. Anderson's CV is attached. The Defendant reserves the right to conduct destructive and non-destructive testing.

Mr. Anderson is expected to testify as to those facts and matters observed by him in the course of his field investigation and to the opinions and conclusions he has drawn. This witness' testimony is expected to relate to both liability and damage issues.

The Defendant/Third-Party Plaintiff further reserves the right to call former employees or representatives of Professional Plastering & Stucco, Inc. as expert(s) to testify in this matter within their scope of expertise.

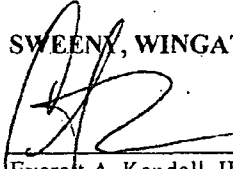
The Defendant further reserves the right to call Donnie King, formerly of Professional Plastering & Stucco, as an expert to testify in this matter within his scope of expertise.

Further answering, this Defendant/Third-Party Plaintiff reserves the right to illicit expert opinion testimony from the above-named experts, any fact witnesses identified by any party that are qualified to provide expert testimony in any area that they are deemed qualified to offer such testimony, any party representative(s) that is/are qualified to provide expert testimony in any area that they are deemed qualified to offer such testimony, by any expert identified by any party or otherwise identified through the course of discovery.

Additional persons may become known through discovery who may be witnesses concerning facts of this case. This Defendant/Third-Party Plaintiff retains the right to amend this response at any time, up to and including at trial.

The Defendant reserves the right to call any witnesses or experts identified or designated by any other party.

Respectfully submitted,


SWEENEY, WINGATE & BARROW, P.A.

Everett A. Kendall, II
Christy E. Mahon
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

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

Columbia, South Carolina

April 1, 2010

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Professional Plastering & Stucco, do hereby certify that I have served a copy of the foregoing Designation of Expert in connection with the above-referenced case by mailing a copy of the same via electronic transmission, to the following:

W. Jefferson Leath, Jr., Esquire
Leath Bouch Crawford & Von Keller, LLP
P.O. Box 59
Charleston, SC 29402
Attorney for Plaintiffs, Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated

Jesse A. Kirchner, Esquire
Steven D. Epps, Esquire
Thurmond, Kirchner & Timbes, PA.
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Charleston, SC 29401
Attorney for H2

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Charleston, SC 29412
Attorney for J.R. Hobbs

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Carlock Copeland & Stair, LLP
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Charleston, SC 29401-3531
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Attorney for Development, Compliance & Inspections, Inc.

John T. Chakeris, Esquire
The Chakeris Law Firm
231 Calhoun Street Charleston, SC 29401
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Mt. Pleasant, SC 29464
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National Counsel for Gen. Alum. Co. of TX, LP

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Attorneys for H2L Consulting Engineers

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Halio & Halio
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Owners Association**

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Barbara J. Wagner, Esquire
Barnwell Whaley Patterson & Helms, LLC
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**Attorneys for North Florida Framing, Inc. and
Marquez Construction, Inc.**

Charles C. Blackburn, Esquire
Murphy & Grantland, P.A.
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Columbia, SC 29260
**Attorneys for Johnson Companies, Inc., d/b/a
Johnson Roofing, Inc.**

James Geoffrey Osborn, Jr., Esquire
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3200
Attorney for Magna Wall, Inc.

John V. Burch, Esquire
Christina A. Craddock, Esquire
200 Ashford Center North, Suite 500
Atlanta, Georgia 30338-2668

Attorneys for Federal Insurance Company

James A. Bruorton, IV, Esquire
Rosen Rosen & Hagood, LLC
PO Box 893
Charleston, South Carolina 29402

Attorney for Federal Insurance Company

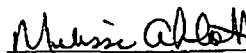
S. Markey Stubbs, Esquire
Baker, Ravenel & Bender
3710 Landmark Drive, Suite 400
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**Attorneys J.R. Hobbs Co-Atlanta, LLC f/k/a
JRH Merger Co., LLC**

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Attorneys for All South Vinyl

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Turner Padgett Graham & Laney
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Charleston, SC 29413-2129
**Attorney for General Aluminum Company of
Texas, LP**

Phillip C. Dozier, Esquire
Phillip C. Dozier, P.A.
P.O. Drawer 2024
Apopka, Florida 32704-2024
**Attorney for Professional Plastering &
Stucco, Inc.**

Dunn D. Hollingsworth, Esquire
Robertson & Hollingsworth
177 Meeting Street, Suite 300
Charleston, SC 29401
Attorneys for Los Campos, Inc.


Melissa H. Abbott

Charleston, South Carolina

April 1, 2010

Curriculum Vitae Christian N. Dawkins

Chris Dawkins has more than 27 years experience in building construction systems and civil engineering disciplines. He has a strong background in building and site systems construction, building systems forensics investigations, and facilities and utilities assessment/master planning. He has also practiced in urban areas site civil engineering design, parks/streetscape master planning and design, and in construction phase management of new buildings construction or renovation projects, grading and paving operations, and urban streetscape projects. Mr. Dawkins has practiced as a building consultant since 1993 after serving in several assignments with the U.S. Navy Civil Engineer Corps.

Education

- MSCE, Civil Engineering, 1987, Georgia Institute of Technology
- BSCE, Civil Engineering, 1981, North Carolina State University

Registration

- Professional Engineer in Georgia and North Carolina

Professional Organizations

- Member, American Society of Civil Engineers (ASCE)
- Member, Roof Consultants Institute (RCI)
- Member, Southern Loss Association

Representative Continuing Education

- RCI Region II Roofs Seminar & BEC Charleston Moisture Control in Buildings Seminar (2008)
- Versico Roofing Design Conference & WoodWorks Wood Solutions Fair (2008)
- ASTM E06 Committee - Building Envelope Interface Techniques & Systems Symposium (2007)
- Simpson Strong-Tie - High Wind Design and Analysis (2007)
- Simpson Strong-Tie - Wall Bracing Requirements of IRC 2006 & Designing with Cold Formed Steel (2007)
- SJI - Specifying and Designing with Steel Joists and Joist Girders (2006)
- RCI Wind and Drainage (2005) and Professional Roof Consulting & Advanced Thermal and Moisture (2004)
- Lorman - Solving Water Intrusion and Mold Problems in Buildings (2002)
- ASCE Structural Condition Assessment of Existing Structures (2002) and 2nd Forensics Congress (2000)
- ASCE 7-98 Wind Loads for Buildings & Clemson University-Understanding Wind Effects on Buildings (1999)
- EDI 3rd Party EIFS Inspection and Moisture Analysis Training (1998) NAHB EIFS Remediation (1999)
- RCI Building Envelope Symposiums (1997 & 2005)

Employment Experience

- Senior Building Consultant & Civil Engineer, Engineered Solutions, LLC, Atlanta, GA - Oct 2008 - Present
- President, Beech Consulting, Inc. - January 2003 - Present
- Associate, Kimley-Horn and Associates, Inc. (Raleigh, NC and Norcross, GA) - 1993-2003
- Public Works Officer, Presidential Retreat, Camp David, MD - 1990-93
- Company Commander and Equipment Officer, Naval Mobile Construction Battalion SEVEN, Gulfport, MS. with 8-month deployments to Sicily and Puerto Rico - 1987-89
- Executive Assistant/Aide to Commander, Atlantic Division, Naval Facilities Engineering Command, Norfolk, VA - 1985-86
- Public Works Officer, U.S. Naval Support Activity, Souda Bay, Crete, Greece - 1983-85
- Assistant Public Works Officer, Naval Air Facility, El Centro, CA - 1981-83

Engineered Solutions

3883 Rogers Bridge Road, Suite 401A
Duluth, Georgia 30097
Direct: 770-476-2362 Fax: 770-476-1047
Atlanta office: 404-688-2320
www.ESL-eng.com

Curriculum Vitae Christian N. Dawkins

Principal Areas of Practice

- Building Systems Investigation
- Roof Systems Evaluation/Analysis
- Wall Cladding Systems Evaluation/Analysis
- Civil Engineering/Urban Design

Building Systems Investigation

- Over 400 general building and/or site investigations of commercial and residential construction including failure cause/origin and/or scope of needed repairs studies of building system components (structures, window systems, retaining walls, decks, special construction systems, and roofs/ wall claddings,) and other studies including identifying construction defects, structural systems collapse/failure/scope of repair, and leakage/water intrusion/mold studies. Other investigations have included storm, hurricane or tornado, wind/hail, flood, fire or tree/auto impact damage assessment, and/or scope of repair analysis. These investigations have been conducted in GA, AL, FL, NC, SC, TN, MS, PA, OK and TX.
- Over 125 major building system repairs or new construction projects at U.S. Naval facilities including barracks, residential housing, aircraft hangars, warehouses, and operations and maintenance facilities in El Centro, CA; Souda Bay, Crete, Greece; and Camp David, MD.

Roofs & Wall Cladding Evaluation/Analysis

- Over 150 commercial or residential roof systems investigations including built-up roofs, various cap sheet or membrane systems, asbestos shingle, slate, tile, metal systems, wood shakes, and residential 3-tab or architectural shingle systems.
- Over 125 Portland Cement-based Stucco/Plaster cladding and related wall components evaluations throughout southeastern U.S.
- Over 50 wall systems evaluations involving other claddings including brick veneer, mass masonry, storefront glass systems and various lap sidings.
- Over 600 Exterior Insulation Finish System (EIFS) cladding investigations to determine sources of moisture intrusion; to observe tear-off/re-clad and determine wall substrate damage; to develop scope of repairs; and/or to evaluate related building components performance (windows, doors, roofs and other cladding penetrations). These investigations include 35 commercial structures and 589 residences in NC, SC, GA, AL, TN, FL, KY, AR, OH, IA, MO, AZ, and Rota, Spain.

Civil Engineering/Urban Design

- Urban Streetscape projects planning, public involvement, design, and/or construction services on Spring Garden and East Market Streets - Greensboro, NC; and Wrightsville Avenue Renovations, Wilmington, NC.
- Site Civil Engineering Design and/or construction phase services on Gwinnett County, GA municipal projects including sites at George Pierce, Shorty Howell, Bethesda and Rabbit Hill Parks, and Taxiway B extension Briscoe Field Airport, Lawrenceville, GA.
- Park Master Plans for South 17th Street Neighborhood Park and Legion Stadium Fields and Buildings Complex, Wilmington, NC.
- Site Civil Engineering design and/or construction phase services on new banks, pharmacies, restaurants, or roadways (over 25 projects) at municipalities throughout NC, GA, SC, VA, TN.
- Civil Engineering planning/alternatives studies/services on more than 100 projects including due diligence studies, traffic access/impact studies, public consensus building/team involvement, and permitting or construction phase services.
- Several major utilities renovations or replacements projects at Souda Bay, Crete, Greece and Camp David, MD.
- Directed paving/grading operations on more than 25 roadway or parking facilities projects at Souda Bay, Crete, Greece; Sigonella, Sicily; Ceiba, Puerto Rico; Gulfport, MS; and Camp David, MD.

Other Special Experience

- Directed numerous Hurricane Hugo emergency disaster recovery operations in southeastern Puerto Rico (1989).
- As Crew Chief or Project Construction Coordinator with NAMB "World Changers", led or directed renovations to more than 100 residences (re-roofing; re-siding; renovating decks and roof structures; exterior/interior finishes and weatherization projects) with week-long ministry projects located in OK, ME, MS, VA, NC and GA (2000 - 2008).

February 2009
Page 2 of 2

Curriculum Vitae Wade T. Anderson, PE

Wade Anderson has over 15 years experience in building construction systems and mechanical engineering disciplines. He has a strong background in building and site construction, building system forensics investigations and utilities testing, assessment and optimization for site planning. Prior to entering the construction industry, Mr. Anderson spent over three years working on shuttle robotics for NASA's manned space program where he developed a rigorous engineering background in the areas of testing, simulation and design. Mr. Anderson's strong theoretical background is complimented by years of practical experience where he has been instrumental in the design, engineering, code compliance and statutory approval of construction projects throughout the USA, Mexico and the Caribbean.

Education

- BSME, Mechanical Engineering, Georgia Institute of Technology 1995
Presidential Scholarship

Registrations & Certifications

- Professional Engineering (PE) registration current as of 2009 in: GA20711, AL28588, AR13006, CO41440, FL66698, KS19493, KY25302, LA33300, ME11422, MS18110, MT18224, NH12171, NM18065, NC33064, OK22861, PR22778, SC25734, TN111564, UT6657811-2202, VA43890, WV17323
- Backflow Prevention Tester Certification: University of Florida / FREEO, #S09-08-8219
- Refrigerant Recycling, Recovery & Reclamation: EPA 608 Universal #PDFBA37C85EE483L0

Technical Summary

- Technical expert work providing testing, analysis and litigation support for site projects & building systems.
- Construction experience including managing green-field projects to \$3+ million.
- Experience in consulting, research / development and in manufacturing environments.
- Water system supply & return design, optimization and forensic inspection.
- HVAC inspection and assessment of system performance and damage (primarily for insurance underwriters).

Design and Analysis Work

- Water systems engineering & water availability design.
- Hygrothermal finite element analysis (including dew-point) of building structures.
- Design review of waterproofing details for architectural construction drawings.
- Architectural and process integration for aseptic containment cleanrooms.
- Pioneered automated analysis of real-time data stream from space shuttle robotics.
- Water intrusion analysis.
- Thermal systems design.
- HVAC design review.
- Filtration and airflow design.

Employment History

- Engineered Solutions International, LLC, Principal 2005-Present
Engineering consulting including construction design work, forensic and technical expert work.
- BioPure Group, LLC, Partner 2003-2005
Construction consulting including forensic and technical expert work.
- Air Energy Systems, Director Production Engineering 2002-2003
Turnkey construction company which acquired MSS Clean Technology in 2002.
- Shepherd Building Group, MSS Clean Technology, Inc., Development Manager/Project Engineer 1998-2003
Provided the design, manufacture and construction of Biotech cleanrooms and controlled environments.
- Lockheed Martin Engineering & Science Services, Sr. Associate / Associate Engineer 1995-1998
Sub-contracted to NASA's Johnson Space Center in the Engineering Analysis and Simulation Department.
- Round Mountain Gold Corporation, Plant Maintenance co-op: 1993, 1994
Maintenance work on the entire plant, including crusher, conveyors, stackers and ADR.



659 Auburn Avenue, Suite 249
Atlanta, Georgia 30312
Cell: 404-547-1371 Fax: 404-920-3269
Atlanta office: 404-688-2320
www.ESL-eng.com

Curriculum Vitae **Wade T. Anderson, PE**

Principal Areas of Practice:

- Building Systems & Site Investigation
- Water System Engineering
- Mechanical and Plumbing Systems

Building System & Site Investigation

- Provide site investigations of commercial and residential construction related to building system and construction site defects, including failure cause / origin.
- Inspection and assessment of wall claddings / building envelopes primarily related to identifying defects leading to moisture intrusion and mold, including litigation support.
- Determine scope of needed repairs and associated cost estimates of building system components.
- Construction contract administration including scheduling, estimating and quality control site visits to support new & remedial projects.

Water System Engineering

- Testing, modeling and analysis of over 150 new or existing water systems.
- Design and optimization of water distribution systems primarily for new construction projects. Work includes pressure and flow analysis for fire flow and domestic conditions. Design experience extends to waste water where on-site pump design, lift station or pre-treatment is called for.
- Municipal domestic water system capacity analysis and modeling. Experience includes forward load capacity prediction and design recommendations.

Mechanical & Plumbing Systems

- Forensic inspections of plumbing and HVAC systems. System inspections include leak detection, sound pressure level measurements, documentation review, quality control site visits, and forensic failure cause and origin analysis.
- Testing, analysis, design and certification of HVAC systems for critical area cleanrooms.
- Inspection and assessment of system performance, primarily following hail damage to condenser coils and associated HVAC components.

Prior Representative Experience:

725,000 Square Foot Retail – Failure cause & remedial repair design for systemic plumbing failures, Oxford, AL
16 Story Condos – Multi-source, building wide water intrusion identification and remedial repair management, Atlanta, GA
Hotel – HVAC related injury, system analysis and litigation support, Savannah, GA
Multiple cement-based stucco homes – Window interface / installation problem detection & repair management, Atlanta, GA
21 Story Condos – Hot water loop failure analysis, Atlanta, GA
Residential condo – EIFS related water intrusion / litigation support, Atlanta, GA
Waste Water Pre-Treatment Plant – Owners representative / green field construction management, Columbus, OH
Finite Element Analysis – Structural engineering review, NASA, Houston, TX

Languages

- Bilingual, in English and Spanish.

Professional Organizations

- Professional Member, International Code Council (ICC)
- Member, American Society of Mechanical Engineers (ASME)
- Member, National Fire Protection Association (NFPA)
- Affiliate, Society of Fire Protection Engineers (SFPE)

January 2009
Page 2 of 2

CERTIFICATE OF SERVICE

I, Cathi Adkins, an employee of Thurmond Kirchner Timbes & Yelverton, P.A., do hereby certify that I have this date, mailed, postage prepaid, and electronically mailed a true and correct copy of the ***Plaintiffs' Memorandum in Opposition to the Defendant's Post Trial Motions*** to the following counsel of record:

JJ Anderson, Esq.
Anderson Reynolds & Stephens, LLC
37 ½ Broad Street
Post Office Box 87
Charleston, SC 29402
janderson@arlawsc.com

Everett A. Kendall, Esq.
Christy E. Mahon, Esq.
Sweeney Wingate & Barrow, PA
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Columbia, SC 29211
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cem@swblaw.com

By:


Cathi P. Adkins
Paralegal to Jesse A. Kirchner

FILED
2011 MAY 27 PM 3:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This 27th day of May, 2011

Charleston, South Carolina.

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF, SUITE 101
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May 27, 2011

*Also admitted in Georgia
**Also admitted in North Carolina

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Mark F. Teseniar and Nan M. Teseniar, et al. v. Fenwick Plantation
Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick
Plantation, et al.
Case No.: 2008-CP-10-0049

Dear Ms. Armstrong:

Enclosed for filing please find the original and one (1) copy of Plaintiffs' Memorandum in Opposition to the Defendant's Post Trial Motions, in connection with the above-referenced matter. I would appreciate it very much if you would file this pleading with the Court and return a file-stamped copy to me via my courier.

Your assistance with this matter is greatly appreciated.

With best regards, I remain

Very truly yours,



Cathi P. Adkins
Paralegal to Jesse A. Kirchner

JAK/cpa
Enclosure

cc: (VIA EMAIL ONLY)
John T. Chakeris, Esquire (w/encl)
Phillip W. Segui, Esquire (w/encl)
W. Jefferson Leath, JR., Esquire (w/encl)
Justin O. Lucey, Esquire (w/encl)

(VIA EMAIL and US MAIL)
J.J. Anderson, Esquire (w/encl)
Everett A. Kendall, Esquire (w/encl)
Christy E. Mahon, Esquire (w/encl)

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 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

REPLY IN SUPPORT OF DEFENDANT'S
POST-TRIAL MOTIONS

FILED
2011 JUN -1 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Defendant Professional Plastering & Stucco (hereinafter "Professional
Plastering") submits the following reply in support of its post-trial motions. Rather than
refute each allegation asserted in Plaintiffs' Memorandum, Professional Plastering

restates and incorporates, as if set forth herein verbatim, its Memoranda previously filed in support of its post trial motions.

A. Verdict Form.

In Plaintiffs' Memorandum, they argue that Professional Plastering consented to the use of the verdict form and the inclusion of the settlement amounts received on the verdict form. However, this is not the case. During the trial, Professional Plastering made specific objections to the verdict form and to the settlement amounts being included on the verdict form. Professional Plastering did not consent to the issue of set-off being dealt with by the jury.

The fact that Professional Plastering made the strategic decision not to object to the comments regarding settlement made by Plaintiffs' counsel during their opening statement or throughout the trial does not waive Professional Plastering's right to challenge the verdict form used. These are completely different issues.

The error in the Court's jury charge on the verdict form and the use of the special verdict form were prejudicial to Professional Plastering, and require a new trial absolute.

B. Exclusion of Defendant's Expert.

The Plaintiffs argue that the Court also could have excluded Chris Dawkins for some kind of discovery violation.

First, it is noted that the Court did not exclude Chris Dawkins on this basis. However, addressing the Plaintiffs' argument that in their words "as an additional sustaining ground," the Court could have excluded the expert on some sort of alleged discovery violation, the Defendant addresses this issue.

"The sanction of excluding a witness should never be lightly invoked." Jenkins v. Few, 391 S.C. 209, 705 S.E.2d 457 (Ct. App. 2011). Before excluding a witness as a sanction for violating the continuing duty to disclose information the trial court should ascertain (1) the type of witness involved, (2) the content of the evidence, (3) the explanation for the failure to name the witness in answer to the interrogatory, (4) the importance of the witness's testimony, and (5) the degree of surprise to the other party. Id. (quoting and applying Bensch v. Davidson, 354 S.C. 173, 580 S.E.2d 128 (2003)). The Court found the Bensch factors applied since the record before them indicated that there was a failure to later supplement discovery responses.

In Jenkins v. Few, supra, Few argued that the trial court erred in allowing Stokes to testify as an expert witness because he lacked the necessary qualifications and Few was not provided with notice Jenkins intended to call Stokes as an expert. The Court found that the trial court made the appropriate considerations before declining to exclude Stokes as an expert witness. The trial court determined Jenkins was calling Stokes as an expert witness although named as a fact witness. Jenkins's counsel explained he first listed Stokes as a fact witness but reserved the right to make a later determination about calling him as an expert witness. However, after deciding to call Stokes as an expert witness, Jenkins's counsel inadvertently failed to supplement his interrogatory answer. The trial court found this mistake was not the result of bad faith. Finally, the trial court found the degree of surprise and prejudice to Few was low because Stokes testified to the same thing during his deposition and Few's counsel had the opportunity to cross-examine him during an *in camera* proffer of his testimony. Accordingly, the Court concluded that the trial court did not abuse its discretion in admitting Stokes as an expert witness.

The Plaintiffs quote Bensch v. Davidson, *supra*. In Bensch, the Court found that by not naming an expert, there was a degree of surprise since the respondents were prevented from hiring their own expert. That is clearly not the case here. The Plaintiffs have articulated absolutely no surprise, and they were not surprised. There was no bad faith and the Plaintiffs have not alleged any. In fact, the Plaintiffs have not asserted any grounds for any of the Bensch factors that must be met to exclude a witness for a violation with continuing discovery.

Chris Dawkins had been named as an expert for over a year. The Plaintiffs had and presented their own expert witnesses. The witness was the Defendant's liability expert, and the content of his testimony was critical to the Defendant's case. The Plaintiffs never requested a copy of the file in response to the Defendant's discovery responses, through a subpoena, or even by a deposition.

The Plaintiff's Memorandum quoted their discovery request, however, it failed to quote the Defendant's discovery response to Request for Production 9. The Defendant's discovery responses as to Plaintiffs' Request for Production 9 dated August 20, 2010 stated: "The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211." (Exhibit I) It was therefore incumbent upon the Plaintiffs' attorneys to request the information and make arrangements to review the

material. No such request was ever made on behalf of the Plaintiffs for any documents from or on behalf of any expert.

The Plaintiffs were aware prior to trial that Mr. Dawkins had been retained as an expert in this case. As noted by Professional Plastering's discovery responses, which are attached as an exhibit to Plaintiffs' memorandum, Mr. Dawkins was identified as an expert witness for Professional Plastering on April 1, 2010, over a year ago.

Plaintiffs had ample opportunity to depose Mr. Dawkins and to discover any opinions which he might hold. Also, the day prior to Mr. Dawkins testimony being offered, Plaintiffs counsel were able to review Mr. Dawkins' complete file and to interview him, thus eliminating any potential surprise regarding his testimony.

Accordingly, the Court correctly ruled that there was no discovery violation that would allow for the exclusion of Chris Dawkins.

The list of reasons for excluding Mr. Dawkins, outlined by the Plaintiffs, goes to the weight of the expert's testimony and not to admissibility. "Generally, defects in the amount and quality of education and experience go to the weight of the expert's testimony and not its admissibility." Lee v. Suess, 318 S.C. 283, 286 (1995) (citing State v. Schumpert, 312 S.C. 402, 435 S.E.2d 859 (1993)); McMillan v. Durant, 312 S.C. 200, 205 (1993) (The fact that expert on the standard of care for nursing was a physician and not a nurse would go to the weight of his testimony, and not its admissibility).

The exclusion of Mr. Dawkins as an expert witness was highly prejudicial to Professional Plastering and requires a new trial absolute.

C. Exclusion of Defendant's Stucco Only Repair Estimate

The Plaintiffs argue that the stucco only repair estimate prepared by Mr. Pusheck that compares the pricing by Plaintiffs' expert, Mr. Gallagher with the pricing by Mr. Pusheck is a form of impermissible pitting. The impermissible pitting of witnesses is the act of examining a witness in such a manner as to force the witness to attack the veracity of another witness. State v. Kelsey, 321 S.C. 50, 69, 502 S.E. 2d 63 (1998). The exhibit prepared by Mr. Pusheck did not attack Mr. Gallagher's veracity but rather compared the methods used by Mr. Gallagher to those used by Mr. Pusheck to calculate the cost of repair.

The exclusion of Defendant's Stucco Only Repair Estimate was highly prejudicial to Professional Plastering and requires a new trial absolute.

D. "Additional Sustaining Ground"

In Plaintiff's Reply to Defendant's Post Trial Motions, Plaintiff's attempt to use the theory of alternative sustaining grounds for denial of these motions. In doing so the Plaintiff often makes references to issues that were not decided as a part of the issues raised and were not a part of the record. The theory of alternative sustaining grounds is an appellate creature and is not applicable to post trial motions at the state court level. Therefore, Defendant objects to inclusion and consideration of matters not on the record as a part of the issue raised in post trial motions as a basis for the Court's decision. See e.g., Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010) (Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court).

CONCLUSION

Based on the arguments above as well as the previously submitted memoranda,
Professional Plastering & Stucco's post-trial motions should be granted.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



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*Attorneys for Defendant
Professional Plastering & Stucco, Inc.*

Charleston, South Carolina

June 1, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) THE NINTH JUDICIAL CIRCUIT
) THE COURT OF COMMON PLEAS

Mark F. Teseniar & Nan K. Teseniar,
on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

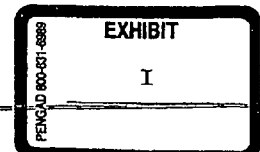
Fenwick Plantation Tarragon, LLC, A
South Carolina Limited Liability
Company, f/k/a Fenwick Tarragon
Apartments, LLC, A South Carolina
Limited Liability Company,
Charleston Tarragon Manager, LLC,
A Delaware Limited Liability
Company, Tarragon Development
Corporation, A Nevada Corporation,
Summit Contractors Group, Inc.,
Fugleberg Koch Architects, Inc.,
Development, Compliance &
Inspections, Inc., H2L Consulting
Engineers, Twelve Oaks at Fenwick
Property Owners Association, Inc.,
Professional Plastering & Stucco, Inc.,
Johnson Companies, Inc., d/b/a
Johnson Roofing, Inc., Los Campos,
Inc., North Florida Framing, Inc.,
Magna Wall, Inc., All South Vinyl
Products, Inc., Marquez Construction,
Inc., J.T. Walker 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,

Defendants.

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

DEFENDANT PROFESSIONAL
PLASTERING & STUCCO, INC.'S
RESPONSES TO PLAINTIFFS' FIRST
REQUESTS FOR PRODUCTION

TO: PHILIP W. SEQUI, JR., ATTORNEY FOR PLAINTIFFS AND TO THE
PLAINTIFFS ABOVE-NAMED:



Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Professional Plastering & Stucco, Inc.'s Responses to Plaintiffs' First Requests for Production.

1. Copies of all documents identified or referenced in any way to the Complaint, any responsive pleadings, or in your answers to any party's Interrogatories or Requests for Production.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

2. Copies of any and all documents that support the contentions in your Answer.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

3. Copies of all photographs, sketches, plans, specifications, and diagrams which relate to the matters alleged herein.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, upon information and belief, the Defendant has no such documents in its possession. However, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

4. Copies of any plans used to construct the building(s) at issue or any part thereof.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, upon information and belief, the Defendant has no such documents in its possession. However, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

5. Copies of any and all statements written or recorded of any person including parties who are and may be witnesses to any of the matters relating to the claim or defense in this case.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

6. Copies of all contracts or documents relating to the construction, maintenance, repair, providing of or sale of any materials, components or supplies for or to the building(s) at issue and/or investigation of the building(s) at issue.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

7. Copies of all contracts between you and any party or between you and any third-party involving the construction, maintenance, repair, providing of or sale of any materials, components or supplies for or to the building(s) at issue and/or investigation of the building(s) at issue.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

8. Copies of all plans, specifications, manufacturers' instructions, shop drawings, directions and/or instructions or industry standards used by you or relied on by you or your subcontractor to perform your scope of work for the building(s) at issue.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

9. Copies of any and all written notes, memos and/or reports of any expert witnesses retained for use at trial or identified as a witness in response to the party's Interrogatories, including but not limited to the following:

- a) All documents, including draft notes, preliminary reports and/or final reports, prepared in whole or in part by the expert on the subject matter, and in connection with those matters about which the expert is expected to testify at trial;
- b) All documents sent to the expert by the party or the party's counsel in reference to this litigation;
- c) All documents upon which the expert will rely for the opinion or opinions that the expert will express at trial;
- d) All documents utilized, relied upon, consulted with and/or reviewed by the expert in connection with this litigation;
- e) All documents setting forth any compensation agreement between the party and the expert;
- f) Identification by court, term, number and date, any and all litigation wherein the expert was either a party or testified as a witness;
- g) All documents used or relied upon by the expert in preparing answers to expert interrogatories;

h) All documents that have been or will be shown to the expert during or in preparation of the expert's testimony at deposition or trial;

i) All documents, including curriculum vitae, that the party contends will establish the expert's qualifications for trial purposes.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

10. Copies of all insurance policies that may provide you liability coverage from the time your scope of work for the building(s) at issue began to the present.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

11. Copies of all documents relating to any complaints, responses or filings by or against the Defendant(s) with the South Carolina Department of Labor, Licensing & Regulation Contractors' Licensing Board or South Carolina Department of Labor, Licensing & Regulation Residential Builders Commission, or any other state regulatory or licensing agency.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, the Defendant has no such documents in its possession.

12. Copies of any and all professional licenses, general contractors' licenses and/or specialty subcontractors' licenses that were in effect and governing your work during the time your scope of work for the building(s) at issue was performed.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

13. Copies of any and all warranties, instructions, letters, pamphlets, specifications, product literature or any other materials in your possession that in any way relate to the above referenced lawsuit.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at

the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

14. Copies of all documents which you intend to introduce at trial.

RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, the Defendant has not made this determination at this time.

15. Copies of any other non-privileged documents relating to this case.

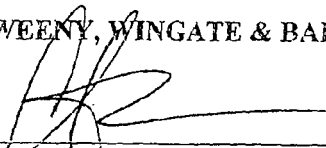
RESPONSE:

The Defendant objects to this request on the grounds that it may violate attorney/client privilege and the work-product doctrine. In addition, the requests are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, all non-privileged items, which may be responsive to this request, will, upon request, be made available for review at a mutually agreeable time at the offices of Sweeny, Wingate & Barrow, located at 1515 Lady Street, Columbia, South Carolina 29211.

-signature to follow-

Respectfully submitted;

SWEENEY, WINGATE & BARROW, P.A.



Everett A. Kendall, II
Christy Mahon
1515 Lady Street
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Columbia, South Carolina 29211
(803) 256-2233

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

Charleston, South Carolina

August 20, 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., 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 RULE 59(E) MOTION
TO ALTER OR AMEND THE
JUDGMENT**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure,
Professional Plastering & Stucco, Inc. (hereinafter "Professional Plastering") by and
through its undersigned counsel respectfully moves this Court for an order reconsidering

and altering or amending the Court's Order dated June 15, 2011 denying Professional Plastering's post-trial motions.

This case was tried before a jury during the week of May 9, 2011. The jury returned a verdict in favor of the Plaintiffs, and Professional Plastering timely moved for 1) a New Trial Absolute; 2) New Trial Nisi Remittitur; 3) Judgment Notwithstanding the Verdict; and 4) Set-Off. On June 15, 2011, the Court signed a single Form 4 Order denying all of Professional Plastering's post-trial motions, which was filed by the Clerk of Court on June 17, 2011. On June 21, 2011, Professional Plastering received written notice from the Plaintiffs of the entry of the order. Professional Plastering has timely filed this motion pursuant to Rule 59(e).

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" Arnold v. State, 309 S.C. 157, 172-173 (1992) (citing Budinich v. Becton Dickinson and Co., 486 U.S. 196, 200, 103 S.Ct. 1717, 1720, 100 L.Ed.2d 178, 184 (1988)). "It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21 (2004). A party may "ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument." *Id.* at 22.

The Court erred in denying Professional Plastering's Motion for New Trial Absolute, Motion for Set-Off, Motion for Judgment Notwithstanding the Verdict, and

Motion for New Trial *Nisi Remittitur*, and therefore the Court should reconsider, alter and amend its order denying the defendant's post-trial motions. Defendant incorporates by reference all its arguments made in its Memoranda in Support of Its Post-Trial Motions filed on May 23, 2011 as if set forth herein verbatim.

I. The Order improperly denied Professional Plastering's entitlement to a new trial absolute based on the erroneous instructions given to the jury.

"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).

The charges given by the Court on the building code, negligence, builder liability, negligence per se, implied warranty of workmanlike service, special skills, cost to repair, depreciation, and punitive damages were incomplete and/or incorrect statements of law.

Plaintiffs requested charges on negligence per se and violations of the building code were missing the necessary element of proximate cause. The 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)). It must be proven 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). A statute can establish a duty to the plaintiff,

and breach of duty can be found with a showing of a violation of the statute, but the finding of statutory violation does not automatically lead to recovery of damages; the 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 charges given were incorrect statements of law. The alleged violation must be the proximate cause of damages. Additionally, 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.

Plaintiffs' requested charge on negligence which stated 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). 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.

The jury charges requested by Plaintiffs on the implied warranty of workmanlike service and special skills were also incorrect. There was no evidence of any kind of specialty or expert qualification on the part of the Defendant in this matter.

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 constituting 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.

The Plaintiffs requested that the jury be charged that cost of repair may include the expense necessary to perform the repairs to existing codes. However, there was no evidence presented that this was necessitated. The charge was incorrect and was reversible error since it was not an accurate measure of how damages can be awarded. 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 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 charge did not place the Plaintiffs in a same or similar position but required the Jury to better the Plaintiffs' position. That is not a recognized measure of damages in South Carolina and was error, and a new trial should be granted.

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).

Additionally, the Court erred in failing to charge the jury on the Defendant's requested charges. The jury charges requested by Professional Plastering were the Defendant's defenses. Evidence was presented to substantiate these charges, and it was error for the jury not to be charged the Defendant's requested charges.

"A jury charge is correct if the charge, when read as a whole, adequately covers the current and correct law. To warrant reversal on appeal, the trial court's instructions must be not only erroneous, but must also be prejudicial." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 560, 658 S.E.2d 80 (2008). Here, the jury charges given by the Court did not adequately cover the current and correct law. The error in the incorrect jury instructions given by the Court as well as in refusing to charge the Defendant's requested charges was highly prejudicial to Professional Plastering and warrants a new trial absolute. The Defendant incorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute as if set forth verbatim herein. The Order should be altered or amended to grant the Defendant's motion for new trial absolute on this basis.

II. The Order improperly denied the Defendant's Motion for a New Trial Absolute based on the error in the special verdict form and jury charge on the special verdict form.

The special verdict form which was submitted to the jury should not have included the amount previously paid to Plaintiffs in settlement. This error in the verdict form was further aggravated by the Court's instructions, which required the jury to award damages over and above the amount Plaintiffs received in settlement.

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 in the verdict form was not remedied by the instructions from the Court. It was exacerbated by the jury charge on the special verdict form.

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. 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. The jury was left without any instruction on what to do if they found the amount of settlement to be adequate compensation for all damages. It was highly prejudicial to include the amount of settlement received by Plaintiffs on the verdict form and requiring the jury to award over and above the amount received in settlement.

Plaintiffs argue in their Memorandum in Opposition to the Defendant's Post-trial motions that the Defendant somehow consented to the use of the verdict form and the inclusion of the settlement amount on the verdict form. However, this is not the case, as Professional Plastering made specific objections during the trial to the verdict form and to the settlement amount being included on the verdict form. Professional Plastering did not consent to the issue of set-off being dealt with by the jury.

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. Defendant herein reincorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute and

requests the Court to rule on all its arguments therein. (See Section III of Professional Plastering's Memorandum in Support of Motion for New Trial Absolute for a full discussion of the Defendant's right to a new trial absolute based on the error in the special verdict form and jury charge concerning the special verdict form.)

The Order should be altered or amended to grant Defendant's Motion for a New Trial Absolute on this basis.

III. The Order improperly denied the Defendant's motion for a new trial absolute based on the exclusion of Professional Plastering's expert, Chris Dawkins.

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., supra. 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. The list of reasons for excluding Mr. Dawkins, outlined by the Plaintiffs, goes to the weight of the expert's testimony and not to admissibility. “Generally, defects in the amount and quality of education and experience go to the weight of the expert's testimony and not its admissibility.” Lee v. Suess, 318 S.C. 283, 286 (1995) (citing State v. Schumpert, 312 S.C. 402, 435 S.E.2d 859 (1993)); McMillan v. Durant, 312 S.C. 200, 205 (1993) (The fact that expert on the standard of care for nursing was a physician and not a nurse would go to the weight of his testimony, and not its admissibility). 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. 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 of the 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 was highly prejudicial to Professional Plastering. Defendant incorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute as if set forth verbatim herein.

The Order should be altered or amended to grant the Defendant's Motion for a New Trial Absolute on this basis.

IV. The Order improperly denied the Defendant's motion for a new trial absolute based on the exclusion of the Defendant's stucco-only cost estimate.

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. Allowing the Plaintiffs' stucco-only repair estimate while excluding the Defendant's stucco-only estimate is extremely prejudicial to the Defendant. 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.

The Plaintiffs argue that the stucco only repair estimate prepared by Mr. Pusheck that compares the pricing by Plaintiffs' expert, Mr. Gallagher with the pricing by Mr. Pusheck is a form of impermissible pitting. The impermissible pitting of witnesses is the act of examining a witness in such a manner as to force the witness to attack the veracity

of another witness. State v. Kelsey, 321 S.C. 50, 69, 502 S.E. 2d 63 (1998). The exhibit prepared by Mr. Pusheck did not attack Mr. Gallagher's veracity but rather compared the methods used by Mr. Gallagher to those used by Mr. Pusheck to calculate the cost of repair.

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. Defendant incorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute as if set forth verbatim herein.

The Order should be altered or amended to grant the Defendant a new trial absolute on this ground.

V. The Order improperly denies the Defendant's Motion for a New Trial Absolute based on the objections to the lay testimony of Chris Dawkins.

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.

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.

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. Defendant incorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute as if set forth verbatim herein.

The Order should be altered or amended to grant the Defendant a new trial absolute on this ground.

VI. The Order improperly denies the Defendant's right to set off against the damages awarded to Plaintiffs. Failure to apply such a set off requires a new trial absolute. The Court also improperly denied the Defendant's Motion for Set Off.

"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 settlement amounts received by Plaintiffs are set forth in Defendant’s Motion for Set-Off and are incorporated by reference herein. 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, as well as the alleged damages, were identical. 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, Exhibit 1 to Memorandum in Support of Motion for New Trial Absolute and Motion for Set-Off). 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.

Additionally, Professional Plastering's damages should 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, Exhibit 2 to Memorandum in Support of Motion for New Trial Absolute and Motion for Set Off).

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 Fugelberg 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, Exhibit 3 to Memorandum in Support of Motion for New Trial Absolute and Motion for Set Off). 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, Exhibit 4 to Memorandum in Support of Motion for New Trial Absolute). 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, Exhibit 5 to Memorandum in Support of Motion for New Trial Absolute and Motion for Set Off). 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, in whole or in part, 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, Exhibit 6 to Memorandum in Support of Motion for New Trial Absolute and Motion for Set Off).

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.

Based on the argument above, Professional Plastering & Stucco is entitled to a set-off of the settlement proceeds received by the Plaintiffs in the amount of \$8,075,000.00. Defendant incorporates by reference all its arguments made in its Memorandum in Support of Its Motion for New Trial Absolute and Motion for Set-Off as if set forth verbatim herein. Any failure of the Court to apply such a set-off requires a

new trial absolute. In addition, the Defendant requests the Court reconsider, alter and amend its Order denying the Defendant's Motion for Set-Off.

The Order should be altered or amended to grant the Defendant's motion for set-off, or alternatively Defendant's motion for a new trial absolute.

VII. The Order improperly denied the Defendant's right to a new trial *nisi remittitur*.

"A motion for a new trial *nisi remittitur* asks the trial court to reduce the verdict because the verdict is merely excessive." James v. Horace Mann Ins. Co., 371 S.C. 187, 193, 638 S.E.2d 667, 670 (2006). The jury returned a verdict in favor of the Plaintiffs, awarding damages in the amount of \$7,723,225.00. The evidence presented at trial does not support the amount of damages awarded by the jury. The verdict reached by the jury in this case was excessive and should be reduced.

The verdict form used 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 removing 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. The jury was required to award the Plaintiffs over and above the \$8 million that the Plaintiffs had received in settlement. By removing the Defendant's right to set-off, the damages awarded by the jury are clearly excessive and should be reduced. The Defendant incorporates by reference the argument set forth in its Motion for New Trial *Nisi Remittitur* as if set forth verbatim herein.

The Order should be altered or amended to grant the Defendant's motion for new trial *nisi remittitur*.

VIII. The Order improperly denied the Defendant's Motion for Judgment

Notwithstanding the Verdict.

The evidence submitted at trial was insufficient to support a verdict for the Plaintiffs, and the evidence shows that the Defendant is entitled to a judgment as a matter of law. The Plaintiffs failed to prove the essential elements of their claims against the Defendant.

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). Plaintiffs have failed to establish that the actions of Professional Plastering were the proximate cause of Plaintiffs' damages. The only reasonable inference that can be drawn from the evidence presented at trial was that the Plaintiffs failed, as a matter of law, to prove that the Defendant was the proximate cause of the Plaintiffs damages, which is necessary to establish liability.

The Plaintiffs have failed to prove the essential elements of their claims against the Defendant, and therefore the verdict of the jury should be reversed and judgment entered in favor of the Defendant. Defendant incorporates by reference all its arguments set forth in its Motion for Judgment Notwithstanding as if set forth verbatim herein. The Order should be altered or amended to grant the Defendant's Motion for Judgment Notwithstanding the Verdict.

VIII. The Court improperly denied Professional Plastering's Motion for a New Trial Absolute based on the Thirteenth Juror Doctrine.

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.

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). Plaintiffs have not proven that the actions of Professional Plastering were the proximate cause of Plaintiffs' damages, which is necessary to establish liability. 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).

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. A new trial absolute is necessary based upon the Thirteenth Juror Doctrine. The Defendant incorporates by reference all of its arguments made in its Motion for New Trial Absolute as if set forth verbatim herein.

The Order should be altered or amended to grant the Defendant's motion for new trial absolute based on the thirteenth juror doctrine.

ADDITIONAL GROUNDS

In addition to the argument set forth above, Professional Plastering relies on and incorporates, by reference as if set forth herein verbatim, its Memorandum in Support of Motion for New Trial Absolute, Motion for *Nisi Remittitur*, Motion for Set-Off, and Motion for Judgment Notwithstanding the Verdict.

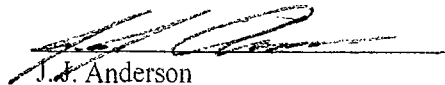
CONCLUSION

For the reasons set forth above, Professional Plastering's Motion to Alter or Amend the Order denying Professional Plastering's post-trial motions should be granted.

Signature appears on following page.

Respectfully submitted,

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Charleston, South Carolina

June 29, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

RECEIVED

JUL 22 2011

SC Court of Appeals

Case No. 2008-CP-10-0049

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

v.

Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A
Fenwick Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston
Tarragon Manager, LLC, A Delaware Limited Liability Company, Tarragon Development
Corporation, A Nevada Corporation, Summit 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, Inc., J.T. Industries D/B/A General Aluminum Corporation, And General
Aluminum Company Of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC F/K/A JRH Merger Co., LLC.,
Jamie Helman, Individually, Scott Ferguson, Individually, And Chris Cobbs, Individually, And
Federal Insurance Company, Maria Arias, Miquel 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,

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

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

NOTICE OF APPEAL

Professional Plastering & Stucco, Inc. appeals the Order of the Honorable Kristi L. Harrington granting APS Enterprises Unlimited, Inc.'s Motion for Summary Judgment (Exhibit A) that was signed May 9, 2011, filed May 11, 2011, copy obtained on May 19, 2011 and written notice was received on May 20, 2011. A motion pursuant to Rule 59(e) was filed on May 20, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

Professional Plastering & Stucco, Inc. appeals the judgment of the Honorable Kristi L. Harrington (Exhibit C) dated May 13, 2011 that was entered following the return of a jury verdict in favor of the Respondents, and the Order of the Honorable Kristi L. Harrington denying the Appellant's Motion for New Trial Absolute, Motion for Judgment Notwithstanding the Verdict, Motion for New Trial *Nisi Remittitur*, and Motion for Set-Off (collectively "Appellant's Post Trial Motions") (Exhibit D). The Order denying Appellant's Post Trial Motions was signed June 15, 2011, filed June 17, 2011 and written notice of the Order was received on June 21, 2011. A motion pursuant to Rule 59(e) was filed on May 20, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

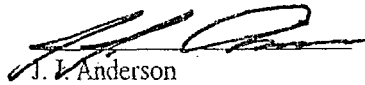
Further, Professional Plastering & Stucco, Inc. appeals the consolidated Order of the Honorable Kristi L. Harrington (Exhibit B) denying the Rule 59(e) Motions to Alter

or Amend the Court's denial of Professional Plastering & Stucco, Inc.'s Post Trial
Motions and the Rule 59(e) Motion to Alter or Amend the Court's granting of APS
Enterprises Unlimited, Inc.'s Motion for Summary Judgment.

This appeal is timely pursuant to Rule 203 of the South Carolina Appellate Court
Rules.

Respectfully submitted,

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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,

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON,
LLC, ET AL

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

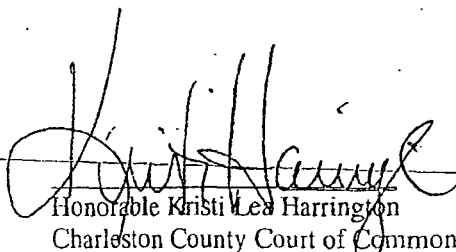
ORDER GRANTING APS
ENTERPRISES, INC.'S MOTION FOR
SUMMARY JUDGMENT

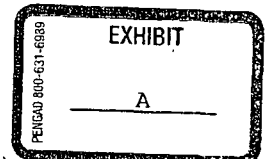
FILED
2011 MAY 11 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT

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.

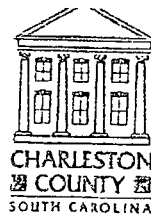
AND IT IS SO ORDERED

May 9, 2011


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



JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

9



JONATHAN J. ANDERSON
ANDERSON & REYNOLDS, LLC
PO BOX 87
CHARLESTON SC 29402-0087

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Order granting APS Enterprises Mot for sum judg

CASE NO: 2008CP1000049

**Mark F Teseniar, plaintiff, et al VS Fenwick Plantation Tarragon Llc A Sc Limited Liability Co
Et, d**

This judgment was entered on the 11th day of May, 2011, and a copy mailed first class on Wednesday, May 18, 2011, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

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 Teseniar, et al

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

Fenwick Plantation Tarragon, LLC, et al

PLAINTIFF(S)

BY _____

DEFENDANT(S)

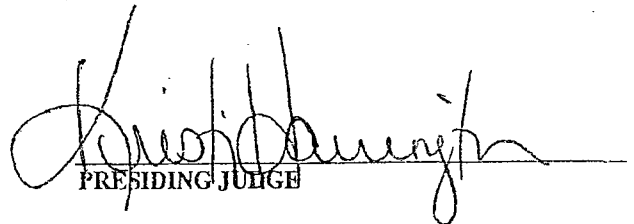
CHECK ONE:

- ☐ **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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

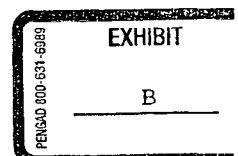
Defendant Professional Plastering and Stucco, Inc.'s Motion to Alter or Amend is respectfully denied.

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


PRESIDING JUDGE

SCCA SCRP 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 F. Teseniar, et al

versus

Professional Plastering & Stucco, Inc.

PLAINTIFFS

DEFENDANT(S)

CHECK ONE:

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- ☒ **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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. nonsuit)
☐ Rule 43(k), SCRPC (Settled); ☐ Other -
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

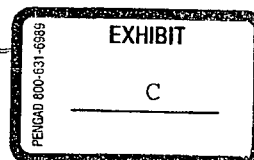
-By Unanimous Decision, Jury found in favor of Plaintiff on both counts; awarding Plaintiff \$7,723,225.00 actual damages.

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

[Signature]
PRESIDING JUDGE

SCCA SCRP 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.: 2008-CP-10-0049

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

)
) Plaintiffs,
)

)
) vs.
)

)
) PROFESSIONAL PLASTERING & STUCCO, INC.,)
)

)
) Defendants.
)

VERDICT FORM

1. On the claim of Negligence, we the jury, find in favor of:

☒ Plaintiffs

☐ Defendant

2. On the Claim of Breach of Implied Warranty of Good and Workmanlike Service,
we the jury, find in favor of:

☒ Plaintiffs

☐ Defendant

The Plaintiffs have received a total of \$8,025,000 in settlements in this matter from other parties. Therefore, any damages that you award Plaintiffs would be in addition to those damages already received.

DAMAGES

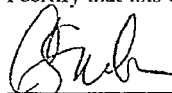
4. If you found in favor of Plaintiffs on either cause of action, please state the amount of damages sustained by the plaintiff.

\$ 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 SWENSON

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 Teseniar, et al,

versus

Fenwick Plantation Tarragon, LLC, et
al

PLAINTIFF

DEFENDANT(S)

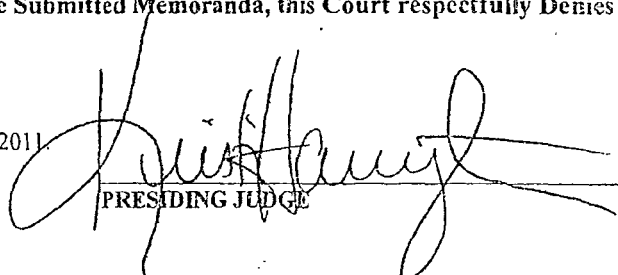
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- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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☐ Rule 43(k), SCRPC (Settled); ☐ Other -
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- ☐ **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:

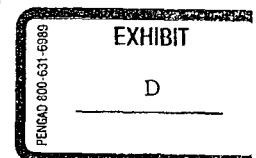
After the Jury returned a verdict in favor of Plaintiff, Defendant Professional Plastering & Stucco, Inc. timely moved for 1) New Trial Absolute, 2) New Trial Nisi Remittitur, 3) Judgment Notwithstanding the Verdict, and 4) Set-off. After reviewing these Motions and the Submitted Memoranda, this Court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

Dated at Charleston, South Carolina, this 15th day of June, 2011.


PRESIDING JUDGE

SCCA SCRP Form 4 Revised 6/2008

Clerk of Court
Julie J. Armstrong



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049

RECEIVED
JUL 22 2011
SC Court of Appeals

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

v.

Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A Fenwick
Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston Tarragon
Manager, LLC, A Delaware Limited Liability Company, Tarragon Development Corporation, A
Nevada Corporation, Summit 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 Succesor 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, 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,

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

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal by depositing a copy in the U. S. mail, postage paid on July 20, 2011 addressed to Respondents' attorneys as set forth below:

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464

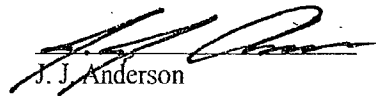
John T. Chakeris, Esquire
The Chakeris Law Firm
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Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
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Thurmond, Kirchner & Timbes, P.A.
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Justin O'Toole Lucey, P.A.
Post Office Box 806
Mount Pleasant, South Carolina 29465-0806

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
Charleston, South Carolina 29407



J. J. Anderson
S. C. Bar Number 383
Anderson Reynolds & Stephens, LLC
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Charleston, SC 29402
843-723-0185

*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUL 22 2011

SC Court of Appeals

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049

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

v.

Fenwick Plantation Tarragon, LLC, A South Carolina Limited Liability Company, F/K/A
Fenwick Tarragon Apartments, LLC, A South Carolina Limited Liability Company, Charleston
Tarragon Manager, LLC, A Delaware Limited Liability Company, Tarragon Development
Corporation, A Nevada Corporation, Summit 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, Inc., J.T. Industries D/B/A General Aluminum Corporation, And General
Aluminum Company Of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC F/K/A JRH Merger Co., LLC.,
Jamie Helman, Individually, Scott Ferguson, Individually, And Chris Cobbs, Individually, And
Federal Insurance Company, Maria Arias, Miquel 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,

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

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

AMENDED/ CORRECTED
NOTICE OF APPEAL

Professional Plastering & Stucco, Inc. appeals the Order of the Honorable Kristi L. Harrington granting APS Enterprises Unlimited, Inc.'s Motion for Summary Judgment (Exhibit A) that was signed May 9, 2011, filed May 11, 2011, copy obtained on May 19, 2011 and written notice was received on May 20, 2011. A motion pursuant to Rule 59(e) was filed on May 20, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

Professional Plastering & Stucco, Inc. appeals the judgment of the Honorable Kristi L. Harrington (Exhibit C) dated May 13, 2011 that was entered following the return of a jury verdict in favor of the Respondents, and the Order of the Honorable Kristi L. Harrington denying the Appellant's Motion for New Trial Absolute, Motion for Judgment Notwithstanding the Verdict, Motion for New Trial *Nisi Remittitur*, and Motion for Set-Off (collectively "Appellant's Post Trial Motions") (Exhibit D). The Order denying Appellant's Post Trial Motions was signed June 15, 2011, filed June 17, 2011 and written notice of the Order was received on June 21, 2011. A motion pursuant to Rule 59(e) was filed on June 29, 2011. An Order denying the Rule 59(e) Motion (Exhibit B) was signed July 13, 2011, filed July 19, 2011, and notice of the signing of the Order was received via e-mail on July 18, 2011.

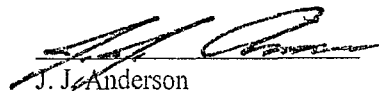
Further, Professional Plastering & Stucco, Inc. appeals the consolidated Order of the Honorable Kristi L. Harrington (Exhibit B) denying the Rule 59(e) Motions to Alter

or Amend the Court's denial of Professional Plastering & Stucco, Inc.'s Post Trial
Motions and the Rule 59(e) Motion to Alter or Amend the Court's granting of APS
Enterprises Unlimited, Inc.'s Motion for Summary Judgment.

This appeal is timely pursuant to Rule 203 of the South Carolina Appellate Court
Rules.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



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37 ½ Broad Street
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SWEENEY WINGATE
& BARROW, PA
Everett A. Kendall
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*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*

Other Counsel of Record and Interested Parties

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Michael S. Seckings, Esquire
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Post Office Box 806
Mount Pleasant, South Carolina 29465-0806
843-849-8400

Attorneys for Respondents

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

Roy P. Maybank, Esquire
Jason A. Daigle, Esquire
Maybank Law Firm, LLC
P O Box 12579
Charleston, SC 29407
843-766-8101

Attorneys for Respondents

APS Enterprises Unlimited, Inc.

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Kristi L. Harrington, Circuit Court Judge

RECEIVED

JUL 22 2011

Case No. 2008-CP-10-0049

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Nevada Corporation, Summit Contractors Group, Inc., Summit Contractors, Inc, Fugleberg Koch
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And

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v.

C & N Stucco and Plastering, Inc.

AMENDED/CORRECTED

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal by depositing a copy in the U. S. mail, postage paid on July 20, 2011 addressed to Respondents' attorneys as set forth below:

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464

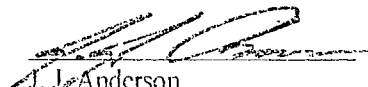
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Michael S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
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843-723-0185

*Attorneys for Appellant Professional
Plastering & Stucco, Inc.*

July 21, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049

RECEIVED

JUL 22 2011

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v.

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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 Succesor 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, 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,

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

And

APS Enterprises Unlimited, Inc. Respondents

v.

C & N Stucco and Plastering, Inc.

MOTION FOR SUBSTITUTION IN FILING OF
NOTICE OF APPEAL AND PROOF OF SERVICE

TO: THE CLERK OF THE SOUTH CAROLINA COURT OF APPEALS

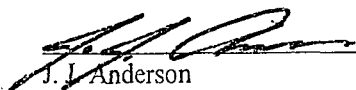
Comes now the appellant, Professional Plastering & Stucco, Inc. requesting the substitution of the enclosed Amended/Corrected Notice of Appeal and substitution of the Proof of Service originally filed with the Notice of Appeal with the enclosed Amended/Corrected Proof of Service for the Notice of Appeal and Proof of Service filed with the Clerk of the South Carolina Court of Appeals on July 20th, 2011.

The original Notice of Appeal contained an incorrect date of May 20, 2011 in paragraph 2, line 9. The correct date is June 29, 2011.

The original Proof of Service omitted the post office box for Respondent Maybank Law Firm.

Respectfully submitted,

ANDERSON REYNOLDS
& STEPHENS, LLC



J. I. Anderson
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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2008-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, et al,)

PLAINTIFFS,)

VS.)

FENWICK PLANTATION TARRAGON,)
LLC, ET AL,)

DEFENDANTS.)

JURY TRIAL

VOLUME 1

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, May 9, 2011, Commencing at 11:28 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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COPY

1 we say it is. You'll listen to this evidence for
2 yourself and make up your mind. They may say others
3 contributed. Others may have contributed to some
4 small degree. These folks were the major cause. And
5 they may say, well, it's not as expensive to repair as
6 we say it is. That is your job and your judgment call
7 in this case to determine that. Again, if you find
8 that they're a contributing cause -- and they are
9 major -- then they're responsible.

10 Well, what are the consequences to the
11 homeowners in this case and where are they? Happily
12 for everyone here, us as well as you-all, when we
13 started this case it was much, much larger than just
14 having this stucco issue. We had many other issues
15 and many other defendants. They had roofing problems,
16 they had framing problems, windows, and mechanical
17 problems, and happily we've been able to resolve those
18 problems with these other defendants. And that's why
19 they're not here right now.

20 You'll hear that we have an overall estimate
21 from ProCon, a highly-skilled professional corporation
22 which does this type of mediation and repair all
23 around -- not only this part of the country, but all
24 over the country, for the total repairs to this
25 project of about \$15,718,000.

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1 The other parties have already resolved this for
2 approximately eight million, their part of it. What's
3 left, that has not been resolved by the entity
4 largely, if not wholly, responsible for these stucco
5 problems which is the bulk of the building envelope
6 with these associated damages -- is about 7.2 million
7 dollars. That's an estimate. That's what we're here
8 about.

9 Now, when you finally hear all the evidence and
10 you listen to everything that's been said, you'll have
11 two things to decide. One of them is, the first
12 thing, was Professional Plastering a contributing
13 cause to these stucco problems and their related
14 damages at Twelve Oaks. And we believe you'll find
15 clearly, and the answer will be, yes, we have proved
16 it.

17 If you find that, as we believe you will, the
18 second question you will answer is how much will it
19 cost to remedy those problems to which Professional
20 Plastering contributed. And we believe it will be the
21 difference between the estimate we will prove to you
22 of the overall damages and what the other persons
23 paid. They paid their fair share. Professional
24 Plastering has not, which is why we need your help.

25 This is an important case for these homeowners.

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1 MYLES GLICK,

2 Having Been First Duly Sworn,

3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SEQUI:

6 Q. If you would, first I want you to explain a
7 little bit about your education and work history so that
8 the jury can understand -- get an understanding sort of
9 what you do for a living and what you're going to present
10 to them by way of understanding in this case. But first
11 I'm going to ask you to tell us where you live.

12 A. I live in West Ashley right here in Charleston,
13 South Carolina.

14 Q. All right. And what do you do for a living?

15 A. I'm an architect.

16 I've been a practicing architect since 1969 and
17 I've been a registered architect since 1976.

18 Q. Okay. Tell us just briefly what it means to be
19 a registered architect.

20 A. Well, when you're a registered architect, that
21 means that you've gone through a series of educational
22 levels and taken an exam and having passed that exam --
23 South Carolina is my home state -- that you are licensed
24 to practice architecture, which means by law that you are
25 to protect the health, safety and welfare of the public.

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1 Q. And tell us a little bit about your education,
2 formal education.

3 A. Well, my formal education actually started in
4 high school. I went to a special high school that had a
5 three-year architecture program so I actually graduated
6 with both a standard highschool degree and then whatever
7 extra kind of degree for going through architecture
8 classes.

9 Then I went to the University of Cincinnati
10 through a six-year program, graduated, and then went to
11 work on -- at Sea Pines on Hilton Head Island.

12 Q. Okay. And how long were you down at Sea Pines?

13 A. I was at Sea Pines, at Hilton Head Island, for
14 about eight months when the new owners came by and bought
15 the island called Kiawah here in Charleston. They hired
16 Sea Pines to develop Kiawah into a resort. And in late
17 '73, early '74 I was transferred to the Kiawah Island
18 Company and over a seven-year period became director of
19 design and construction. Had about fourteen people in my
20 department. And we were responsible for not only the
21 design, but many of the projects, hiring of the architects
22 to do some of those projects, as well, but also the
23 construction of those projects.

24 Q. Would you be at least partially responsible for
25 what some people may consider the Kiawah look?

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1 A. I would say that I started it. But others have
2 taken it quite a bit further, and they deserve the credit.

3 Q. All right. After Kiawah, what kind of work did
4 you do?

5 A. In March of 1981, I went into my business. I
6 have thirteen employees and I do both commercial work and
7 residential work.

8 Q. Okay. And what is the name of your firm?

9 A. It's Glick-Boehm, Associates.

10 Q. Okay. And where is your office?

11 A. Right up here on King Street.

12 Q. All right. Tell us a little bit about the type
13 of work that you do today, if you could.

14 A. I do a mixture of work. I'm a practicing
15 architect and I do some forensic work, which was mentioned
16 earlier in the opening.

17 Some of the work that I've done, that you may
18 have seen, is Moultrie Middle School, the farmer's market
19 in Mount Pleasant, the IMax complex next to the aquarium
20 downtown, the new animal shelter on Remount Road, projects
21 of that nature.

22 Q. And it come up a little bit earlier, and you
23 just mentioned it again, forensic architecture. Could you
24 explain in layman's terms to the jury kind of what that
25 means, as far as how you do your job or what is -- what is

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1 your aim with that type of work?

2 A. Forensic architecture is really the analysis of
3 what went wrong with a building, whether it's water
4 intrusion or a structural failure.

5 And it takes a combination of I call it
6 inquisitiveness, just like a detective is looking for
7 clues to why something happened, in combination with
8 construction knowledge and a strong design knowledge of
9 architecture.

10 Q. Are you basically trying to solve a mystery, of
11 sorts, as to what went wrong?

12 A. Yes.

13 I mean, you usually have a picture of what's in
14 a building, because anyone could see what's in a building.
15 You just take a picture of it. But what's not in the
16 building and what's not done properly is really what the
17 focus of the forensic investigation is.

18 Q. Mr. Glick, have you had an opportunity to
19 testify in court prior to today?

20 A. Yes, I have.

21 Q. Okay. How many times would you estimate you've
22 given architectural expert opinion in court?

23 A. Well, I've been in court between five and seven
24 times giving an opinion. I've done over 400 forensic
25 investigations, starting in 1981.

1 Q. All right. And tell us a little bit about maybe
2 the type of forensic -- or some of the higher-line
3 forensic projects that -- give us sort of an idea of the
4 type forensic projects you're involved with.

5 A. Some of the projects I'm involved with right
6 now, forensically, are eight or nine multi-family
7 condominium projects very similar to Twelve Oaks; the
8 Beaufort County Complex, I'm rebuilding that right now
9 from a forensic investigation that I did in 2004; and
10 looking at different office buildings, smaller law-firm-
11 type offices, things of that nature.

12 Q. Anything that stands out as far as even the jury
13 may be aware of?

14 A. Well, I think about two years ago they took
15 every brick off of this building because of water
16 intrusion.

17 I was the forensic architect hired by Charleston
18 County to investigate the sources of water intrusion and
19 to be the architect responsible for the re-cladding of
20 this entire complex that we're sitting in today.

21 Q. And have you ever failed to be qualified as an
22 expert in court where you were offered to provide expert
23 testimony?

24 A. I've never failed to qualify as an expert in
25 design -- architecture, design, construction, forensic

1 architecture, no.

2 MR. SEQUI: Your Honor, at this point we would
3 like to have Mr. Glick qualified as an expert witness
4 in the areas of architecture, forensic architecture,
5 and construction, please.

6 MR. ANDERSON: That's without objection.

7 THE COURT: Ladies and gentlemen of the jury,
8 normally a person cannot give opinion testimony.
9 Normally, when a person testifies they must testify as
10 to either what they saw, heard, or sensed by smell or
11 something of that nature. There is an exception when
12 someone is qualified because of their education or
13 experience. They will then be permitted to give their
14 opinion in certain areas, if the Court qualifies them
15 in that way.

16 This witness will be qualified in the area of
17 architecture, forensic architecture, and design
18 construction, to give opinion testimony in those
19 areas. That does not mean that you must accept the
20 opinion. It is simply evidence for you to use in any
21 way that you see fit.

22 Mr. Sequi.

23 MR. SEQUI: Thank you, Your Honor.

24 Q. [Mr. Sequi] Mr. Glick, to kind of move things
25 along most efficiently -- or most efficiently as possible,

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1 can we agree that all the opinions that you will give us
2 today, or on Wednesday if we don't finish with you today,
3 will be to a reasonable degree of certainty in the areas
4 of architecture, forensic architecture, and construction,
5 unless you state otherwise?

6 A. Yes.

7 Q. Thank you.

8 Are you familiar with the project known as
9 Twelve Oaks Fenwick --

10 A. Yes.

11 Q. -- located off Maybank Highway down on Johns
12 Island?

13 A. Yes, I am.

14 Q. All right. And have you had an opportunity to
15 perform an investigation of that -- of some of the
16 problems out there?

17 A. Yes. I visited the site on four occasions.

18 Q. Okay. And give us a ballpark, as far as the
19 time periods involved. When was the first time you went
20 out there?

21 A. The first time I went out there was shortly
22 after a conversation, September of 2008, with Mr. John
23 Chakeris.

24 I then went out in October of 2008 to walk
25 through the interior of a number of units to look at

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1 water- intrusion concerns. I also walked around the
2 entire project, just to get a feel for how the buildings
3 were built in terms of consistency. There are a lot of
4 buildings and I could tell a lot by walking around the
5 facility.

6 And then back in the latter part of October of
7 2008, I did a destructive test, which is basically going
8 on site with the help of a contractor, making some holes
9 where I think there could be some issues, to help me
10 define better -- because I can't see behind the walls
11 without doing what we call destructive test holes -- and
12 made six holes that day, analyzed them, and then did a
13 fourth visit, which was six more destructive test holes,
14 in March of 2009.

15 Q. All right. You mentioned these words holes.
16 Are those the openings we saw in the slides where the
17 stucco had been removed to expose what was behind it?

18 A. Yes.

19 Q. Why do you do that?

20 A. Well, I had the plans and the specifications.
21 But things change in the field. And you want to make sure
22 how a project is really built before you can really
23 analyze it and try to find the reasons for the problems.

24 Q. Was anybody else consulting with you
25 professionally as part of your overall investigation when

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1 you initially went out there?

2 A. Yes.

3 There were a lot of construction deficiencies in
4 many categories. Russell Meese was there to investigate
5 the roof. Mr. Lenny Greene was a mechanical engineer
6 looking at mechanical problems. And Mr. Tom Carlson, with
7 CalLite Construction, who's assisting me with his crews,
8 to cut these holes that we talked about.

9 Q. Okay. And when did you focus -- in what areas
10 did you focus your attention on?

11 A. Well, I focused my attention on the exterior
12 shell, which was a combination of the Magna Wall stucco
13 system that was mentioned earlier; the roof intersections
14 with walls when you had a lower gabled roof hitting a wall
15 -- and we'll show -- I'll show pictures of that later --
16 the Hardiplank system, which is on some of the bay
17 windows, and those kind of areas.

18 Q. Okay. And Mr. Leath mentioned in his opening
19 statement a mention of rules for people to look to in sort
20 of providing them things. What type of materials have you
21 reviewed or relied upon in formulating your opinions as a
22 result of your investigation in this case?

23 A. Well, the biggest starting point for architects
24 and contractors is what the law says, and that is the
25 building code.

1 When the permits were issued for this project,
2 it was the 2000 IBC, which is the International Building
3 Code. The year of the building code is never the year
4 that you build the project or issue the permits. So those
5 are off by a couple of years, for different reasons,
6 legislatively.

7 That book is about a three- to four-inch binder
8 and it's based on performance specifications. That book
9 refers to evaluation tests. Magna Wall, like many
10 products -- because there are hundreds of thousands of
11 products that construction people use, are then referred
12 to by the code that they have to meet certain performance
13 characteristics. So there's different testing third-party
14 arms-length laboratories that say different products meet
15 the different requirements of the building code.

16 But the code is what you have to build by. It
17 doesn't matter what the contract says. You have to build
18 by the building code. That's what we have to follow.

19 Q. In these evaluation reports, are these sort of
20 approved exceptions to the building code because of
21 something different about the system?

22 A. They're not exceptions to it. But what's very
23 significant about the evaluation report is in the
24 compliance section or the conditions of use of the Magna
25 Wall product. For instance, it specifically says that

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1 this product will meet the building code and its
2 performance requirements if the building product is
3 installed in accordance with the Magna Wall
4 specifications.

5 So you have to follow the specifications. And
6 one of their specifications is that the installer has to
7 be a certified installer, which means he needs to know how
8 to put the product up and shouldn't necessarily need to
9 rely on everybody else telling him that it was not put up
10 right or put up correctly. He's supposed to know by law.

11 Q. Now, Mr. Glick, there's a few things I'm going
12 to want into evidence and I'm going to ask you to bear
13 with me.

14 MR. SEQUI: I ask the jury to bear with me.

15 May I approach the witness, Your Honor?

16 THE COURT: You may.

17 Q. [Mr. Sequi] I'm going to hand you what's been
18 marked as Plaintiff's Exhibits Numbers 5 and Number 6,
19 please, and ask if you'll identify those for us, please.

20 A. Exhibit Number 5 is the National Evaluation
21 Services, Incorporated. This is a third-party testing
22 agency. It's NER-459. And this is the -- what I call the
23 compliance report that says Magna Wall meets the
24 performance characteristics of the building code, given
25 the conditions that I explained earlier.

1 Q. Okay. And what are the significance of these
2 documents as to Professional Plastering's work?

3 A. These are the documents that Professional
4 Plastering must install their product to.

5 Q. Okay. And if they fail to follow the
6 requirements in Exhibits 5 and 6, what is the result of
7 that?

8 A. Well, the result is twofold at two different
9 levels. Number one, it's in violation of the building
10 code, which is in violation of the law; and, two, it lets
11 water in.

12 That's why you have reasons why you do certain
13 things in terms of the application process. You have to
14 follow it strictly so that the serviceability of the
15 product and the buildings stay in good health.

16 Q. And in case I forget to ask you in the future,
17 what is your opinion about how long a properly-maintained
18 -- cement-based stucco system should last before it needs
19 to be taken off and replaced? What kind of surface life
20 are we talking about?

21 A. I would estimate, on a wood-framed structure,
22 probably between seventy-five and a hundred years.

23 Q. Thank you.

24 What else as far as these rules we're talking
25 about? We've got the building code. We've got these two

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1 compliance reports, Exhibits 5 and 6. What else is there
2 that would govern Professional Plastering's work?

3 A. Well, they do have a contract with the general
4 contractor, which does call out specific requirements
5 which actually emulate the requirements of the Magna Wall
6 system installation instructions, as well as some
7 additional work product that they're supposed to complete
8 on the building.

9 Q. And have you had an opportunity to review in
10 detail their actual written contract that set forth those
11 requirements?

12 A. Yes, I have.

13 Q. And what else, Mr. Glick? Is there anything
14 else that sort of defines the rules for Professional
15 Plastering in this case?

16 A. No. That would be the focus of the rules of
17 engagement for using that product.

18 Q. All right. Well, let me ask you about something
19 that the jury might be wondering. Weren't there any
20 architectural plans, specifications, that would of said
21 stucco or add some real specific requirements in this
22 case?

23 A. Yes. Yes, there were.

24 There were plans by an architect. And those
25 plans by the architect called for what we call a three-

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1 coat stucco system, which is a masonry stucco, more
2 traditional than the one coat that Magna Wall is. The
3 Magna Wall system is a three-eighths inch to one-half inch
4 system that has fiber reinforcement in it, which allows
5 just a two-coat system. The three-coat system is seven-
6 eighths of an inch thick, which is more traditional and its
7 thicker. So it's a thinner system.

8 But the architect called for the three-coat
9 system, and he did not have any details for the Magna Wall
10 system. The details that you would follow would be the
11 installation details by the manufacturer.

12 Q. Would it be fair to say that these Magna Wall
13 instructions trumped what was in the plans, since the
14 substitution was made?

15 A. Absolutely.

16 Q. Okay. So the plans really have very little
17 bearing on the issues, as far as what the rules were,
18 because the Magna Wall rules are what apply; is that
19 right?

20 A. Yes, sir.

21 Q. Okay. I'm also going to approach you and hand
22 you what's been marked as Plaintiff's Exhibits Number 8
23 and 9 and ask if you would identify those, please.

24 A. Exhibit Number 8 is the specifications for the
25 Magna Wall stucco system itself.

1 And Number 9 is additional specifications and
2 instructions, how to use their product, and how to install
3 it.

4 Q. How do Exhibits 8 and 9 relate to Exhibits 5 and
5 6, which were those reports we talked about that were
6 submitted to the code body?

7 A. The exhibits of the evaluation agencies, both
8 Plaintiff's Exhibit 6 and 5, refer to the specifications
9 and installation instructions of Magna Wall. So they're
10 all tied together.

11 Q. All right. Was Professional Plastering supposed
12 to follow Exhibits 8 and 9, as well?

13 A. Yes, sir.

14 Q. All right. And moving into your investigation a
15 little bit. And I want to go ahead and take care of these
16 evidentiary issues first. As part of your investigations,
17 did you take photos of everything important?

18 A. I took photos of everything.

19 [Whereupon, Mr. Sequi and Mr. Kirchner confer]

20 MR. SEQUI: Your Honor, for counsel's benefit,
21 these are the photographs from his investigation --
22 produced to opposing counsel.

23 THE COURT: All right. And the exhibit number?

24 MR. SEQUI: It's Exhibit 19, Your Honor.

25 Q. [Mr. Sequi] Mr. Glick, could you identify

1 Exhibit 19 for us, please?

2 A. Exhibit 19 is the photographs, from the
3 different visits, that are the backup to my written
4 report.

5 Q. Okay. So is that basically a copy of every
6 picture you have ever taken in this case?

7 A. [No response]

8 Q. At least as part of your investigation?

9 A. It appears to be the photographs that were
10 attached to my report, from the visits of October 25th,
11 October 10th, and March 13th.

12 Q. Thank you, Mr. Glick. And I think this will be
13 my last exhibit, at least for right now.

14 MR. SEQUI: Your Honor, one last approach.

15 Q. [Mr. Sequi] This is Exhibit 20. Could you
16 identify that for us, please, Mr. Glick?

17 A. Exhibit 20 is a hard copy, eight-and-a-half-by-
18 eleven, of the presentation that I'm going to show this
19 afternoon.

20 Q. Thank you, Mr. Glick.

21 MR. SEQUI: Your Honor, at this point in time we
22 would like to move Plaintiff's Exhibits Numbers, 5, 6,
23 8, 9, 19 and 20 into evidence, please.

24 THE COURT: 5, 6, 8, 9, 19 and 20?

25 MR. SEQUI: Yes, Your Honor.

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1 THE COURT: Any objection?

2 MR. ANDERSON: Yes, Your Honor, to Plaintiff's
3 Exhibit Number 5.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: All right. Plaintiff's 5, 6, 8, 9,
7 19 and 20 into evidence without objection.

8 You may continue. All right. Continue.

9 [Whereupon, Plaintiff's Exhibit Number 5 is
10 admitted into evidence by the Court]

11 [Whereupon, Plaintiff's Exhibit Number 6 is
12 admitted into evidence by the Court]

13 [Whereupon, Plaintiff's Exhibit Number 8 is
14 admitted into evidence by the Court]

15 [Whereupon, Plaintiff's Exhibit Number 9 is
16 admitted into evidence by the Court]

17 [Whereupon, Plaintiff's Exhibit Number 19 is
18 admitted into evidence by the Court]

19 [Whereupon, Plaintiff's Exhibit Number 20 is
20 admitted into evidence by the Court]

21 MR. SEQUI: Your Honor, and just because of the
22 date on that one, I need to add -- put one more in.

23 If I could have the Court's indulgence for one
24 second, please.

25 THE COURT: Yes, sir.

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1 [Whereupon, Mr. Sequi reviews documents]

2 Q. [Mr. Sequi] Mr. Glick, if you would look at
3 Exhibit Number 5 for me and tell me the date of that.

4 A. Exhibit 5 is dated July 1st, 2002.

5 MR. SEQUI: All right. And I may have just made
6 a mistake here.

7 Q. [Mr. Sequi] This is Exhibit Number 4. Could
8 you identify that and also tell the Court the date,
9 please.

10 A. This is National Evaluation Report NER-459,
11 April 1st, 1997.

12 Q. Okay. And I want to try to draw the distinction
13 here between what would have governed original
14 construction work by Professional Plastering and what may
15 have governed any repair work. What would -- what would
16 Exhibit Number 4 govern?

17 A. Exhibit Number 4 would have governed the
18 original construction of the project, which states the
19 exact same requirements that I stated earlier in terms of
20 following the Magna Wall's instructions, and the
21 conditions of use.

22 Q. Is there any real difference between Exhibits
23 Numbers 4 and Number 5?

24 A. No, sir.

25 MR. SEQUI: Okay. Your Honor, just to get the

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1 dates right, I would move that Exhibit 4 now be
2 admitted into evidence, as well.

3 THE COURT: Any objection?

4 MR. SEQUI: No objection, Your Honor.

5 THE COURT: Plaintiff's 4 into evidence without
6 objection.

7 [Whereupon, Plaintiff's Exhibit Number 4 is
8 admitted into evidence by the Court]

9 Q. [Mr. Sequi] Mr. Glick, how would you best like
10 to explain to the jury how your investigation went, what
11 you saw, and this kind of thing? Do you have anything
12 such as a Power Point we can use?

13 A. Yes, sir. I think my --

14 MR. SEQUI: Your Honor, would it be okay if
15 Mr. Glick came down off of the witness chair so he
16 can maneuver his computer to move the Power Point
17 through?

18 THE COURT: Yes.

19 MR. SEQUI: Thank you, Your Honor.

20 THE COURT: Mr. Glick, please make sure that you
21 speak loudly. My court reporter will let me know if
22 she cannot hear you.

23 THE WITNESS: I shall do that.

24 THE COURT: Thank you.

25 [Off the record momentarily]

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1 A. As you saw earlier, at Twelve Oaks --

2 THE WITNESS: Could we turn the lights down a
3 little bit? Is that okay?

4 Thank you.

5 A. Twelve Oaks does consist of ten buildings. It's
6 a residential project. And to understand what the focus
7 of this is all about, you have to understand that there
8 are two wall systems, and I'm going to explain that to
9 you.

10 There's something called a barrier system, and
11 there's something called a water-management system.
12 Barrier systems are high-rise buildings, granite,
13 commercial grade windows, professional ceiling
14 consultants, things of that nature. And it's exactly what
15 it says. It's a barrier to water. So it doesn't let
16 water behind the cladding, whether it be brick, wood, in
17 this case stucco.

18 MR. ANDERSON: Excuse me, Your Honor. Mr.
19 Glick, I apologize.

20 There is no question pending and we would object
21 to the actual style of the presentation.

22 THE COURT: All right. Well, please answer --
23 just answer the questions. Mr. Sequi had asked a
24 question. I think he was just clarifying.

25 But please --

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1 MR. ANDERSON: Thank you, Your Honor.

2 THE COURT: Since you're standing up, I know you
3 have a tendency to lecture so please make sure you
4 only answer questions. You can sit down if you would
5 like to, Mr. Glick. Whatever --

6 THE WITNESS: Okay.

7 MR. SEQUI: Your Honor, I would maybe seek some
8 guidance from you. I can pull it out of him question
9 by question, if that's what the Court wants, or I can
10 try to move it in a more streamlined fashion and let
11 him talk about his investigation and his findings.

12 Whatever the Court wants to do, I'm going to do
13 and I'm going to keep Your Honor happy.

14 THE COURT: My understanding was he was doing
15 the latter, Mr. Sequi. Let's move it on. Thank you.

16 MR. SEQUI: Thank you, Your Honor.

17 A. What we're focusing on, this wall at Twelve Oaks
18 is a water-management system. That's why it's very
19 important that the water-management plane be intact and
20 the water gets out.

21 This is a representation of water, with arrows,
22 hitting a wall, not getting through, and bouncing off.
23 That's a water-management system. Water goes through
24 caulk joints that don't break down. Windows do leak every
25 once in a while. They hit the dotted line, which is the

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1 building paper. It rolls vertically. The building paper
2 is lapped properly with the flashing, and then it exits
3 the water from in back of the system. This is to be
4 expected. When the water-management plane is not intact,
5 then the water ends up on the building.

6 Q. [Mr. Sequi] Mr. Glick, just to make sure
7 everyone on the jury may understand some of those terms
8 you're using -- some of them may be familiar, some may not
9 -- if you could tell us a little bit about what flashing
10 is and what it's supposed to be. Or define it for us,
11 please.

12 A. I will. I can do it with these series.

13 You have your studs. Then you have wall
14 sheathing. This is plywood that you usually see on
15 buildings. Then we put building paper on top of that. It
16 could be white or black. White is called Tyvek. Then we
17 stick a piece of metal flashing underneath it so it laps
18 properly -- the lapping issue is one of the key issues
19 here -- so that water laps in a horizontal fashion
20 vertically and then the water exits the wall. And then
21 you put your skin on it, in this case stucco, the Magna
22 Wall. So if the water goes through, the water goes out.

23 So looking at typical buildings, we have some
24 parking in some buildings that are below, residential
25 units above. There are different shapes. My

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1 investigation showed that there was both stucco and
2 Hardiplank. And the rules of engagement were the
3 International Building Code, as I said, but that code does
4 refer to Exhibits 4 and 5. The highlight is the National
5 Evaluation Report and it does deal with the Magna Wall
6 system.

7 Some of the issues in that report are things
8 such as putting corner beads and weep screeds shall be
9 installed as shown in the report. It says you need to do
10 that. The weep screed is how the water gets out from in
11 back of the stucco. So it says to do that.

12 It also says that flashing shall be designed and
13 installed to direct moisture from behind the system to the
14 exterior of the building.

15 Q. Mr. Glick, I want to interrupt you here for a
16 second.

17 Mr. Anderson, in his opening, repeatedly
18 mentioned the term follow the water. Once the water gets
19 in behind this stucco, what's supposed to happen to it if
20 it's done right?

21 A. If it hits the front of the water-management
22 plane, it comes out.

23 Q. Is that -- is that that paper you talked about?

24 A. Yes, sir.

25 If it gets in back of that paper by the nature.

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1 of the installation of the paper, which I found to be in a
2 reversed fashion, the water gets behind the paper and gets
3 on the sheathing. And that was the damage you saw
4 earlier.

5 Q. And, Mr. Glick, you talked about lapping and
6 then the reverse lapping. If I were to wear my raincoat
7 out over my breaches, is that a proper lap to get water
8 off of me?

9 A. Correct.

10 It would shed from your raincoat down to the
11 ground.

12 Q. If I tucked my raincoat into my breaches, is
13 that lapped, or a reverse lap?

14 A. That would be a reverse lap where the water
15 would go behind your pants.

16 Q. Okay. Thank you.

17 A. That report also has details. It tells you how
18 to let the water escape. This is a section at a roof
19 where the stucco allows the water to get out through one
20 of these screeds.

21 Q. Mr. Glick, one more interruption.

22 These flashing -- the pictures here, it's hard
23 for the jury to see it because it's a little bit farther
24 away. They're going to get to see it later. Does it
25 actually show the lapping, as far as what's supposed to be

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1 in front of what, what's supposed to be behind what, how
2 that's supposed to be done, in these pictures that you're
3 showing us?

4 A. Yes.

5 It's not only in the pictures, it's standard
6 construction. It's standard of care, as we say.

7 Q. All right. Thank you.

8 A. The conditions of use I talked about. There's a
9 section at 7.0 and it says: the material and methods of
10 installation shall comply with this report and the
11 installation shall be by an approved installer of Magna
12 Wall, which the subcontractor was. He was supposed to
13 know these rules. He was an approved subcontractor for
14 this product.

15 The product, there's quite a bit of it on the
16 buildings. It's a total of 298,000 square feet of surface
17 area and 250, a quarter of a million square feet, are
18 stucco. So that's why it's a major problem on this
19 project.

20 One of the buildings is all stucco. They're not
21 all all stucco. Most of them are a combination of wood
22 and stucco -- I'm sorry -- Hardiplank and stucco. But
23 when they're stucco, they have bands, joints, things of
24 that nature. And we're going to focus on some of those
25 bands, how they come together, because that's where a lot

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1 of the water got in was with -- through the system that
2 was installed.

3 At the ground level, I used my mirror to look
4 for a weep screed. That's what you -- what you're looking
5 at in the mirror is a metal bead at the underside of the
6 vertical wall hitting the ground. There's no drainage
7 opportunities. It's not a weep screed. It's in violation
8 of the installation instructions.

9 Q. Mr. Glick, can you explain to us how that weep
10 screed gets installed and what it's supposed to do?

11 A. The weep screed gets installed and then you
12 start installing your stucco on top of it. But what laps
13 the weep screed, of course, is the water-management plane,
14 the building paper.

15 Q. So is the weep screed the bottom drain of the
16 system, basically?

17 A. That's the bottom drain. That's where it gets
18 out.

19 Q. And what happens if there is no drain there or
20 the drain doesn't function and it wasn't installed right?

21 A. Moisture will build up and eventually find a
22 hole or a lap joint and get into the sheathing, whether it
23 be plywood or OSB board.

24 That's just another shot, a little blurry, but
25 there's no holes whatsoever in that weep screed. The weep

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1 screed is explained and shown very clearly, where my arrow
2 is, so the water could come out. It's in the installation
3 instructions. It's right there for everyone to see.

4 Typical windows. Have stucco and stucco bands
5 surrounding them at the window heads. The same
6 instructions call for flashing so that the water could get
7 out. It shows how it's lapped --

8 Q. Mr. Glick, did -- that piece of flashing there
9 that your arrow goes to, is that basically a drain of the
10 wall above a window?

11 A. That is correct, and that's why it says flashing
12 weep screed.

13 Q. And what happens if that drain is not there or
14 if it's not put in the right way?

15 A. Water will get behind the system and go anywhere
16 it wants to go.

17 Q. Okay.

18 A. These are some of the pictures that are now
19 beginning to take the building apart. They are
20 identified.

21 This is a before picture. And we're beginning
22 to take the system off and we immediately find water on
23 the sheathing. If water is on the sheathing, it's in back
24 of the water-management plane, which means something's
25 wrong above it.

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1 Now, just because water gets in a system, it
2 still should be able to get out. And that's the purpose
3 of the proper lapping.

4 The stucco went from a quarter inch to a half
5 inch. I even found places where it was an eighth-inch
6 thick. Instructions say it should be between three-eighths
7 and a half inch. The reason this is important is when you
8 have -- it goes from thick to thin, thick to thin, that's
9 where cracks -- because of expansion and contraction,
10 water is let in at that point.

11 More samples, quarter inch to half-inch, eighth-
12 inch thickness.

13 Q. Mr. Glick, I'm going to stop you there.

14 What is the minimum thickness that basically the
15 building code says because of these manufacturer's
16 requirements?

17 A. Well, the building code, through the
18 manufacturer's instructions approved by the building
19 code, says three-eighths of an inch.

20 Q. Okay. And you found areas as thin as how much?

21 A. Eighth-inch.

22 Q. Okay. So that's defective by its nature?

23 A. That is correct.

24 Q. Thank you.

25 A. And will lead to cracking and water intrusion,

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1 which it has.

2 The system is put up with some metal, and it's
3 called lath. And I had some samples of it. I think it's
4 in front of the -- no: Right here. That lath is held to
5 the sheathing --

6 THE WITNESS: Thank you.

7 A. That lath, which is this metal, is held to the
8 sheathing with staples, which you're allowed to use, but
9 the staples need to go three-quarters of an inch into a
10 structural stud. These staples were only one-inch long,
11 which means a half inch of it went into the sheathing and
12 only a half inch or less went into the actual structural
13 stud. So the system will fail in terms of coming off, at
14 some point, maybe a major wind event, the rusting of the
15 staples. And the fact that the staple is so rusted
16 because it's a regular steel staple -- it's not
17 galvanized. This mesh is actually galvanized -- it's
18 going to corrode and fall off. And it tells you that
19 water is behind that system --

20 Q. [Mr. Sequi] Mr. Glick --

21 A. -- by the nature of its rust.

22 Q. -- aside from any issues of anything else, just
23 on this stapling issue, if it's only an inch long and it's
24 only -- it's a half inch into the studs, what kind of
25 problems as to that service life we talked about are what

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1 the unit owners are looking at?

2 A. It will be greatly shortened. There were
3 cracks. And the laths weren't proper.

4 I want to explain this. You see on the left of
5 the slide there's some felt paper and you kind of see the
6 lath on the bottom right-hand area right there where my
7 pointer is. So there's lath here, there's building paper
8 here, and there's another piece of lath right there. This
9 is called paperbacked lath, meaning it's a two-foot
10 section of lath and paper. And then you take another
11 piece and it's lapped like this so the water hits the
12 black paper, rolls to the next black paper.

13 But what you're supposed to do is remove four
14 inches of this paper -- and it says it on the paper -- so
15 that you get metal to metal, because that's how the system
16 ties together when you do it in two-foot sections. If you
17 have the paper between it, you now have the embedment of
18 the lath broken. So there's no tying of the stucco
19 together as you go down from one section to another
20 section.

21 Q. Did I hear you correctly that that instruction,
22 to do with what you just said, that has the metal-to-metal
23 is actually written on the paper itself --

24 A. Yes, sir.

25 Q. -- that black paper?

1 A. There's a line that's four inches down and it
2 says remove paper to line.

3 Q. Okay. And what's -- what are some of the
4 problems when it's not done properly?

5 A. You get a crack because you don't -- you have
6 one stucco lift, or application, I'll call it, separated
7 by paper, and another lift, which is this one, with its
8 own lath. So you've got lath there and you've got lath
9 there and they don't tie together and you get a crack.
10 Cracks let water in. And we found cracks everywhere.

11 This is at the top of a window. And this is
12 just a representative series of pictures. The problems
13 were pervasive through all the buildings I investigated.
14 You can see here, again, the paperback is not lapped
15 properly. The staples are rusted, which means water --
16 you can see the staining on the back of the Magna Wall
17 system.

18 This is called a reverse lap. So the building
19 paper, or the flashing around the windows, which was part
20 of this subcontractor's job. It's in his contract. And
21 I'm going to show that to you -- he put this flashing on
22 around the windows and it's not lapped properly with the
23 Tyvek so with -- my awl, it's called A-W-L, tool is there,
24 the water gets behind the system and it just goes anywhere
25 it wants.

1 Q. Mr. Glick, just to make sure I understand you
2 correctly. You talked about a drainage plane. Is that
3 this black paper you're talking about?

4 A. It's both the black paper and the white paper.
5 The white paper is used here in combination with the peel-
6 and-stick and the black paper as well.

7 Q. And is all this paper supposed to be like
8 roofing shingles, it's supposed to be lapped -- weather
9 lapped, we talked about?

10 A. It should be weather lapped in a -- it's
11 horizontal lapping in a vertical format so that water
12 sheds. Like they said, follow the water. The water has
13 to shed to the next piece, to the next piece, and then
14 eventually get kicked out with the flashing.

15 Q. We used the raincoat analogy. But when it's
16 reverse lapped on a building that's made of wood, what
17 happens when the water runs down the drainage plane?

18 A. It rots the wood framing behind it.
19 And there's the evidence of it. It's just
20 rotting. The water is going anywhere it wants to go. And
21 that's why you can't do a spot repair, because you don't
22 know where the water went and the rot is everywhere and
23 the installation problems are everywhere. So you really
24 have to remove the entire system to start fresh and to
25 remove all the rotted wood and whatever else may be

1 rotted. We found rotted trusses in the roof, studs,
2 things of that nature.

3 These are just more examples of that rust. The
4 building paper underneath the stucco is right there on top
5 of the nailing flange of the window. It's supposed to be
6 underneath it, so that's not lapped properly. When water
7 gets underneath the lip of the window, it hits the nailing
8 fin and goes behind the black paper, which is the
9 paperbacked lath. So the water gets in that way, and
10 that's why we saw it right where the arrow is, and it gets
11 on the building.

12 Now, the stucco is an inch and a half thick.

13 Q. Well, tell me a little bit about that. Is there
14 a problem there?

15 A. It's too -- it's too thick. It needs to be
16 between three-eighths and a half inch, according to the
17 manufacturer.

18 This is a piece of stucco trim right where the
19 banding is right by the window, below the window. This
20 band underneath the window hits the stucco and they just
21 abut each other. And that's dirt. What you're looking at
22 is where water simply went in through the system and there
23 wasn't any bead, there wasn't any joint, there was
24 nothing. And, again, you put a bead at the end of a
25 stucco plane.

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1 Q. Mr. Glick, before you move forward, I wanted to
2 ask you about something that I forgot. Could you go back
3 to slide 41 --

4 A. 41?

5 Q. Yes, sir.

6 A. [Witness complies]

7 Q. See that blue piece of tape that says MC equals
8 fifty-plus percent? What --

9 A. Correct. That's --

10 Q. -- does that mean?

11 A. That's moisture content, fifty-percent.

12 The allowable moisture content for wood is
13 nineteen percent. Anything above twenty percent grows
14 fungus, mold, et cetera.

15 Q. And what is rot? Is that a fungus?

16 A. Rot is a result of fungus and water intrusion.

17 Q. Thank you.

18 A. These are some more pictures of just the lack of
19 sealant joints at the stucco trim and the band.

20 And this is really interesting. This is where
21 the stucco hits the side of a window, where the arrow is
22 showing. The stucco applicator left no room for a sealant
23 joint so nobody could put a sealant joint anyway.

24 Q. Can you tell us what a sealant joint is?

25 A. A sealing joint is where the stucco stops. And

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1 it's supposed to stop with a bead, a J-bead. It's
2 basically an end cap. So the stucco goes into the end
3 cap. You caulk between the end cap and the window, two
4 dissimilar materials, to stop water from intruding.

5 They did not use an end bead. They just stuck
6 the stucco right into the window frame.

7 Q. Now, did the contract say that you're supposed
8 to use a casing bead or a J-bead?

9 A. Yes, it did.

10 Q. And does the Magna Wall specification say you're
11 supposed to use a casing bead or a J-bead in that
12 location?

13 MR. ANDERSON: Object to the leading.

14 THE COURT: Hold on one second.

15 You may answer. Overruled.

16 A. Yes, it did.

17 Q. [Mr. Sequi] And when they take the stucco and
18 just put it up against the window versus putting in this
19 accessory that's going to hold it off the window, what is
20 the problem with that?

21 A. Water gets in. Water intrudes, gets behind the
22 management plane, water-management plane, rots the
23 building.

24 Q. Thank you.

25 A. This is the contract, the subcontractor's

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1 contract, and it's between Professional Plastering and
2 Stucco.

3 In the pages that are enclosed with this
4 contract, it specifically talks about the things that are
5 supposed to be put in in terms of the beads and the other
6 accessories. Those are called accessories, J-beads,
7 things of that nature -- and with the applicable
8 regulations as called for and recommendations by the
9 manufacturer.

10 Q. So the contract specifically said they're
11 supposed to do this stuff according to the manufacturer's
12 recommendation?

13 A. Correct.

14 Other sections of the contract call for the
15 beads that I'm talking about per the manufacturer's
16 instructions.

17 I'm turning to another area of the project.
18 This is where breeze-ways and rails come together. You
19 see the stucco that's on the wall and the piece of
20 flashing. That's ineffective. Clearly, the last person
21 to work on this is the stucco people. They're responsible
22 for where the stucco is working or not working.

23 We began --

24 Q. Okay. Mr. Glick, take me back to slide 51. I
25 know this is a contract, but I have another question for

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1 you.

2 There at line 25 it references putting these
3 casing beads, I was just asking you about, at the
4 dissimilar materials. Can you explain to us there -- can
5 you see 25? It says: all parties hereby agree that the
6 subcontractor is to furnish and install all casing beads
7 where stucco terminates at any dissimilar materials. Can
8 you --

9 A. Correct. That --

10 Q. Could you tell us what that means?

11 A. That would be at the windows, for instance.

12 Q. Would it be things other than the windows?

13 A. Everywhere there was a dissimilar material.

14 Hardiplank siding, things of that nature.

15 Q. So something made of something different than
16 stucco?

17 A. Correct.

18 Q. Thank you.

19 A. So we just took these kind of areas to see what
20 kind of problems we had here. We looked at the area above
21 the detailing and the stucco was flat. It's not supposed
22 to be flat, it's supposed to be sloped. We began to take
23 it apart and you could see the mesh very clearly. If you
24 see the mesh or the lath -- I'm using those terms
25 interchangeably -- that means there's no embedment into

1 the stucco. So there's really no strength to the stucco
2 at this point. And that problem was pervasive throughout.
3 That will lead to cracking, water intrusion.

4 Q. So that means that this lath that you showed us,
5 that's supposed to be back over in the stucco, was not
6 even in the stucco at all?

7 A. That is correct.

8 Q. Okay.

9 A. And we began to take the building apart.. We're
10 basically peeling it back like a fruit.

11 We're doing moisture tests. We find fifty-
12 percent moisture readings in these areas, as well.

13 Lack of these beads that we're talking about,
14 and sealant joints at the bands. This is between the
15 different esthetic areas of the building. The stucco is
16 not just esthetic. I mean, obviously, you could pick
17 stucco versus brick or another material. But the primary
18 function of the stucco cladding is to keep water out of
19 the building. So if you put it up with holes or the lack
20 of sealant in the joints, or you don't provide for the
21 joints, it's going to let water in.

22 Q. Mr. Glick, while we're going through this, I'm
23 just going to seize this opportunity to ask you this we
24 heard a little bit about in the openings. But we've got
25 the stucco applicator that's got the specific instructions

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1 that need to be followed and that he's sort of building
2 this in the layer system. Tell me how the general
3 contractor and the architect -- I mean, the jury may be
4 asking aren't they watching, aren't they -- they're not
5 seeing all this stuff going on?

6 A. Well, let's talk about the architect first. The
7 architect is on the job periodically: every couple of
8 weeks, maybe once a week. He would have to stand in one
9 place -- that's what I would have to do as the architect -
10 - and just watch them do this for hours. And we don't
11 inspect. That word was not used properly, nor legally,
12 earlier. Architects don't do inspections. Architects
13 provide observations because they're there on a periodic
14 basis and they're not responsible for extensive nor
15 exhaustive site reviews.

16 The job of the stucco installation is primarily
17 the responsibility of the stucco expert, which is the
18 stucco subcontractor and his superintendent. At some
19 point there's an overview, yes, by the general contractor
20 and his superintendent. But the primary responsibility
21 is, in fact, the subcontractor and his ability to put the
22 system on correctly in accordance with the system.

23 This is pictures of the rot that was behind the
24 stucco that we looked at earlier.

25 These are additional areas. If you look at that

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1 square, this is another type area that's very significant.
2 It's on every building. This is where a roof hits a wall.
3 Right there. And I'm going to go close up here. The
4 picture on the right, that's the fascia, that's the
5 stucco, this is the crack that's emanating from this point
6 right there.

7 That crack is caused because water is getting
8 into that system, through the system, because of an
9 inappropriate installation. The water has caused damage
10 underneath the fascia. Rot. You can see the mesh again.
11 And you can just take apart the building. I mean, I
12 literally took apart the building in my hand. That's
13 mostly solid plywood, and you could see it. That's what's
14 behind these walls.

15 This is the place also where the truss of that
16 gable comes together with a wall and where the truss was
17 rotted. So we're literally going to have to take the
18 trusses out and replace the roofing and the shingles,
19 things of that nature, because the water got in right at
20 the fascia because of what we call the lack of kick-out
21 flashing. And I'm going to show you what it should look
22 like in a minute.

23 Q. And before we get to the -- you mentioned the
24 word truss. Again, I want to make sure the jury
25 understands some things. They may have heard truss when

1 talking about bridges. But what is a truss when it comes
2 to a wood-frame building like this? What does it do?

3 A. The roof truss is what holds up the roof. It
4 gives the shape to the roof, the architecture, the
5 esthetic to the roof.

6 Q. And what happen -- you've also I think talked
7 about framing, structural framing, or studs. What happens
8 when the structural members like studs or trusses get
9 compromised due to rot? What potentially could happen?

10 A. You have a failure. Could have a collapse.

11 Q. Okay.

12 A. And, again, we're doing moisture readings. And
13 this was just absolutely soaked right in my hand. It was
14 a hundred-percent moisture content. It was, you know,
15 able to be taken apart it was so wet.

16 Just more pictures of the same thing. You see
17 the clarity of the lath, no embedment, probably caused
18 that crack I showed you.

19 You can see the back of the stucco with lack of
20 embedment.

21 Peeling it off right here. Taking apart the
22 truss and the framing. In my hand is the actual studs.
23 Those are structural studs that I took apart in my hand.

24 We did some moisture readings to determine some
25 areas that we should do some holes in. Again, fifty-

1 percent moisture content right on the windows where stucco
2 comes together with other stucco at different trim bands.
3 That's the before we open it up, and we find rot. So
4 everywhere I opened it up, in every single hole, the
5 building was rotted.

6 Q. Mr. Glick, where is this water coming from? I'm
7 sure it's going to be a battle before us when we hear from
8 Professional Plastering. They're going to say that
9 somehow this water came from somewhere else. So that will
10 be the first -- where is the water coming from?

11 A. This water came in at what we call the
12 collection joint. This is where the side of a window, a
13 jamb, hits the sill of a window, the very corner of a
14 window. It comes together. And because of the nature of
15 the installation of the stucco -- remember I talked about
16 earlier there was no room for a caulk joint, they just
17 stuck the stucco in the window frame. That's where the
18 water came from. So, typically, the rotting would be
19 below the windows. But if there was a window above you,
20 it would then get to the top of the window below.

21 Q. Does this work have anything to do with how the
22 windows would have been installed?

23 A. Absolutely not. This is how the outside surface
24 was put together and the lack of appropriate installation.

25 Q. So this isn't a window issue, this is a stucco

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1 issue?

2 A. Correct.

3 And there's some of the flashing that is in the
4 subcontractor's contract. The flashing I'm referring to
5 is this -- around the windows. And you can see here that
6 it's on top of the nailing flange. The nailing flange
7 holds the window to the building. So underneath this
8 silver foil is this metal. Well, if water gets in at this
9 joint, it hits here and goes in back of that. That
10 flashing should be underneath the nailing flange to do the
11 exact same thing: the shedding effect of water.

12 Q. And does the contract say that this flashing was
13 part of Professional Plastering's work?

14 A. Yes, it did.

15 Q. Thank you.

16 A. And more rot taking this apart. These areas are
17 everywhere.

18 Again, this is a wall. The truss that I talked
19 about earlier would be the shape of this triangle. And it
20 was right there where the rot occurred. Every one of the
21 buildings were built the exact same way with the lack of
22 kick-out flashing.

23 This is looking at it from top of the -- from
24 the top of the roof. And you're actually looking into the
25 building. You could see into the building at that point.

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1 This flashing stops. The stucco starts. The flashing
2 people were the last people to leave that area. They
3 didn't say anything. They just put their stucco on and
4 there's a hole in the building.

5 Q. And you said they're the last man there or the
6 last person there. What's the significance of that? What
7 does that have to do with anything?

8 A. Well, two things. If they weren't supposed to
9 do the kick-out flashing, they should have told the
10 superintendent that there's none there, I can't complete
11 my work properly.

12 Typically, in the industry if you proceed with
13 your work you accept what we call the substrate
14 preparation of the previous subcontractor. So as far as
15 I'm concerned, the stucco subcontractor is responsible for
16 the lack of flashing at that point in just putting his
17 product up.

18 Q. Because he covered it up?

19 A. That's correct.

20 And what typically will happen is water will
21 come down -- this is a closeup -- from the roof. This is
22 a closeup of that area that I was talking about. And the
23 water just goes right in. There's not any flashing, this
24 metal, to kick the water out away.

25 This is what it should have looked like. That's

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1 kick-out flashing. That's not this project. This is an
2 example of kick-out flashing where water comes down and is
3 kicked out by the flashing, turning at that point so it
4 doesn't go behind the stucco. That's what should be
5 there. It cost about a buck or less.

6 More areas of kick-out flashing in other
7 buildings.

8 Lack of embedment of stucco in the lath, which
9 means it has no strength. It's in violation of the
10 building code.

11 Building paper just stopping, letting water in.
12 And when water gets in, everything rots.

13 Moisture content is a hundred percent at this
14 roof.

15 There's one of the steel gussets. That's a -- a
16 gusset plate is a steel plate holding pieces of a truss
17 together. The truss is a triangular shape made up of two-
18 by-fours or two-by-sixes. Where those pieces come
19 together, they're held together by a metal plate. That's
20 the metal plate that's rusting. The result of that is
21 structural failure of the trusses.

22 Q. Is that a roof truss or --

23 A. That's a roof -- it's a roof truss.

24 Q. So that's -- is that a critical component of the
25 what holds the roof up?

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1 A. Yes, sir.

2 And, again, there's more areas that demonstrate
3 the same thing throughout the whole project. I'll quickly
4 go through. They're somewhat redundant. But, again, the
5 Magna Wall thickness went from an inch on the right to a
6 half inch or three-eighths on the left. I mean, we found
7 the same things everywhere. It wasn't an aberration in
8 one area.

9 Q. Were these problems pervasive?

10 A. Yes, sir.

11 Again, the stucco thickness varied quite a bit
12 from quarter inch to three-eighths.

13 That awl has a four-inch blade on it and it just
14 went right into the truss. That truss is absolutely gone.

15 Rusted truss plates.

16 These are other areas. These are not the same
17 holes. This is other buildings, rotted, same thing.

18 Going to another breeze-way. Before condition.
19 After condition. Rotted. You can see the black rot.

20 Forty-percent moisture content at this point.

21 Sheathing rot. The white fungus is the fungus
22 that I was talking about that you develop with a twenty-
23 percent moisture content, meaning constant. It never
24 dries out. That's what that white fungus is. It's
25 everywhere.

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1 The thickness varied quite a bit. You can see
2 the thin on the top and then the thicker on the bottom.
3 And even on the bottom piece you can see it go from three-
4 eighths to a quarter back to three-eighths. These are all
5 cracks.

6 Just took some other areas where water looked
7 like it was having problems. Looked at it closely. This
8 was destructive test number 9. We took it apart. You
9 could see the stucco coming out from the window frame
10 right there, right behind this window. No caulking, no
11 sealant. There's no way to put sealant there. Water got
12 in.

13 Lack of embedment. At this area you can see the
14 mesh clearly. You shouldn't be able to see the mesh or
15 the lath. It should have come off with the stucco.

16 Q. Mr. Glick, I want to ask you, since we're there
17 and it just didn't occur to me sooner -- but where Mr.
18 Anderson talked about the fact that Professional
19 Plastering was not responsible for applying sealants or
20 caulking: is there any way to caulk this intersection
21 between this window and this stucco when it's put up there
22 without a casing bead?

23 A. No. It's impossible to do it.

24 Q. Okay. Thank you.

25 A. Some more holes. Other windows. Forty-percent

1 moisture content.

2 Fifty-percent moisture content.

3 Thickness of the Magna Wall is half inch at that
4 point. You can see it getting thicker and thinner.

5 Reverse laths that I was talking about between
6 the wrap or flashing around the windows -- which was in
7 the contract -- by the subcontractor sitting here today.
8 So water gets behind the system. Once it gets behind the
9 system, there's no way to fix it.

10 There's no casing bead on top of the windows.
11 There should be a metal casing bead right there. They
12 took the stucco and they rammed it right into the
13 flashing. Water can't get out.

14 You've got a reverse lath.

15 And this is the contract from the subcontractor
16 where it says, right next to the initials, that they are
17 responsible for the flashing and the wrap around the
18 windows. So their contract was not only all around the
19 windows and doors, but also for the actual Magna Wall
20 installation.

21 Another area, more rot.

22 Lack of proper lap of the back lap of the
23 paperbacked lath. It was constant.

24 Water gets in right where my tool is. The
25 thickness is -- looks like an inch and a half at this.

1 point.

2 Hundred percent -- forty-percent moisture
3 content. Excuse me.

4 The thing is not lathed properly. You can see
5 the stucco lath clear as a bell. No embedment.

6 At the end of the instructions for installation,
7 which the approved applicator, which the subcontractor
8 was, has a little chart in it. That chart is an
9 installation card. That card says -- and I'm going to
10 highlight it -- that it certifies that the system was
11 installed in accordance with the Magna Wall manufacturer's
12 instructions. Clearly, they did not do that. It resulted
13 in massive damage to 216 homes, people just like
14 yourselves. And they never signed the card. That card is
15 supposed to be registered with a building official and it
16 was never in the file, or anywhere else that we could
17 find.

18 So, in conclusion, there's rot everywhere.
19 Different situations.

20 And I brought some of that rotted OSB board or
21 plywood. I have it in a box.

22 Q. I'm going to get to those last. I've got a few
23 more questions for you.

24 A. Okay.

25 Q. Based on what you've seen out there both with

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1 regard to the problems as to the way the stucco system was
2 applied, as well as the rotten trusses, structural framing
3 or the studs and the plywood sheathing, have you come to
4 conclusion as to the proper way to address those issues?

5 A. Yes.

6 The only way to properly fix this building is to
7 remove the exterior cladding back to the studs and at that
8 point we'll see how many studs are rotted, replace those,
9 and replace the insulation.

10 There may be a need to do mold remediation,
11 because if there's that much rot and it comes apart like
12 it shows in my hand, there's -- based on my experience,
13 there's going to be a number of areas where we'll have
14 mold that will need to be remediated, which is typically
15 on the back of the interior drywall of the units.

16 Q. So we're not dealing with just the skin at this
17 point? It goes much deeper?

18 A. It goes much deeper.

19 We have to take the windows out because the
20 windows are mounted to the plywood sheathing or the OSB
21 sheathing. You can't fix that without taking the windows
22 out, which is actually good because now we could properly
23 flash the windows at the same time.

24 Q. All right. And you've mentioned the term
25 nailing the flange. If you could tell us basically this

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1 whole concept of what the nailing flange does and why
2 because of that you have to take the window out and fix
3 the rotten wood underneath it.

4 A. The windows are secured to the building with
5 fasteners through the nailing flange so that they
6 basically affix the window to a plywood frame, just like a
7 window frame -- or a picture frame, rather. Well, the
8 plywood is underneath the nailing flange. You can't get
9 the -- you can't fix the rotted plywood unless you take
10 the window out, which will affect the interior drywall.
11 And the amount of damage and movement of the outside wall,
12 removing all of this, we're also going to have nail pops
13 on the insides of these rooms of the units so those walls
14 will have to be re-plastered and refinished and repainted,
15 as well.

16 Q. Pretend for me for a moment that there --
17 somehow, miraculously, there was none of this rot, none of
18 this water intrusion, behind the drainage plane. We're
19 just dealing with just the installation deficiencies of
20 the stucco by itself. Would you still condemn the system?

21 A. Absolutely, the way it's put up.

22 Q. All right. And then since we've got all this
23 rot, would you say the stucco has got to come off
24 regardless of how it's put on because you've got to find
25 it; right?

1 A. Yes.

2 Q. Okay. And would it be fair to say that most
3 everywhere you've looked, you found deteriorated wood?

4 A. I didn't find any place that didn't have
5 improper installation of the stucco system or rotted wood.

6 Q. Okay. I'm sure we may hear why can't you
7 perform a partial repair or a surgical repair, just a
8 little bit here and a little bit there. What's the
9 problem with that?

10 A. The -- it's a fragmented approach to fixing this
11 building because when the water gets in back of the
12 building paper or the white building paper, the Tyvek, the
13 black being felt, you don't know where it goes. And as
14 you can imagine on a building this size, three stories,
15 pieces of sheathing come together and they're not sealed
16 so water will go down that wood surface, find that joint,
17 and go right into the building.

18 So I don't have x-ray eyes. You need to take
19 all of the stucco off, because it's all on wrong anyway.
20 It's in violation of the building code, which means the
21 law, and you need to fix the building and see what's
22 rotted. That's the only way to see it.

23 Q. Does the stucco system that is installed in all
24 the buildings at Twelve Oaks comply with the building code
25 and the manufacturer's installation requirements and/or

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1 the contractual documents defining Professional
2 Plastering's scope of work?

3 A. It does not match any of those requirements.

4 Q. Have you communicated your recommended repair
5 scope, in detail, to ProCon and Associates?

6 A. Yes.

7 Q. Last-- I wanted to talk about your baggies here.
8 Or, actually, I have one other question. As -- we talked
9 a little bit about this piecemeal approach. Has that been
10 tried already at Twelve Oaks is your understanding?

11 A. Yes.

12 Before I got on the job they actually tried to
13 do a fragmented approach at one of the balconies, where I
14 showed you those rail details, and I opened that up and
15 there was rot again.

16 Q. So even in the area when they tried the
17 piecemeal, that didn't work there?

18 A. That's because there's other areas, one inch
19 next to the area they replaced, that's also letting water
20 in.

21 Q. And who did the repairs that we're talking about
22 in the breeze-way?

23 A. I believe the subcontractor here today did those
24 repairs, as well.

25 Q. Okay. Thank you.

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1 Let's talk about what you've got there in your
2 Ziplock. What is that?

3 A. I have a number of bags here.

4 But this is the OSB or the sheathing from
5 destructive test hole number 3. This is supposed to be a
6 solid material with structural capabilities. OSB is said
7 to be stronger than plywood, and it's -- it looks like a
8 bag of grass. And it's just soft rot.

9 Q. How many of these different bags do you have,
10 Mr. Glick?

11 A. We chose to collect about six samples from
12 different holes --

13 Q. Are they all labeled with the date and which cut
14 they were and --

15 A. Yes.

16 Q. -- what it is?

17 A. Yes, they are.

18 Q. What other kind of materials are there? Is
19 there anything else? Or is it all just the wood framing
20 and sheathing at Twelve Oaks?

21 A. No. It's samples of the stucco showing rusted
22 staples. It's showing thickness of a half inch. It's a
23 variety of the construction deficiencies, based on the
24 installation requirements of Magna Wall.

25 MR. SEQUI: Can I mark the box as Plaintiff's

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1 Exhibit 12, please.

2 [Whereupon, Plaintiff's Exhibit Number 12 is
3 marked by the court reporter]

4 Q. [Mr. Sequi] Mr. Glick, is the contents of
5 Plaintiff's Exhibit Number 12 a section of the stucco that
6 you removed from the building, as well as the various
7 baggies that contain damaged wood materials that was
8 behind the stucco that you obtained and removed as a part
9 of your investigation in this case?

10 A. Yes.

11 MR. SEQUI: Your Honor, we would move
12 Plaintiff's Exhibit Number 12 into evidence, please.

13 THE COURT: Mr. Anderson?

14 MR. ANDERSON: No objection, Your Honor. I
15 think some of it is redundant.

16 THE COURT: Plaintiff's 12 into evidence without
17 objection.

18 [Whereupon, Plaintiff's Exhibit Number 12 is
19 admitted into evidence by the Court]

20 MR. SEQUI: Your Honor, I would like to publish
21 these at this point to the jury.

22 And that's all the questions I have for right
23 now.

24 THE COURT: All right.

25 MR. SEQUI: Mr. Glick, please answer any

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1 questions that Mr. Anderson may have for you.

2 THE WITNESS: Yes, sir.

3 THE COURT: Mr. Foreman, you may pass the
4 baggies around but make sure that all the baggies get
5 back in the box. Thank you.

6 MR. SEQUI: And can I ask him one other
7 question, Your Honor?

8 THE COURT: You can't while they're passing --
9 while you're publishing. So you can wait until after
10 they're published.

11 MR. SEQUI: Okay. Thank you, Your Honor.

12 [Whereupon, the jury reviews Plaintiff's Exhibit
13 Number 12]

14 THE COURT: All right. Anything further,
15 counsel?

16 MR. SEQUI: One other question, I believe, Your
17 Honor.

18 Q. [Mr. Sequi] Mr. Glick, we've got these windows
19 that are going to need to be removed, and these drywall
20 repairs and interior-finish repairs and paintwork and all
21 that. Do you have an opinion as to whether it's going to
22 be necessary for the unit owners, the people who live in
23 these individual units, to move out --

24 MR. ANDERSON: Objection, Your Honor.

25 Q. [Mr. Sequi] -- during the repairs?

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1 THE COURT: What was the basis?

2 MR. ANDERSON: Beyond the scope of his
3 expertise.

4 THE COURT: Let him finish his question.

5 MR. ANDERSON: I'm sorry. I thought he did.

6 THE COURT: That's okay.

7 Q. [Mr. Sequi] -- necessary for them to move out
8 during the process of these repairs going along?

9 THE COURT: I'm going to -- I'm going to allow
10 that one.

11 A. The nature of these repairs could be quite
12 extensive.

13 When you remove studs out of a wall, you have
14 wiring in those walls. When you move the stucco off the
15 wall, you have to take the meter banks off the wall and
16 disconnect the power. People will have to move out of
17 these units because of the extensive nature of the
18 construction deficiencies and the necessary repairs.

19 Q. [Mr. Sequi] And is that primarily related to
20 the stucco and stucco-related damages?

21 A. Yes, sir.

22 MR. SEQUI: Thank you. That's all the questions
23 I have.

24 THE COURT: Ladies and gentlemen, we're going to
25 take a short comfort break. We're going to end as

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Mark T. Teseniar, et al	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 08-CP-10-0049
	)	
Fenwick Plantation Tarragon, LLC	)	
et al	)	
	)	
Defendants.	)	

PARTIAL TRANSCRIPT OF JURY TRIAL
May 11-13, 2011

The within transcript is a portion of the jury trial held in the above-captioned action on May 10 through May 13, 2011, before The Honorable Kristie L. Harrington, in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Jesse Kirchner, Esq.
Phillip Sequi, Esq.
John Chakeris, Esq.
Jefferson Leath, Jr., Esq.
Justin Lucey, Esq.
Appearing for Plaintiffs

J.J. Anderson, Esq.
Christy Mahon
Appearing for Defendants

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1

2

(TRIAL IN PROGRESS)

3

(SEE SEPARATE TRANSCRIPT FOR MAY 10, 2011)

4

5

MAY 11, 2011

9:00 A.M.

6

7

THE COURT: All of our jurors are
here. And who is your next witness?

8

MR. LUCEY: Don King, Your Honor.

9

THE COURT: Let's bring the jury.

10

(JURY ENTERS)

11

12

13

14

15

16

17

18

19

THE COURT: Please rise for the
jury. Please be seated. Ladies and gentlemen
of the jury, we are going to take a witness
out of order, so we will hear from Mr. Glick's
cross examination later this afternoon. But
we're going to go ahead and proceed with the
trial. So please -- please pay attention.
We're passing out the notepads. Go ahead and
call your next witness, Mr. Lucey.

20

21

MR. LUCEY: The plaintiff calls Mr.
Donnie King to the stand.

22

23

24

THE COURT: Hold on one second, Mr.
Lucey. We're still passing out the notepads.
Thank you. Go ahead, Mr. Lucey.

25

(WITNESS TAKES STAND)

1 DONNIE MICHAEL KING, being duly
2 sworn to tell the truth, the whole truth and
3 nothing but the truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY MR. LUCEY:

6 Q. Mr. King, you are currently the owner and
7 president of Forum Construction, correct?

8 A. Yes, sir.

9 Q. And that is, among other things, a stucco
10 application company; correct?

11 A. Yes, sir.

12 Q. In Florida?

13 A. Yes, sir.

14 Q. You're also owner, sole owner and
15 president of a second stucco application
16 company at this time, correct?

17 A. Yes, sir.

18 Q. And that would be called Wellington
19 Professional?

20 A. Yes, sir.

21 Q. Which is also in Florida, correct?

22 A. Yes, sir.

23 Q. But both of those companies, from time to
24 time, operate regionally; correct?

25 A. Yes, sir.

1 Q. And you're the owner and president of a
2 third applicator company at this time,
3 correct?

4 A. Yes, sir.

5 Q. That would be the Construction Offices of
6 Sanford, correct?

7 A. Yes, it would.

8 Q. And this third company, you now have
9 organized a management company, correct?

10 A. Yes.

11 Q. You use it to manage your other two
12 companies that are applying the stucco,
13 correct?

14 A. Yes, sir.

15 Q. And you've done a number of large jobs
16 recently; correct?

17 A. Yes, sir.

18 Q. In fact, you just finished up the
19 Cottages at Winding Creek not too long ago,
20 correct?

21 A. Yes, sir.

22 Q. A two and a half million-dollar job,
23 mostly stucco, some concrete?

24 A. All concrete/stucco siding.

25 Q. And you also just finished up another

1 large job called the Cottages at Stoney Creek,
2 correct?

3 A. Yes, sir.

4 Q. You just finished up Gainesville Place,
5 Phase Two, correct?

6 A. Yes, sir.

7 Q. Another large job involving a lot of
8 stucco, correct, and concrete?

9 A. Yes, sir.

10 Q. Same with Villa Medici, correct?

11 A. Yes, sir.

12 Q. New apartments, correct?

13 A. Yes, sir.

14 Q. But all these jobs were conducted in your
15 new companies, correct?

16 A. Yes, sir.

17 Q. Forum, Construction Offices of Sanford
18 and Wellington Professional; correct?

19 A. No, sir, the Forum Construction or
20 Wellington Professional.

21 Q. The other one just manages them, correct?

22 A. Yeah, the other one is an entity that
23 owns the office building.

24 Q. And the reason that you did all these new
25 jobs in Forum is because you folded

1 Professional Plastering after this lawsuit was
2 filed, correct?

3 A. I don't know when exactly it was but I
4 don't think it was right after the lawsuit was
5 filed, but I'm not sure of that.

6 Q. Well, let's take it one step at a time.
7 You have folded the party that's a defendant
8 in this lawsuit, the company known as -- the
9 corporation known as Professional Plastering
10 and Stucco, Inc., correct?

11 A. Yes, sir.

12 Q. It is defunct, correct?

13 A. Yes, sir.

14 Q. No employees?

15 A. No, sir.

16 Q. No assets?

17 A. No, sir.

18 Q. No ability to service those warranties?

19 A. No, sir.

20 Q. Now, the last time you filed your
21 required Florida annual filing in Professional
22 Plastering was in 2008, the same year this
23 lawsuit was filed, correct?

24 MR. ANDERSON: Object, Your
25 Honor, to the leading.

1 THE COURT: I'm going to allow it.

2 Please answer.

3 THE WITNESS: It could have been,
4 yes, sir.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. LUCEY:

7 Q. And the suit was filed in 2008, correct?

8 A. I believe it was.

9 Q. Now, prior to your folding Professional
10 Plastering, after the suit had been filed, it
11 was part of a successful company; correct?

12 A. Yes, sir, it was.

13 Q. It was a large company, was it not?

14 A. Pretty good-sized.

15 Q. You were the sole owner, right?

16 A. (Affirmative nod).

17 Q. You were the president, correct?

18 A. Yes, sir.

19 Q. And you employed what you called a
20 general superintendent named Darrell, correct?

21 A. Yes, sir.

22 Q. Darrell Hendricks?

23 A. Yes, sir.

24 Q. And underneath Darrell Hendricks there
25 would be a number of other project managers

1 and site supervisors, correct?

2 A. Yes, sir.

3 Q. One site supervisor for each job at
4 least, correct?

5 A. Yes, sir.

6 Q. And each project manager would have four
7 or so jobs under management at any given time,
8 correct?

9 A. Yes, sir.

10 Q. And you had a second general super-
11 intendent for Southport, correct?

12 A. Yes, sir.

13 Q. That was an additional division besides
14 Darrell Hendricks' division, correct?

15 A. Yes, sir.

16 Q. Then you had a third division, the
17 painting division; correct?

18 A. Yes, sir.

19 Q. Under Mr. Lowe?

20 A. Yes, sir.

21 Q. And you had about fifty employees in its
22 heyday at Professional Plastering, right?

23 A. Yes, sir.

24 Q. Just to be clear, you personally, you,
25 Donnie King -- you are not a named party to

1 the suit, are you?

2 A. (No verbal response).

3 Q. You're not a defendant.

4 A. No, sir.

5 Q. The defunct corporation, Professional
6 Plastering and Stucco, that's the defendant,
7 correct?

8 A. I believe it is just Professional
9 Plastering.

10 Q. And so back to Professional Plastering,
11 in its heyday had fifty or so employees,
12 correct?

13 A. Yes, sir.

14 Q. But most of these were management-type
15 employees because, truthfully, Professional
16 Plastering subbed out most of its work,
17 correct?

18 A. Yes, sir.

19 Q. You subbed out all the lath work,
20 correct?

21 A. Yes, sir.

22 Q. You subbed out all the plaster or stucco
23 work, correct?

24 A. Yes, sir.

25 Q. And you subbed out a fair amount of --

1 you subbed out the scaffolding work?

2 A. Yes, sir.

3 Q. And sometimes you'd sub out the paint
4 work too, correct?

5 A. Yes, sir.

6 Q. So you had this large corporation with
7 all these managers -- managing all these
8 subcontractors doing fifteen to twenty million
9 dollars per year in annual revenues, correct?

10 A. Yes, sir.

11 Q. Before you folded the company because of
12 this suit, correct?

13 A. I didn't fold the company because of the
14 suit, sir.

15 Q. This wasn't a mom-and-pop operation, was
16 it?

17 A. No, I was the only pop there. I don't
18 know what you'd call it.

19 Q. And this wasn't the only -- these four
20 companies that we've already told the jury
21 about weren't the only companies that were
22 taking up your time during this period,
23 correct?

24 A. (No verbal response).

25 Q. You were president and owner or

1 controller of a number of other companies
2 operating out of the exact same offices, in
3 the same building, as Professional Plastering,
4 correct?

5 A. Yes, sir.

6 Q. TEN AC, LLC?

7 A. Sir?

8 Q. TEN AC, LLC was one of those companies.

9 A. No, sir, I don't believe so.

10 Q. 270 LLC?

11 A. Yeah.

12 Q. Professional Plaster and Drywall, Inc.
13 operated with you, right?

14 A. Yes.

15 Q. Professional Plaster and Stucco One,
16 Inc.?

17 A. Yes, sir.

18 Q. Professional Plaster and Stucco Two,
19 Inc.?

20 A. Yes, sir.

21 Q. All out of the same office at the same
22 time, correct?

23 A. Yes, sir.

24 Q. You were a busy man, were you not?

25 A. Yes, sir.

1 Q. And that is one of the reasons why you
2 never ever went to this job site, correct?

3 A. Yes, sir.

4 Q. Didn't go there for quality control work?

5 A. No.

6 Q. Didn't go there to familiarize your
7 company with the site conditions, correct?

8 A. No, sir.

9 Q. Didn't go there to check your company's
10 job, correct?

11 A. No, sir.

12 Q. In 2003, when there were leak problems
13 and a new investigation was started, you
14 didn't go there to check out the company's
15 work, did you?

16 A. No, sir.

17 Q. After your company did some work in 2004,
18 you didn't go back and check the remedial
19 work; did you?

20 A. No, sir.

21 Q. Too busy with your other projects, were
22 you not?

23 A. I was busy, and I had people working
24 underneath me that was in charge of that job,
25 and they would go to the job.

1 Q. Sir, I want to hand you what's been
2 marked for purposes of identification only at
3 this time ---

4 MR. LUCEY: May I approach, Your
5 Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. LUCEY:

9 Q. --- as Plaintiff's Exhibit Number 3.
10 This was your company's contract for what was
11 then called Vintage and what the jury has
12 heard referred to in the past day or so as
13 Twelve Oaks or Fenwick Plantation, correct?

14 A. Yes, sir.

15 Q. It's a 2002 contract, correct?

16 A. Yes, sir.

17 Q. Let's take a look at a couple of
18 provisions before the jury. First of all,
19 who is Terry Smith?

20 A. He was my estimator at the time.

21 Q. And he was authorized by your company to
22 act on your company's behalf?

23 A. Yes, sir.

24 Q. And he's on a number of those corporation
25 papers we talked about, correct?

1 A. He may be on a couple of them.

2 Q. Is it Jesse Henderson?

3 A. Jesse Henderson, my assistant director.

4 Q. Is Jesse still with you?

5 A. Yes, sir.

6 Q. She's on a lot of those corporation
7 papers, too, correct?

8 A. On some of them, yes, sir.

9 Q. In fact, you actually have Terry Smith
10 serving as the member or president of some
11 of these companies in your name, correct?

12 A. That may be, yes, sir.

13 Q. On page seven of Plaintiff's Exhibit 3,
14 it has signatures on it, does it not?

15 A. Yes, sir, it's got initials on it.

16 Q. And is that your signature on behalf of
17 -- it's a big "D," I believe. Is that your
18 signature on behalf of Professional Plaster
19 and Stucco, Inc.?

20 A. Yes, sir.

21 Q. Dated March 20th or so of 2002?

22 A. Yes, sir.

23 MR. LUCEY: Plaintiff would move
24 Exhibit Number 3 into evidence, Your Honor.

25 THE COURT: Any objection?

1 MR. ANDERSON: Your Honor, we
2 have no objection. I think Exhibit 3 is on
3 the back.

4 THE COURT: Plaintiff's 3 into
5 evidence without objection.

6 (PLAINTIFF'S EXHIBIT 3 MARKED)

7 THE COURT: You may continue.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. LUCEY:

10 Q. Now, Plaintiff's 3, the contract is
11 basically three parts, correct -- the base
12 contract, an Attachment A and Attachment B,
13 correct?

14 A. Yes, sir.

15 Q. And the base contract has various rules
16 in it, various agreements, correct?

17 A. Yes, sir.

18 Q. Such as the amount of the job?

19 A. Yes, sir.

20 Q. Location of the job?

21 A. Yes, sir.

22 Q. And the attachments, A and B, have
23 additional rules and provisions pertaining
24 particularly to your trade, correct?

25 A. Yes, sir.

1 Q. In the main contract it refers to Exhibit
2 B or Attachment B on page three for the scope
3 of work, correct?

4 A. (Affirmative nod), I believe Exhibit B is
5 the scope.

6 Q. And on page one it has your company's
7 name on it as the subcontractor, correct?

8 A. Yes, sir.

9 Q. And tell the jury what the address is for
10 Professional Plastering and Stucco, Inc.

11 A. 2920 Stonewall Place, Sanford, Florida

12 Q. That's what its address was as of 2002?

13 A. Yes, sir.

14 Q. Tell the jury, please, what the address
15 is for Forum, Wellington, and Construction
16 Offices of Sanford.

17 A. 2920 Stonewall Place, Sanford, Florida.

18 Q. Now, if we go to page fifteen of
19 Attachment A, paragraph nine, it expressly
20 provides that Professional Plastering is
21 responsible for "all related work to the
22 stucco", correct?

23 A. Yes, sir.

24 Q. And we go to page seventeen, paragraph
25 twenty-two, it requires Professional

1 Plastering to employ a competent super-
2 intendent on the job site at all times,
3 correct?

4 A. Yes, sir.

5 Q. And the purpose of that is to make sure
6 the stucco gets applied correctly, correct?

7 A. Yes, sir.

8 Q. Which we saw yesterday didn't happen in
9 this case, correct? Well, actually it was
10 Monday that ---

11 MR. ANDERSON: Objection, Your
12 Honor.

13 THE COURT: Basis?

14 MR. ANDERSON: Your Honor, may we
15 approach?

16 THE COURT: You may.

17 (OFF RECORD BENCH CONFERENCE)

18 THE COURT: You may continue.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. LUCEY:

21 Q. Just pointing out for the jury that the
22 purpose of having a competent superintendent
23 on the job site at all times is to make sure
24 that the stucco system, especially one-coat
25 stucco system fiber-reinforced, gets installed

1 properly; correct?

2 A. Yes, sir.

3 Q. As I was saying before the interruption
4 occurred, we saw on Monday that that didn't
5 occur at this job site, correct?

6 A. I didn't see that.

7 Q. You didn't see that?

8 A. I didn't see that.

9 Q. Now, paragraph twenty on page sixteen
10 provides that your company is going to do a
11 product submission to the general contractor
12 and the architect prior to commencing work,
13 correct?

14 A. Yes, sir.

15 Q. That's typical in your industry, is it
16 not?

17 A. Yes, sir.

18 Q. And you all performed that product
19 submission, correct?

20 A. I believe we did.

21 Q. And it was some of what you produced to
22 us in that nine hundred pages of company
23 records relating to this project in this
24 litigation, correct?

25 A. It should be.

1 Q. You're familiar with the discovery
2 process in litigation, correct?

3 A. A little bit, yes, sir.

4 Q. Each side gets the opportunity to ask the
5 other side a couple of questions in writing
6 and then possibly a couple of questions in
7 depositions?

8 A. Yeah.

9 Q. And then also each side gets to ask the
10 other side to produce the documents that are
11 relevant ---

12 A. Yes, sir.

13 Q. --- to that particular dispute, correct?

14 A. Yes, sir.

15 Q. And you all did that in this case,
16 correct?

17 A. Yes, sir, we did.

18 Q. And included in those documents was the
19 submissions that you made to the architect and
20 the general contractor, correct? The product
21 submissions?

22 A. Yes.

23 Q. And the product submissions would be and
24 include the exact same exhibits that Myles
25 Glick talked about on Monday, being the master

1 wall instructions and the Code-compliant
2 report, the NER report, Exhibits 4, 5, 6, 7
3 and 8, correct?

4 A. It was a manual form.

5 Q. Manual form, (affirmative nod), thank
6 you. That's what the product submission to
7 the architect and the general contractor is,
8 correct?

9 A. I believe it was.

10 Q. And in that submission you're telling the
11 GC and the architect that this is how your
12 company is, in fact, going to apply the
13 stucco, correct?

14 A. We send the submittals to the general
15 contractor and the architect. They look at
16 them. They approve if they want us to use
17 them or not.

18 Q. Page seventeen, paragraph twenty-nine of
19 Plaintiff's Exhibit Number 3, your contract in
20 this matter provides, does it not, that the
21 codes, federal, state, local -- whatever's
22 applicable -- the codes, the laws, take
23 precedent over anything else in the contract
24 documents, plans or specifications, correct?

25 A. Yes, sir.

1 Q. You understood that, correct?

2 A. Yes, sir.

3 Q. In fact, you've operated in a number of
4 states in the southeastern United States;
5 correct?

6 A. Yes, sir.

7 Q. But primarily in Florida, correct?

8 A. Yes, sir.

9 Q. And Florida has a building code, right?

10 A. Yes, sir.

11 Q. And every contractor and every sub-
12 contractor knows they have to comply with the
13 building code, correct?

14 A. Yes, sir.

15 Q. On any one job site, each party on that
16 site has to comply with the codes, correct?

17 A. Yes, sir.

18 Q. Each party, each subcontractor, has their
19 own duty, in other words their own independent
20 duty, to comply with the building code,
21 correct?

22 A. Yes, sir.

23 Q. And so when you come into South Carolina,
24 you understand that you're entering a similar
25 environment, correct?

1 A. Yes, sir.

2 Q. There is the building codes, correct?

3 A. Yes, sir.

4 Q. And when you take on a South Carolina job
5 each subcontractor has an independent duty on
6 that job site to comply with the building
7 codes, correct?

8 A. Yes, sir.

9 Q. And you understand the building codes has
10 the force and effect of law, correct?

11 A. Yes, sir.

12 Q. It also the force and effect of a
13 contract, because to make sure there's no
14 mistake the general contractor actually puts
15 that requirement into your contract.

16 A. Yes, sir.

17 Q. And not to leave anything for chance, on
18 paragraph forty-two of page eighteen, the
19 general contractor effectively says to you,
20 and you agree with this contract, to the same
21 principle another way. Paragraph 42 actually
22 says the provisions of any applicable law are
23 hereby made a part of this contract, correct?

24 A. Yes, sir.

25 Q. So the building code is incorporated by

1 reference into your contract, correct?

2 A. Yes, sir.

3 Q. Which we saw on Monday in the case of
4 Magna Wall being a specialty product, includes
5 the third party, the NER report, with the
6 specific requirements of how it must be
7 applied or be used per the building codes,
8 correct?

9 A. Yes, sir.

10 Q. So to state it more simplistically, the
11 requirements of both the NER, which requires
12 you to comply in conformance with the Magna
13 Wall instructions, and the Magna Wall
14 instructions themselves are incorporated right
15 into this contract, correct?

16 A. Yes, sir.

17 Q. And if we go to Exhibit B of the
18 contract, which that would be the scope of
19 work, it would appear that you and the general
20 contractor didn't want to leave anything to
21 chance. Because for a third time in the
22 introduction you all agree that the stucco is
23 going to be applied in strict accordance with
24 the manufacturer's instructions and with the
25 building code. Correct?

1 A. Yes, sir.

2 Q. And just to make sure that didn't get
3 misunderstood, paragraph one of Attachment B
4 again says that you must apply the stucco in
5 strict accordance with the manufacturer's
6 instructions, correct?

7 A. Yes, sir.

8 Q. Now, paragraph six of Exhibit B provides
9 that your company must inspect the substrate,
10 the surfaces, that you're going to apply your
11 stucco to prior to application, to make sure
12 that they are proper; correct?

13 A. Yes, sir.

14 Q. You heard Mr. Glick talk about that
15 concept as an industry standard on Monday,
16 correct?

17 A. Yes, sir.

18 Q. That a subcontractor essentially buys the
19 substrate that he lays his product on,
20 correct?

21 MR. ANDERSON: Object to the
22 question.

23 MR. LUCEY: I withdraw it.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. LUCEY:

1 Q. As a matter of industry standard and as a
2 matter of your contract, Exhibit B, paragraph
3 six, you are not to cover up defective work of
4 others; correct?

5 A. Yes, sir.

6 Q. But your company did cover up the
7 locations on these buildings with the missing
8 kickout flashing, did it not?

9 A. It appeared that way when I seen the
10 slides, that there was no kickout flashing
11 there.

12 Q. You agree that kickout flashing serves an
13 important function, correct?

14 A. Oh, yes, I think so.

15 Q. Kickout flashing is often located at the
16 intersection of a low roof and an upper wall;
17 correct?

18 A. That's correct.

19 Q. And the kickout flashing is to get the
20 water away from the wall, correct?

21 A. That's correct.

22 Q. To make sure the water does not go behind
23 the wall, correct?

24 A. Yes, sir.

25 Q. And once your stucco is installed, you

1 can't install kickout flashing; correct?

2 A. No, sir. You can, but you've got to go
3 take the assembly apart.

4 Q. You've got to take stucco back out,
5 correct?

6 A. Yes, sir.

7 Q. So, essentially, once the stucco's
8 installed, you can't install kickout flashing,
9 correct?

10 A. Not without removing/replacing the
11 stucco, yeah.

12 Q. And as you saw from the slides on Monday,
13 your company apparently covered up the
14 defective work of others, being the lack of
15 kickout flashing at the roof-wall
16 intersections at Fenwick, correct?

17 A. I don't know if it called for kickout
18 flashing on that particular job.

19 Q. You don't know if it calls for it?

20 A. Not on that particular job, no.

21 Q. You do agree that it is necessary,
22 correct?

23 A. I agree it's necessary.

24 Q. In fact, your company didn't just cover
25 up the absence of kickout flashing, it left

1 holes at that location, did it not?

2 A. I don't believe so.

3 MR. LUCEY: May I have presentation
4 slide numbered eighty (80), please?

5 DIRECT EXAMINATION CONTINUED

6 BY MR. LUCEY:

7 Q. Sir, I hand you Plaintiff's Exhibit
8 Number 20 in evidence and ask you to turn to
9 slide number 80. That's a location where
10 there's supposed to be kickout flashing, is
11 it not, sir?

12 A. Yes, sir.

13 Q. And you can see from the slide, right
14 there at the end of the flashing and the
15 shingle and where they meets the stucco is,
16 there's a little hole where you can see the
17 white building paper, correct?

18 A. Yes, sir.

19 Q. And if you flip to slide number 81 we see
20 a blow-up of that hole, correct?

21 A. Yes, sir.

22 Q. In fact, we now also see some of the
23 paper, not only the building paper but the
24 lath paper, correct?

25 A. Yes, sir.

1 Q. That's a hole in the exterior cladding
2 system, is it not?

3 A. Yes, sir.

4 Q. And you know what happens when water
5 enters that hole, correct?

6 A. Yes, sir.

7 Q. Is that in some of the pictures that Mr.
8 Glick showed us on Monday?

9 A. Yes, sir.

10 Q. And you were the last trade at that
11 location, correct?

12 A. I don't believe so.

13 Q. Which trade would have followed you,
14 besides the painter, sir?

15 A. The painter.

16 Q. Do you blame for the painter for the hole
17 in the stucco?

18 A. No, I don't blame the painter for the
19 hole, but I don't know how the hole got there.

20 Q. It was there at the time your company
21 left the job site, was it not?

22 A. I don't know that. Do you?

23 Q. Is it your contention that the home-
24 owner's had climbed up on the roof and poked
25 holes?

1 A. That's not my contention, no.

2 Q. And so, returning to the contract, at
3 paragraph six of Exhibit B, it doesn't just
4 say to say to inspect the job for proper
5 conditions prior to the stucco being
6 installed. It actually says, "inspect any
7 component associated with water tightness,"
8 correct?

9 A. Yes, sir.

10 Q. Paragraph fifteen of Exhibit B provides
11 that your company is supposed to install the
12 lath in accordance with the building codes,
13 correct?

14 A. Yes, sir.

15 Q. That would include the minimal inch
16 penetration of the lath fasteners that Mr.
17 Glick referenced on Monday, correct?

18 A. Yes, sir.

19 Q. Paragraph seventeen provides, in your
20 contract, that you are to install the trim and
21 accessories necessary to complete your stucco
22 scope; right?

23 A. Yes, sir.

24 Q. And the accessories include the
25 termination accessories for the stucco,

1 correct?

2 A. Yes, sir.

3 Q. In other words, if you've got a wall of
4 stucco, it ends somewhere, and we call that a
5 termination, right?

6 A. Yes, sir.

7 Q. If it ends into other stucco, that's a
8 stucco-to-stucco termination, correct?

9 A. Yes, sir.

10 Q. If it ends into, for instance, a window
11 frame, a metal window frame, that's an inter-
12 section of what we refer to as dissimilar
13 materials; correct?

14 A. Yes, sir.

15 Q. And the accessories that your contract
16 provides your company's supposed to install
17 include whatever accessories called for, for
18 instance, at the intersection of dissimilar
19 materials, correct?

20 A. Yes, sir.

21 Q. Casing beads, correct?

22 A. Some people do away with a casing bead
23 with that type of window, with that window.

24 Q. We're going to get to the casing bead
25 paragraph in just a moment. But generally

1 speaking, a casing bead is what would be used
2 at that window, correct?

3 A. Not very many times.

4 Q. Magna Wall instructions provide for a
5 casing bead at that intersection, correct, as
6 does the NER report?

7 A. Yes, sir, the NER report does.

8 Q. And at the bottom of the wall you also
9 have an accessory where the stucco ends,
10 correct?

11 A. Yes, sir.

12 Q. It's sometimes referred to as a J-bead,
13 right?

14 A. Yes, sir.

15 Q. And for the J-bead to be properly
16 installed, it needs to have the building paper
17 lapped into it so that the exterior system on
18 the walls will be weather lapped, correct?

19 A. Yes, sir.

20 Q. And, in fact, the lath goes down into the
21 J-bead when it terminates, correct?

22 A. Yes, sir.

23 Q. It's not behind the J-bead, as we saw in
24 some pictures on Monday, correct?

25 A. I don't remember the pictures.

1 Q. And that J-bead for the system -- for a
2 wall system to what we call weep or release
3 water, has to have what's called a weep
4 screed, correct?

5 A. Yes, sir.

6 Q. The weep screed is a series of holes that
7 lets the wall breathe or allows the water to
8 go downward and out, correct?

9 A. That's the theory of it, (affirmative
10 nod).

11 Q. And you would agree that if water is not
12 expelled from the system, it will cause rot
13 behind the system, correct?

14 A. Uh, -- I've got a little different theory
15 than Mr. Glick.

16 Q. So you agree that a properly-applied
17 stucco system needs to be able to drain
18 moisture that gets behind the stucco, correct?

19 A. They designed a weep screed to put down
20 there so the water can go out.

21 Q. And you agree that a properly-designed
22 system needs that, correct?

23 A. Well, I find it difficult with all the
24 holes in paper-backed lath and the Tyvek that
25 the water's going to make it to the bottom of

1 the building. I don't agree with that.
2 Because on that particular job right there
3 there was probably over two millions holes in
4 that paper-backed lath and that Tyvek, if you
5 add the numbers up for the square footage that
6 is there.

7 Q. I ---

8 A. I think the number is something like two
9 and half million holes in it.

10 Q. Do you deny previously testifying under
11 oath that a properly-applied stucco system
12 need to be able to drain moisture that gets
13 behind the stucco?

14 A. No, they require you to put a weep screed
15 there at the bottom.

16 Q. And you agree with that, correct?

17 A. Sir?

18 Q. And you agree with that, correct?

19 A. I agree with it.

20 Q. Now, paragraph twenty-two of Exhibit B of
21 Plaintiff's Exhibit 3, your contract, provides
22 that you were to install J-mold, an accessory
23 called J-mold, at the edges of the stucco that
24 are not finished into a wall or a jamb;
25 correct?

1 A. Yes, sir.

2 Q. A jamb being the side of a window, right?

3 A. Yes, sir.

4 Q. Paragraph twenty-five provides what we
5 discussed a few minutes ago. It requires your
6 company to install casing beads where stucco
7 terminates at any dissimilar materials,
8 correct?

9 A. Yes, sir.

10 Q. Such as where the stucco terminates into
11 or at the aluminum window jambs, correct?

12 A. Yes, sir.

13 Q. Just to make sure there's no ambiguity
14 about that, paragraph thirty-nine provides the
15 same thing one more time: casing beads at the
16 intersection of dissimilar materials; correct?

17 A. Yes, sir.

18 Q. Of course, we saw on Monday that there
19 were not casing beads at the intersection of
20 dissimilar materials at the windows, correct?

21 A. That's correct.

22 Q. The photos that we saw on Monday with no
23 casing bead at the intersection of the plaster
24 and the aluminum window is in contravention of
25 the last two paragraphs we just read in

1 Attachment B to your former company's contract
2 for the application of the stucco at Twelve
3 Oaks; correct?

4 A. Yes, sir.

5 Q. Sir, Mr. Glick showed the jury a photo-
6 graph of stucco in contact with shingles on
7 Monday. Do you recall that?

8 A. I believe so, yes.

9 Q. That's an improper construction
10 condition, correct?

11 A. That's where the kickout flashing should
12 have been.

13 Q. Anywhere?

14 A. Yeah.

15 Q. You may not have stucco touching shingles
16 anywhere, can you?

17 A. (No verbal response).

18 Q. It's improper?

19 A. No.

20 Q. You disagree with that?

21 A. Some people -- my business is a customer
22 service business. And when my customers ask
23 me to do special things for them that they
24 want on their job, that's what I do.

25 Q. Magna Wall installation instructions do

1 not permit stucco in contact with shingles,
2 correct.

3 A. I don't believe so.

4 Q. Under the Magna Wall installation
5 instructions that condition is, in fact, an
6 improper construction condition; correct?

7 A. Yes, sir.

8 Q. We've already talked about the casing
9 bead. That's the second defect I wanted to
10 cover.

11 Three -- you saw the photographs of the
12 lack of weep screeds at the base of the walls,
13 correct?

14 A. I've seen a photograph here and I think
15 they had a piece of stucco where they have it
16 turned up.

17 Q. There were supposed to screeds in the
18 bottom of those walls to allow the stucco
19 system to drain so rot would not occur, such
20 as the photographs that Mr. Glick put on the
21 board on Monday, correct?

22 A. Yes, sir.

23 Q. They're not there, are they?

24 A. I seen the pictures that you showed that
25 the material was not there.

1 Q. And you don't have any contrary evidence,
2 correct?

3 A. No, sir.

4 Q. And the absence of weep screeds at the
5 base of the Twelve Oaks or Fenwick walls is a
6 violation of the NER report, the Magna Wall
7 installation instructions and your contract
8 with the general contractor; correct?

9 A. Yes, sir.

10 Q. You also saw the photographs on Monday
11 that the locations where the stucco was
12 documented as being too thin, in other words,
13 less than three-eighths of an inch, and too
14 thick, more than half of an inch, and the
15 cracking that results from variable thickness
16 of stucco; correct?

17 A. I don't believe that's what caused the
18 cracking there.

19 Q. You disagree ---

20 A. I would disagree that that's what caused
21 the cracking.

22 Q. Would you at least agree that the
23 Specialty One Coat, fiber-reinforced, Magna
24 Wall stucco system is supposed to be installed
25 pursuant to the manufacturer's instructions

1 and the NER report at a three-eighths inch to
2 one-half inch thickness?

3 A. No, I think the maximum is one inch on
4 the Magna.

5 Q. And the minimum is three-eighths inch?

6 A. The minimum is three-eighths.

7 Q. And a quarter inch would be in violation
8 of the minimum, correct?

9 A. Yes, a quarter inch would be a little
10 thin.

11 Q. And you disagree that the variation in
12 the thickness contributes to cracking?

13 A. Yes, I disagree with that.

14 Q. You saw the reverse weather lap in the
15 photographs on Monday, correct?

16 A. I heard Mr. Glick talk about it.

17 Q. Each product you put on the structure is
18 supposed to be layered to the outside, like
19 shingles, so it sheds water, correct?

20 A. Yes, sir.

21 Q. And if it's not, it permits water to get
22 behind it; correct?

23 A. If it's not shingled right, yes, sir.

24 Q. It permits water to get into the wood
25 structure, correct?

1 A. Yes, sir.

2 Q. And you saw the photographs on Monday
3 where the water had gotten between the paper-
4 backed lath layers of the reverse lap and
5 rotted the wood structure, correct?

6 A. I've seen that picture.

7 Q. And that condition, that reverse-lap
8 condition of any of your products, including
9 the paper-backed lath is, in fact, a violation
10 of the NER report, correct?

11 A. I believe it is.

12 Q. Which constitutes a violation of the
13 building code, correct?

14 A. I believe so.

15 Q. You also saw the rusted staples in the
16 photographs on Monday, correct?

17 A. Yes, sir.

18 Q. You're aware, of course, that both the
19 Magna Wall installation instructions and your
20 agreement with the contractor required you to
21 use corrosive-resistant fasteners, correct?

22 A. Again, I believe that's what they was.

23 Q. And the fasteners we saw were rusted,
24 correct?

25 A. Yes, sir.

1 Q. And the risk of rusted fasteners -- in
2 other words, the risk of a subcontractor using
3 fasteners that are not corrosive-resistant, is
4 that the wall risks a loss of structural
5 integrity; correct?

6 A. They're corrosive-resistant. Everybody
7 needs to understand that if you take a piece
8 of galvanized and put it in a bucket of water
9 and you leave it there for a year or two
10 years, it's going to rust.

11 Q. Sir, the purpose of having corrosive-
12 resistant fasteners is to maintain the
13 structural integrity of the wall-cladding
14 system; correct?

15 A. That's correct.

16 Q. And that is to keep the stucco on the
17 structure during what's called designed wind
18 events, correct?

19 A. Yes, sir.

20 Q. Hurricanes, correct?

21 A. Yes, sir. Plus there's a coating for,
22 you know, moisture or something like that
23 could get in there. But it's not designed
24 for it to sit in water, you know, for its
25 lifetime.

1 Q. You're aware, sir, that these structures
2 have not yet been tested by the designed wind
3 event in Charleston County since they were
4 constructed in 2002.

5 MR. ANDERSON: Objection, Your
6 Honor. Foundation.

7 THE WITNESS: I don't know that.

8 THE COURT: Sustained. Thank you.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. LUCEY:

11 Q. You aren't aware of whether or not
12 there's not been any hurricanes in Charleston
13 since this structure was constructed, correct?

14 A. Yes, sir.

15 Q. You also saw a document or photographs on
16 Monday of the failure to remove the excess
17 paper when lapping the lath down the wall,
18 correct?

19 A. I heard Mr. Glick say that.

20 Q. You agree that you do need to remove the
21 excess paper from between the lath, correct?

22 A. Yes, sir.

23 Q. Both laps are supposed to be tight
24 together and embedded in the same stucco,
25 correct?

1 A. Yes, sir.

2 Q. If you have paper between the lapped
3 layers, they don't integrate, do they?

4 A. No, sir.

5 Q. The failure to remove the paper from
6 between layers of lath constitutes a violation
7 of the code report, the NER Code Report Number
8 459 referenced in the Magna Wall installation
9 instructions, correct?

10 A. Yes, sir.

11 Q. And is a violation of the building code?

12 A. Yes, sir.

13 Q. Sir, you would agree with me that one or
14 more of the aspects of the stucco installation
15 at Fenwick are not in compliance with the NER
16 report, correct?

17 A. Yes, sir.

18 Q. And that constitutes a building code
19 violation, correct?

20 A. Yes, sir.

21 MR. ANDERSON: Objection.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. LUCEY:

24 Q. The only question is how much, correct?

25 THE COURT: Hold on one second.

1 What's your objection? There's been an
2 objection.

3 MR. ANDERSON: The objection was
4 there was lack of foundation for the question.

5 THE COURT: I'm going to allow it.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. LUCEY:

8 Q. And as you just confirmed, that
9 constitutes a violation of the building code,
10 correct?

11 A. Yes.

12 Q. The only question for the jury is how
13 many violations and how much, correct?

14 A. Yes, sir.

15 Q. Thank you, sir.

16 THE COURT: Mr. Anderson.

17 MR. ANDERSON: Thank you, Your
18 Honor.

19 CROSS EXAMINATION

20 BY MR. ANDERSON:

21 Q. Mr. King, do you still have the contract
22 in front of you?

23 A. Yes, sir.

24 Q. Now, on this job -- let's look at
25 Attachment B to the contract, page nineteen.

1 Mr. Lucey read to you only part of that.
2 The second part of it is "All parties agree
3 that manufacturers' representatives will visit
4 the site no less than monthly and certify to
5 the contractor in writing that the work being
6 performed at the time is in strict conformance
7 with the manufacturers' recommendations." Is
8 that not correct?

9 A. Yes, sir.

10 Q. Okay, and in fact, there was a Magna Wall
11 representative who came out and gave that
12 certification, was there not?

13 A. I believe there was.

14 Q. And your superintendent on the job would
15 have been told by Magna Wall that their
16 installation met the Magna Wall requirements?

17 MR. LUCEY: Objection. Foundation.

18 THE COURT: You may answer.

19 WITNESS: Yes, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ANDERSON:

22 Q. Now, in addition to the certification and
23 approval by Magna Wall, you got a similar
24 certification and approval from Summit on each
25 one of your pay applications. Is that not

1 correct?

2 A. Could I hear the question again, please.

3 Q. In addition to the Magna Wall certifica-
4 tion that your work was correct, each time you
5 made a pay application, the general contractor
6 had to certify that your work was correct
7 also. Is that not correct?

8 A. Yes, sir.

9 Q. And in addition, the architect had to
10 certify not only was your work correct, but it
11 was in accordance with the contract documents,
12 plans and specifications. Is that not
13 correct?

14 A. Yes, sir.

15 Q. All right. And that was required prior
16 to your being paid.

17 A. Yes, sir.

18 Q. And that was to assure the owner that the
19 material was being applied in a proper manner.
20 Is that correct?

21 A. Yes, sir.

22 Q. And your superintendent and you would
23 have been made aware of those certifications.
24 Is that correct?

25 A. Yes, sir. Generally, if there were any

1 issues or somebody had an issue with
2 something, the general contractor or the
3 architect would bring it to my superinten-
4 dent's attention or they would hold the money.

5 Q. Now, I'm going to ask you to go to the
6 main portion of the contract, Article 12.

7 A. What page is it?

8 Q. Page four.

9 A. Okay.

10 Q. And, basically, Article 12 talks in terms
11 of correction of your work. Is that not
12 correct?

13 A. Yes, sir.

14 Q. And there's a procedure during these
15 inspections that if your work is found to be
16 defective or not in accordance with the plans
17 and specifications, either the architect, the
18 owner or the contractor can require
19 Professional Plastering to correct that. Is
20 that right?

21 A. Yes, sir.

22 Q. And they can come back and either, as you
23 said, withhold pay, require you to go out and
24 make repairs and correct any type of defect(s)
25 that there may be. Is that true?

1 A. Yes, sir.

2 Q. Okay. Now, -- so if you had been
3 contacted and told that there was supposed to
4 be kickouts at the roof-to-wall intersections
5 and that it was your fault that they didn't
6 put the kickouts on, they could have required
7 you to go back, take out the work, have the
8 kickouts installed and then reinsert your
9 stucco. Is that correct?

10 A. Yes, sir, that's correct.

11 Q. And that would be at no cost to the
12 owner?

13 A. Yes, sir, that's correct.

14 Q. And was that done?

15 A. No, sir, not to my knowledge.

16 Q. So there's a procedure in place that if
17 the general contractor, the architect or the
18 manufacturer, in doing their inspections -- if
19 they find a defect, you end up coming back to
20 correct it.

21 A. Yes, sir.

22 Q. Now, kickout flashing, can you see kick-
23 out flashing?

24 A. You can see kickout flashing.

25 Q. When you walk by a roof and look up, can

1 you tell whether there's kickout flashing
2 there?

3 A. I can, but I've been in construction all
4 my life. Sometimes it's a little hard for
5 people to see three stories up, you know.

6 Q. Would an architect designing a building
7 know whether or not there was kickout
8 flashing?

9 A. I would think so.

10 Q. How about the general contractor? Would
11 he be able to tell whether or not there was
12 kickout flashing?

13 A. I believe so.

14 Q. Now, if you would look at Attachment B,
15 page nineteen ---

16 A. Yes, sir.

17 Q. Part of this was read to you and it says
18 that "all parties agree that the subcontractor
19 shall inspect all framing, windows, doors,
20 flashing and any dry-in associated with water
21 tightness prior to the start of the lath work.
22 All parties further agree..." -- I'm going to
23 read you the rest of the paragraph that was
24 left out. "All parties further agree that the
25 subcontractor will report to the contractor's

1 job site superintendent any discrepancies or
2 potential concerns that he may have related to
3 water tightness not being sufficient." Is
4 that not correct?

5 A. Yes, sir.

6 MR. ANDERSON: May I approach the
7 witness?

8 THE COURT: You may.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ANDERSON:

11 Q. I'm going to hand you what has been
12 marked as Exhibit PP and S-12, if you would.
13 Do you recognize that document?

14 A. Yes, sir.

15 Q. And what is that document?

16 A. It looks like the letter that come from
17 us and it went to the general contractor.

18 Q. And Tacy McGinty is ---

19 A. Tacy McGinty was the project manager for
20 Summit Construction.

21 Q. Project manager, does that make her the
22 boss of the job site?

23 A. Yes, sir, she makes all the decisions.

24 That's who we deal with is the project manager
25 if we've got any questions or anything. We'd

1 generally talk to him or her.

2 Q. And what authority does the project
3 manager have over you and your crews?

4 A. She controls what we do and how we do it.
5 She controls the whole job site.

6 Q. What does this letter concern?

7 A. It looks like it's a project update that
8 one of my project managers sent to her.

9 Q. And what's the content of the letter?
10 Does that report a concern about water
11 tightness?

12 A. Yes, sir. Do you want me to read it?

13 Q. Yes, sir, if you would, please.

14 A. (Reading): "Please note that
15 Professional Plastering has been directed to
16 proceed with the following items at the above-
17 referenced project. If the building wrap is
18 not installed at the time of the lath of the
19 stucco, we have been directed to proceed with
20 our scope of work without any delays by Tacy
21 McGinty."

22 Then number two, (reading): "We have
23 been directed by Buddy Reeves to proceed with
24 the lath of the stucco before the lightweight
25 and the plastic in the breezeway and the

1 corridor. We will not be held responsible for
2 any damages or repairs due to this sequence of
3 work. This is my interpretation of this
4 conversation today on the phone. Unless
5 advised otherwise, we will proceed with the
6 above directions. If you have any questions,
7 please don't hesitate to call."

8 Our project manager signed it. It's
9 Bobby McCarthy, and it looks like it was
10 signed down here by Tacy McGinty.

11 Q. And is there any notation next to Tacy's?

12 A. It looks like it says "okay."

13 MR. ANDERSON: At this time, Your
14 Honor, we would offer Exhibit -- what we
15 marked as PP and S-12 to distinguish them from
16 the Plaintiffs'. If I could have it remarked
17 as a defendant's exhibit as well.

18 THE COURT: Defendants' Exhibit 1.

19 MR. ANDERSON: Actually, twelve,
20 if we could, Your Honor. I know it's a little
21 out of order.

22 THE COURT: Defendants' 12, if
23 there's no objection. It is admitted into
24 evidence without objection.

25 MR. LUCEY: No objection.

1 (SO ENTERED AS DEFENDANT'S EXHIBIT 12)

2 CROSS EXAMINATION CONTINUED

3 BY MR. ANDERSON:

4 Q. And that's the type of communication --
5 the telephone call was the type of communica-
6 tion that is envisioned by number six, is it
7 not?

8 A. Yes, sir.

9 Q. Just as a follow-up to that, I hand you
10 what's been marked as Defendants' Exhibit 41
11 and ask you if you recognize that letter?

12 A. It looks like it's a letter from Summit,
13 from Tacy McGinty.

14 Q. What was the date on defendant's exhibit
15 Number 12 -- not the one you have, but the
16 previous one? I'm sorry.

17 A. The date on this one here was June 7,
18 2002.

19 Q. And the date of Defendant's Exhibit 41?

20 MR. LUCEY: Objection, Your Honor.
21 41 is not in evidence, and we object to
22 questioning him about it.

23 THE COURT: Please show counsel
24 Exhibit 41.

25 MR. ANDERSON: I'm sorry, Your

1 Honor. It was produced prior to ---

2 MR. LUCEY: Your Honor, we withdraw
3 our objection.

4 THE COURT: Thank you. Are you
5 asking that 41 be admitted?

6 MR. ANDERSON: At this time we
7 are, Your Honor, yes.

8 THE COURT: Defendants' 41 into
9 evidence without objection.

10 (SO ENTERED AS DEFENDANT'S EXHIBIT 41)

11 CROSS EXAMINATION CONTINUED

12 BY MR. ANDERSON:

13 Q. Prior to the letter in September of 2004
14 -- I believe that's the date of the letter, is
15 it not?

16 A. Yes, sir, September the 30th, 2004.

17 Q. It was necessary for Summit to go back
18 and correct the lack of both sheathing and
19 flashing and lack of any concrete in that
20 particular passageway, was it not?

21 A. Yes, sir.

22 Q. In fact, they had to do that on a number
23 of buildings?

24 A. Yes, sir.

25 Q. So it was found that your superintendent

1 was correct that it was not properly prepared.

2 A. Yes, sir.

3 Q. All right. And in that -- please read
4 for us the September 30th letter.

5 A. It's a letter from Summit and Tacy
6 McGinty, senior project manager, referencing
7 the flashing at the breezeways underneath the
8 Magna Wall. It says, (reading): "Donnie, as
9 discussed this morning, the installation of
10 the flashing under the Magna Wall stucco and
11 paper-backed lath at the breezeway bottom
12 edges will be the responsibility of Summit
13 Contractors. I'm requesting the use of labor
14 only from your company. Summit will supply
15 all materials, supervision and will be
16 responsible for obtaining all engineering,
17 approval on the underlaying flashing system.
18 Professional Plastering will install under
19 Summit Contractors direction and is not liable
20 for this flashing or the installation of this
21 flashing. Thank you very much for your help
22 in this situation."

23 Q. Now, -- so the procedure for doing
24 corrections was put into effect, except that
25 they found that since you had told them about

1 it, that they were not in any way going to
2 hold you liable, Professional Plastering?

3 A. Yes, sir.

4 Q. Thank you. Now, on this building in the
5 wall section, and what I would like you to do
6 is tell the jury -- if I start with the
7 outside layer of paint and work my way through
8 the stucco on into the studs, what am I going
9 to find? First of all, there'll be a layer of
10 paint and then there would be the stucco. Is
11 that correct?

12 A. Yes, sir. You'd find a layer of paint,
13 typically paint and caulking is on the
14 outside.

15 Q. By "caulking" you mean the sealants?

16 A. I mean the sealants.

17 Q. And then you go to the stucco itself?

18 A. You go to the stucco.

19 Q. And then you go to the wire mesh.

20 A. Yes, sir, you go to the paper-backed
21 lath.

22 Q. But there's the wire portion or the
23 screen portion of the mesh and then there is
24 the paper backing. Is that correct?

25 A. Yes, sir, the paper's glued right behind

1 the metal lath. That's how it's put on there.
2 It's on there with glue that comes from the
3 manufacturer.

4 Q. And then you have an air space, do you
5 not, a very slight air space?

6 A. Yes, you've got a little bit of -- the
7 lathe has got little dimples on it. It's what
8 they call self-furring lathe.

9 Q. And furring, what do we mean by furring?

10 A. Just sticks out a little bit. Not a
11 whole bunch. I mean, it's got a little dimple
12 in it. The dimple looks like where maybe they
13 hit it with a hammer, is all the dent is when
14 it comes from the manufacturer.

15 Q. And the purpose of that is to allow some
16 space for any water that gets behind the paper
17 to run down. Is that correct?

18 A. It could, yes, sir.

19 Q. All right. Now, in this building, after
20 the paper-backed lath, you then have another
21 layer of building wrap. Is that correct?

22 A. Yes, sir, they have a layer of building
23 wrap. I don't recall who put that on. I
24 don't think we did.

25 Q. Okay. And that layer is commonly

1 referred to as Tyvek.

2 A. Yeah, there's a bunch of different kinds
3 of it. A lot of people refer to as Tyvek. I
4 don't know if that's what these people used on
5 it.

6 Q. You don't who manufactured?

7 A. I don't know who manufactured it.

8 Q. And then after that you get to the
9 wallboard, the OSB or the fiberboard. Is that
10 correct?

11 A. Yes, sir, you get to the OSB.

12 Q. Now, the Tyvek is under everything on
13 this building, it covers of all the plywood.
14 Is that correct?

15 A. Yes, sir.

16 Q. And it is actually tucked into the
17 windows in this building, is it not?

18 A. Yeah, they generally put the -- I refer
19 to it as house wrap. They generally put that
20 on before they install the windows.

21 Q. And this house wrap is the only thing
22 that is underneath the HardiPlank. Is that
23 correct?

24 A. Yes, sir.

25 Q. All right. So HardiPlank doesn't have

1 any building paper or paper-backed lath behind
2 it?

3 A. No, sir. It's got the house wrap behind
4 it, is generally all the HardiPlank's got
5 behind it.

6 Q. And HardiPlank is the wood siding -- or
7 is the cementitious material but it looks like
8 wood siding.

9 A. It's cementitious siding. It's typically
10 about three-eighths of an inch thick. It looks
11 like wood.

12 Q. So when water gets behind your paper-
13 backed lath, if that should happen, it then
14 goes onto the Tyvek?

15 A. Yes, sir. Yeah.

16 Q. And then that would be shed all the way
17 down to the base of the wall?

18 A. Well, you know, that's the theory of it.

19 Q. Okay.

20 A. That's the theory of it.

21 Q. And if you had put up HardiPlank instead
22 of stucco, that would be the only thing that
23 was in front of the OSB. Is that correct?

24 A. Yes, sir.

25 Q. So if water gets behind the HardiPlank,

1 it hits the Tyvek and goes directly down?

2 A. Yes, sir, that's correct.

3 Q. That's the assuming the Tyvek has been
4 put on correctly?

5 A. Yes, sir, that's right.

6 Q. Now, the manner in which the stucco was
7 put around the windows, that was observed by
8 the representative of Magna Wall. He would
9 have seen that. Is that correct?

10 A. Yes, sir, he would have seen that.

11 Q. And the general contractor would have
12 seen that?

13 A. Yes, sir.

14 Q. And the architect may or may not have
15 seen it, depending on when he was out there.
16 Is that correct?

17 A. Yes, sir.

18 MR. ANDERSON: Thank you, Your
19 Honor. That's all the questions I have of
20 this witness.

21 THE COURT: Redirect?

22 MR. LUCEY: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. LUCEY:

25 Q. Sir, would you hold up to the jury the

1 letter you brought to show them that you
2 notified the general contractor that you were
3 applying stucco over top of wall sections with
4 no kickouts?

5 A. It don't say kickouts on it.

6 Q. You don't have such a letter?

7 A. That letter there doesn't say "kickouts"
8 in it.

9 Q. Hold up for the jury the letter where you
10 notified the GC that you weren't putting
11 casing beads in at the window. You don't have
12 that either?

13 A. I don't have that letter.

14 Q. All you have is two letters about a
15 breezeway?

16 A. I've got two letters, yes, sir.

17 Q. The breezeways are the walkways between
18 the buildings, correct?

19 A. (No verbal response).

20 Q. You wouldn't know. You've never been
21 there, right?

22 A. I've never been there.

23 Q. But you've seen some pictures. The
24 breezeways are walkways between buildings,
25 correct?

1 A. Yes.

2 Q. And they don't have windows in them, do
3 they?

4 A. No, sir.

5 Q. And you don't know who inspected the
6 breezeway work that your company did in 2003
7 and 2004, do you?

8 A. No, sir.

9 Q. Would you turn to page six, Article 18 of
10 Exhibit 3, Plaintiff's Exhibit 3, your
11 contract on this job? Article 15.

12 A. Okay.

13 Q. In Article 15 you represented and
14 warranted and guaranteed that the work would
15 be free from all faults and defects, correct?

16 A. Yes, sir.

17 Q. And Article 18 on the same page provides
18 that any changes to this agreement must be in
19 writing, correct?

20 A. Yes, sir.

21 Q. And Page 15, Paragraph 7, provides that
22 any clarifications to any of the agreements
23 or the installation procedures must be in
24 writing, correct?

25 A. Yes, sir.

1 Q. And you don't have such a document, do
2 you?

3 A. No, sir.

4 Q. If you turn to page four, Article 15, it
5 provides that you agree -- your company,
6 Professional Plastering, the one that has no
7 assets now -- you agree to indemnify the
8 contractor and owner for any property damage,
9 correct? Does it say property damage?

10 A. You're talking pretty fast. I didn't get
11 your paragraph.

12 Q. Article 13, page four.

13 A. Yes, sir.

14 Q. You agree to indemnify contractor and
15 owner for any property damage caused in whole
16 or in part by your work, correct?

17 A. Yes, sir.

18 Q. And it goes on to Page 17, Paragraph 22,
19 where you agree to be responsible for any
20 repairs required because of your sub-
21 contractors' defective work, correct?

22 A. Yes, sir.

23 Q. And with regards to that building paper
24 behind your paper-backed lath, that secondary
25 protection, when you installed that paper-

1 backed lath, you punctured it over a quarter
2 million times per building, correct?

3 A. Yes, sir.

4 Q. Thank you, sir.

5 MR. LUCEY: I have nothing further.

6 RECROSS EXAMINATION

7 BY MR. ANDERSON:

8 Q. Is there any way to hold the paper-backed
9 lath on the wall without putting a staple
10 through it?

11 A. No, sir.

12 Q. And in order to hold it up there, it's
13 got to puncture it -- the paper-back, the
14 paper?

15 A.. Yes, sir. You either put it up with
16 staples or you put it up with nails.

17 Q. And it's stapled to the Tyvek?

18 A. Yes, sir.

19 Q. So any material you put on the wall that
20 you put something else over that requires it
21 to be fastened to that wall is going to have a
22 hole in it?

23 A. Yes, sir.

24 Q. Because there's no way around that?

25 A. I don't see it.

1 MR. ANDERSON: Thank you, Your
2 Honor. That's all we have.

3 THE COURT: You may step down.

4 (WITNESS STEPS DOWN)

5 THE COURT: Ladies and gentlemen,
6 we're going to take a mid-morning break. Do
7 not begin your deliberations. Do not discuss
8 the case amongst yourselves. Please rise for
9 the jury.

10 (JURY OUT)

11 THE COURT: Thank you. You may be
12 seated. Any matters to be raised before we
13 take a break, Mr. Lucey?

14 MR. LUCEY: No, Your Honor.

15 THE COURT: Mr. Anderson?

16 MR. ANDERSON: None, Your Honor.

17 THE COURT: Ten minutes.

18 (BRIEF RECESS)

19 THE COURT: Call your next witness.

20 MR. LUCEY: Thank you, Your Honor.

21 The Plaintiff would call Robert Gallagher.

22 (WITNESS TAKES STAND)

23 ROBERT ALLEN GALLAGHER, being duly
24 sworn to tell the truth, the whole truth and
25 nothing but the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. LEATH:

3 Q. Mr. Gallagher, good morning. And I want
4 to make sure that you speak up loudly enough
5 so that I can hear you. That way all the
6 ladies and gentlemen of the jury can. So if
7 you don't mind I will be making sure that you
8 we can hear you, okay?

9 A. Yes, sir.

10 Q. Very good. Mr. Gallagher, where do you
11 live and tell the ladies and gentlemen what
12 you do for a career.

13 A. I live in Myrtle Beach, South Carolina,
14 and I am with a company called ProCon and
15 Associates, Inc. We are general contractors
16 in multiple states. And the focus of our
17 business is going to buildings with architects
18 and engineers. We evaluate building envelope
19 systems, the exterior of the buildings. We
20 are often called to look at problems that may
21 have developed with buildings. And then we
22 often participate in a process called
23 destructive testing where we actually take
24 components of the building apart. And we're
25 trying to identify why building systems have

1 failed or why they are failing. We also try
2 to understand what went wrong in the process
3 when the building was being built. We also
4 are very involved, actively involved in doing
5 mockups to correct the problems. And then we
6 actually physically do the construction work
7 itself. We come back in and we do renovation
8 and repair to building envelope systems.

9 Q. All right, sir. Does your company and do
10 you have a general contractor's license in the
11 State of South Carolina?

12 A. I do.

13 Q. And could you just give the ladies and
14 gentlemen an idea of some of the type projects
15 that you've worked on actually doing repair
16 work in the last few years around this area
17 and elsewhere?

18 A. Okay. Locally, we've been involved in
19 The Dockside property in Charleston. They had
20 twenty-one woodframe townhouses on that site.
21 And those sites or those buildings had to --
22 all the stucco had to be removed off of those
23 buildings. All the roof materials had to be
24 removed. All the framing needed to be brought
25 up to current codes. New window packages --

1 and then the damages and the reason why they
2 had to all this work is they had past water
3 infiltration. And once the water got inside
4 the walls, it damaged, it rotted the framing.
5 And so all that had to be repaired and brought
6 up to code and then a new system put on the
7 exterior, new window packages, new roofs.

8 We completed a project up at Pawleys
9 Island not too long ago, that was a
10 construction defect case where there was water
11 intrusion at multiple locations around the
12 buildings. Our company went in -- I believe
13 there was twelve or fourteen total buildings
14 in that complex. Our company went in after
15 the litigation and we took everything off the
16 outside of those buildings and put a whole new
17 system on the exterior, redid the roofs,
18 corrected all the structural framing and wood
19 rot and decay that occurs when water gets
20 inside of these wood-framed structures.

21 I do a lot of work nationally for some of
22 the major hotel companies. Sometimes the
23 hotels are concrete and steel. But sometimes
24 they can begin with a wood-frame building.

25 We've done very similar services for

1 national companies, too, where damages where
2 once the water gets in and it causes
3 significant damage, then somebody has to come
4 in and repair those damages. And we do that
5 work for some of the national hotel chains as
6 well.

7 Q. Sir, now, as a component to doing your
8 work as a general contractor, are you involved
9 in estimating cost of projects for others?

10 A. Yes, sir. Every project that we're
11 involved with, at some point in time you have
12 to start out with what's often referred to as
13 a conceptual mode. The first thing that
14 owners need to know is what is the magnitude
15 of the cost that we're talking about here?
16 You know, I've talked to all these engineers.
17 I've talked to all these experts who say my
18 building needs to be reclad. But what kind of
19 number are we talking about? They have to
20 have some order of magnitude so they
21 understand the significance of the problem
22 from a dollar standpoint.

23 So I can do what's a conceptual -- just a
24 very, very preliminary budget, just to give
25 the owner an idea of what kind of expense that

1 he may incur. And then after that, as more
2 information becomes available, our company
3 often refines those cost estimates and starts
4 really taking our data, information that we
5 know about the project, and taking all this
6 data that we obtain from other projects --
7 or sometimes we go out and we actually get
8 subcontractors to take a look at some of the
9 components of the work. And we develop a cost
10 estimate of what it will actually take in
11 order to repair the building or buildings.

12 Q. Sir, approximately how long have you been
13 doing this work, both the repair of building
14 similar to the ones we have here and the
15 estimating?

16 A. I came to work for ProCon in 1989, right
17 after Hurricane HUGO hit the Carolina coast.
18 And then shortly after that, the owners of
19 ProCon wanted to retire. And so we laid out
20 a plan where I was able to purchase ProCon and
21 Associates in 1996.

22 Q. So since 1996, -- and for years prior to
23 that.

24 A. Since 1989, I was with ProCon. Prior to
25 that, I was with Glidden Paint Company and

1 Toro Industries. And both Glidden and Toro
2 Industries manufactured products for repairing
3 buildings and maintaining building envelope
4 systems. And I was a specialty representative
5 for those companies. And I went out and
6 helped to write -- or helped architects and
7 engineers to write the building repairs,
8 including specifications.

9 Q. How many times would you think in your
10 career that you've been asked to do estimates
11 for projects that had some similarity to the
12 one we're dealing with?

13 A. There would be literally hundreds of
14 them.

15 Q. And in terms of general contracting work,
16 since 1989, how many buildings again that have
17 some similarity to this would you have been
18 involved in in some way, the repair or the
19 construction, approximately?

20 A. Again, that would be in the hundreds.

21 Q. And in addition to your work, do you
22 serve to do forensic work in terms of working
23 with architects looking at buildings that have
24 problems?

25 A. Yes, sir. One of the key functions that

1 makes our company unique, we primarily do
2 restoration/renovation work on the building
3 envelope. You have to understand why problems
4 are occurring. And the standard way to
5 achieve that goal is to go out and physically
6 go to the site and work with forensic
7 architects or engineers. Sometimes they refer
8 to themselves as moisture migration
9 consultants. You have to understand what went
10 wrong and why it went wrong so that you can
11 start to begin to develop a repair scope.

12 If you don't understand the problem or
13 the extent of the problem, then you can't
14 really focus on what the repair needs to be.
15 So forensic investigation is an important role
16 when you're trying to repair an existing
17 structure. It's not like a new construction
18 project where you have architects and
19 engineers design and take a piece of land, and
20 they design the building from the ground up.
21 When you're dealing with repairs, you have to
22 go out and you have to understand how things
23 were actually constructed in the field. A lot
24 of times the documents don't give you that
25 information that the original of the buildings

1 will show you. So you have to go out and
2 understand the extent of the problem in order
3 to understand the scale and magnitude of the
4 problem and come up with a proper fix.

5 Q. Sir, in that connection, have you been
6 involved in cases that are in litigation and
7 had to give depositions before?

8 A. I have.

9 Q. Approximately how many?

10 A. About fifty or sixty times.

11 Q. And have you been qualified in the state
12 courts of South Carolina as an expert in
13 general contracting and estimating?

14 A. I have.

15 COUNSEL: Your Honor, I tender Mr.
16 Gallagher as an expert in those two fields.

17 THE COURT: Any objection?

18 MS. MAHON: Your Honor, may we
19 approach?

20 THE COURT: You may.

21 (OFF RECORD BENCH CONFERENCE)

22 THE COURT: This witness will be
23 qualified as an expert in those areas. You
24 may continue your examination.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. LEATH:

2 Q. Mr. Gallagher, let's talk about Fenwick
3 here. And I want to talk about you went about
4 putting together a repair estimate -- which
5 you have done, right?

6 A. I have, yes.

7 Q. We'll get into the merits of it in just a
8 minute. But I want to talk about the process,
9 so we all understand what goes into doing an
10 estimate, and what went into this one
11 specifically. First of all, have you visited
12 the property?

13 A. I have been to the site.

14 Q. And have you walked around it and seen
15 it?

16 A. I have.

17 Q. And secondarily, have you discussed this
18 with Mr. Glick and did you obtain a scope of
19 work to be done from him as an architect?

20 A. I obtained Mr. Glick's report. I also
21 had conversations with Mr. Glick about the
22 contents of his report. After I did my site
23 visit I called Mr. Glick to make sure that we
24 were basically on the same page with what the
25 scope of repairs should involve.

1 Q. To make it clear, there are problems that
2 exist at the Fenwick project other than stucco
3 problems; correct?

4 A. Yes..

5 Q. Your estimate takes into consideration
6 stucco problems that we're here about as well
7 as other problems, correct?

8 A. It does, yes.

9 Q. Fine. And did you get that information
10 from Mr. Glick and from your observations?

11 A. I did.

12 Q. Now, once you got the scope of work --
13 and could you give the jury an overview as to
14 what the scope of work on this project is?
15 What it's going to require to get it repaired,
16 just in an overview sense?

17 A. Well, initially, Mr. Glick sent me the
18 documents, the original construction blue-
19 prints of the property that outlines the
20 different building sites, the dimensions, and
21 I took those documents and I went to the site
22 and I walked around each of the buildings just
23 to verify that the dimensions were correct on
24 his blueprints. I did window counts just to
25 verify those. And then, based on the outline

1 of Mr. Glick's report of the deficiencies and
2 the problems and the conditions that he was
3 determining, I started to outline the repair
4 scope of what it would take to address each of
5 those components. There were issues with roof
6 areas. There were issues with the lapped
7 siding areas. There were problems at
8 breezeways. There were problems with the
9 windows. There were issues with -- there were
10 mechanical issues involving the project. So I
11 went through all that data and developed a
12 repair scope for each of those problems. And
13 then I associated the cost with each one of
14 those problems.

15 Q. Now, in doing this, in terms of
16 developing the costs, did you use information
17 that you had collected in terms of what it was
18 going to cost over your experience time?

19 A. Pursuant to the performance of this, and
20 I did take historical data from our records.
21 Or actually, I took information from existing
22 projects that were ongoing that were of
23 similar scope and size. But the majority of
24 the estimates that I obtained for the total
25 estimate came from subcontractors that I

1 typically use everyday in a very similar type
2 project. In other words, I went to the
3 subcontractors that work for me on a very
4 regular basis on very similar projects. I had
5 them come by the office. We talked about the
6 project. We talked about the work scope. We
7 talked about the deficiencies. And then I
8 allowed to go through the plan sheets to do
9 their takeoffs, to verify the quantities, so
10 that they could come back to me with what they
11 would actually charge to do that repair. So
12 that is made up inside that cost estimate.

13 Q. So at the end of all that process, and
14 getting actual subcontractors' numbers and
15 bids, did you get an estimate, a repair
16 estimate, that you have confidence in?

17 A. Yes.

18 Q. I ask you if you could identify
19 Plaintiffs' Exhibit 15 as a copy of your
20 estimate?

21 A. Yes, sir.

22 Q. Do you have an extra one up there?

23 A. I do.

24 MR. LEATH: I'd like to introduce
25 Plaintiff's 15.

1 THE COURT: Objection?

2 MS. MAHON: Your Honor, may we
3 approach?

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: Plaintiff's 15 into
6 evidence over the defense's objection.

7 (SO ENTERED AS PLAINTIFF'S EXHIBIT 15)

8 DIRECT EXAMINATION CONTINUED

9 BY MR. LEATH:

10 Q. Mr. Gallagher, I have a copy published up
11 here of your estimate, which is Plaintiff's
12 Exhibit 15. This is a letter dated March 15,
13 2010 to the Board of Directors at Fenwick?

14 A. Yes, sir.

15 Q. And, generally, what does it say in terms
16 of what you relied on to prepare this
17 estimate?

18 A. I relied upon the January 31, 2002
19 original plan sheets as-built titled Vintage
20 at Fenwick Plantation Plan Sheets A0.01
21 through SP1.05.

22 I relied upon the October 15, 2009 RTM
23 Engineering which was a condominium roofing
24 installation deficiency investigation.

25 I also relied upon the November 6, 2009

1 Bordwell Engineering and Consulting
2 investigative report and analysis.

3 I also relied upon the December 15, 2009
4 Myles Glick preliminary report for non-
5 destructive and destructive testing.

6 Q. And in addition to that you visited the
7 property? Is that correct?

8 A. (Affirmative nod), on February the 1st,
9 2010.

10 Q. And then on the bottom it says who you
11 had contacted as vendors?

12 A. I contacted several subcontractors and
13 suppliers to provide cost estimates for
14 various components of the recommended repair
15 scope.

16 Q. And is that a standard way to do an
17 estimate?

18 A. Yes, sir.

19 Q. Starting with this here, this is a
20 summary, is it not, of the sheets which we
21 will go over here which form the backup for
22 this estimate; correct?

23 A. That's correct.

24 Q. And on the summary sheet did you break it
25 down building-by-building?

1 A. I did.

2 Q. And in the backup documents does it
3 generally outline the terms of the -- in terms
4 of the item numbers, what things are going to
5 be repaired?

6 A. Yes, for each type of building there's a
7 complete breakdown of what is encompassed in
8 each of the numbers on the far right of that
9 column.

10 Q. And so when it says "type one" and "type
11 two" and "type three" buildings and "type
12 four," what does that mean? Explain that to
13 us.

14 A. Well, if you -- when you look at the
15 original plan sheets for the buildings that
16 were dated January the 31st, 2002, each of
17 those structures was identified in this
18 manner: type one, type two, type three, type
19 four, the leasing center and the pool house.

20 Q. And those have different configurations
21 and different square footages?

22 A. There are some differences. Of the type
23 two building, there were seven of those that
24 are the same. And then type one and type
25 three, four, the leasing center and pool house

1 were a little bit different configuration and
2 different square footages.

3 Q. And your total amount of repair budget
4 for this project through all of these things
5 that the project needs is now much?

6 A. \$15,748,225 dollars.

7 Q. Now, this document states that it is a
8 preliminary budget estimate.

9 A. That's correct.

10 Q. It was done in 2010?

11 A. That's correct.

12 Q. Do you have reasonable confidence today,
13 sir, that this repair work could be performed
14 within those pricing parameters?

15 A. The project could be performed within
16 these pricing parameters. There will be a
17 little change once final plans and specifica-
18 tions are developed because you want to get
19 down to the exact type of windows that the
20 owner wants to use in the project. You want
21 to start being project-specific in the final
22 set of plans and specifications. So there
23 will be a little bit of increase or decrease
24 in the total final cost of the project.

25 But, in my opinion, based on my experience in

1 having reclud a lot of buildings, this total
2 estimated repair budget of \$15 Million is a
3 very close number for doing the extent of
4 repairs that have been outlined by Myles
5 Glick.

6 Q. What I'd like to do, if you will go along
7 with me, let's take, for an example, the
8 building type two. There's seven of those
9 buildings. Do you have that in front of you?

10 A. I do.

11 Q. Let's go over the different things that
12 are going to be repaired for these buildings
13 and how you've done the cost allocation. I
14 don't think we'll go over certain areas by
15 dollar because it's in evidence. But,
16 generally, give an idea of those elements
17 after you fixed -- how you costed them out,
18 okay? Is this right?

19 A. Okay.

20 Q. This is building type two, and there's
21 seven of those buildings, correct?

22 A. That's correct.

23 Q. What is the first number, zero-one, what
24 do you call that? Scope or element? How do
25 you do that?

1 A. That's referred to as mobilization of
2 rental equipment which includes the
3 scaffolding, the things like port-a-johns,
4 portable dumpsters -- those were carried in
5 the building type one quantity column. And
6 I didn't want to share all those expenses
7 between every building. But that's basically
8 mobilization of the equipment to do the
9 construction project.

10 Q. Is that a standard construction charge?

11 A. It is.

12 Q. How about item number two? What does
13 that entail?

14 A. Item number two is the roof. It's the
15 repair recommendation found on page thirteen
16 of the RTM Engineering report.

17 Section two outlines removing and
18 replacing the shingles and the EPN roof areas.

19 Q. Number three, what repair and recommenda-
20 tion is that?

21 A. Number three is the Magna Wall system,
22 the repair recommendation found on page
23 fourteen of Myles Glick's report.

24 And then outlined within section three
25 we have components like removing the existing

1 Magna Wall system to include the building
2 wrap, the membrane, flashing at the roof
3 openings to expose the exterior sheathing on
4 the buildings.

5 Q. Let me stop you right there for a moment.

6 In order to determine how much of the OSB
7 sheathing, if any, is deteriorating behind the
8 stucco system -- in order to determine how
9 much of it, what do you have to do?

10 A. You have to take everything off.

11 Q. And is that what is specified in this
12 report?

13 A. It is. And I broke it down for each
14 building, the quantity per building.

15 Q. Do you have any idea how much square
16 footage of stucco is on these buildings
17 approximately?

18 A. There's approximately a quarter of a
19 million square feet of stucco on these
20 buildings.

21 Q. All right, sir. Now, let's walk through
22 this item number three as to what the repair
23 scope is for the Magna Wall system.

24 Three-point-one you've explained.

25 Three-point-two is what?

1 A. Three-point-two puts temporary weather
2 protection over that exterior wall sheathing
3 so that during the repair process, if we get a
4 wind event or a rain event, you don't end up
5 with water inside the unit. Because once you
6 remove all the stucco, now the building is
7 susceptible to allow rain to go directly
8 through the sheathing and into the interior.
9 And during the repair time factor you want to
10 make sure that that water doesn't end up
11 inside the unit where you've paying to have it
12 extracted and repairing any damages. So you
13 need a temporary weather protection.

14 And the next line item is replace
15 moisture damaged exterior OSB sheathing. So
16 once you pull everything off the outside of
17 the building, now you can identify where the
18 damages have occurred. And you start -- and
19 so line item three-point-three is an allowance
20 to start replacing water-damaged sheathing.

21 Q. Why didn't you give an exact number? Why
22 did you need an allowance for replacing what
23 was water-damaged interior sheathing?

24 A. Because no one will know the total
25 quantity of damaged sheathing until all of

1 that stucco is removed. There's no way to
2 identify that total quantity. So we set that
3 up as an allowance inside of this spreadsheet.

4 Q. What is item three-point-four of that
5 estimate?

6 A. That is for replacing. -- that's another
7 allowance for replacing any moisture-damaged
8 woodframe components. Obviously, if you look
9 through Mr. Glick's photographs and through
10 his report you obviously see areas where they
11 took it off and they were able to push it
12 through the sheathing and all the way back
13 into the framing, the wood studs that are
14 underneath that framing. So some allowance
15 has to be given in the work scope and in the
16 cost to replace any damaged wood studs that
17 are inside that wall.

18 Q. All right. If this repair work was not
19 done, is it probable that that condition will
20 get worse?

21 A. Certainly.

22 Q. Number three-point-five, what is that?

23 A. That's replacing any moisture-damaged
24 exterior wall cavities batt insulation. You
25 have water getting in and it's damaging the

1 sheathing and it's damaging the framing,
2 you've going to also have damaged batt
3 insulation in those cavities. So that's
4 another allowance. Nobody knows until we take
5 the stucco off the outside of the building.

6 Q. And what is the next item?

7 A. The next item, three-point-six, is to a
8 new moisture barrier over the entire exterior
9 of the building. Mr. Glick prefers two layers
10 of number 30-pound felt. Some folks like
11 Tyvek. Some folks like the other building
12 wraps that are out there. Mr. Glick, he
13 particularly specifies for the application of
14 a stucco system, he uses two layers of 30-
15 pound felt.

16 Q. So after that has been accomplished, what
17 is the next item, three-point-eight, when you
18 put it back together?

19 A. Well, naturally in conjunction with
20 three-point-six and three-point-seven is
21 wrapping all the rough openings where the
22 windows go in to make sure that you have a
23 continuous moisture barrier over the structure
24 before you start applying finishes such as
25 lapped siding or stucco. So that's what's

1 outlined in three-point-seven.

2 Three-point-eight is the next component
3 associated with the stucco. All of the
4 accessories, J-beads, termination beads, weep
5 screed, all of those accessories that are
6 associated with the stucco system on the wall
7 next.

8 Q. And what's the reason to have those
9 accessories?

10 A. Well, it's to help establish the water
11 management system of the stucco assembly.
12 Without those accessories for the barrier
13 system, you can't manage water. So those
14 accessories help to terminate the system
15 between dissimilar materials to allow you to
16 seal that juncture, say, between the window
17 and the stucco, or between lapped siding and
18 stucco. Those accessories help develop or
19 actually create the drainage system.

20 Q. If there is not a correctly functioning
21 drainage system, what can happen?

22 A. What happens is the water gets in and
23 can't get back out. So it's in constant
24 contact with the underlying materials. And
25 that's what causes the wood structure to have

1 wood rot and decay.

2 Q. What about the foreline flashing, what
3 does that do for us, the item three-point-
4 nine?

5 A. Three-point-nine is through-wall
6 flashing. That typically will occur at the
7 foreline between the second and third and a
8 first and second and also at the bottom of the
9 wall. What that foreline flashing does is it
10 acts as part of the water management system.

11 If water gets behind the stucco, as it travels
12 down behind that system, you integrate the 30-
13 pound felt moisture barrier with that through-
14 wall flashing so that it then drops down. If
15 it gets to that flashing it's directed back
16 outside the wall.

17 Q. Again, this is part of the water
18 management system?

19 A. It is.

20 Q. This should have been installed?

21 A. Yes.

22 Q. What is the self-furring wire lath that
23 you have to install, item three-point-ten?

24 A. The self-furring lath is material that
25 you put on the wall and then you apply the

1 stucco material. You actually take that
2 Portland cement mix and you're actually keying
3 it into that lath. That's what actually holds
4 that hardcoat stucco on the wall, that lath.

5 Q. And then the last things to finish it
6 out, what do you do in three-eleven and three-
7 twelve?

8 A. That's just simply the application of the
9 stucco system. Mr. Glick wanted to use a
10 traditional three-coat stucco system, which is
11 three lifts. The scratch coat is the first
12 one that goes up. The brown coat which is the
13 intermediate, and then the finish coat which
14 is typically the textured coat.

15 And then three-point-twelve, we're
16 putting a primer and a finish, a colored
17 finish over top of that material.

18 Q. And that takes care of the taking off and
19 replacement of the stucco system.

20 A. Yes.

21 Q. And flashing it and putting on
22 accessories such that it will be a water-
23 management system when reinstalled?

24 A. That's correct.

25 Q. Which is the correct way to do it?

1 A. Yes.

2 MS. MAHON: Objection.

3 THE COURT: Overruled. Please
4 proceed.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. LEATH:

7 Q. Let's just go through a few more things.
8 Let me just run through this quickly. Item
9 number four is the repair of what?

10 A. Item number four is for replacement of
11 the existing siding material, which is the
12 cementitious material, it's a lapped material.
13 That section four relates to replacing all of
14 those components.

15 Q. Item number five, what is that?

16 A. That is a scope of work that Mr. Glick
17 and I discussed for the breezeway areas about
18 trying to resolve the problem where the water
19 flows onto the breezeway and migrates over to
20 the wall. I believe Mr. Glick stated it as
21 migrating up the wall.

22 MS. MAHON: Objection. It's
23 hearsay as what Mr. Glick said.

24 THE COURT: Sustained.

25 DIRECT EXAMINATION CONTINUED

1 BY MR. LEATH:

2 Q. What will the item number five solve at
3 the property?

4 MS. MAHON: Objection, Your Honor.
5 Once again, he's not been designated as an
6 expert in this area.

7 THE COURT: Counsel, I need to
8 state your objection. Please don't repeat it.
9 Thank you, y'all approach.

10 MR. LEATH: I can rephrase it, Your
11 Honor.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. LEATH:

15 Q. What is Mr. Glick's repair scope item?

16 A. Mr. Glick wanted to address the standing
17 water that occurs on the breezeway, so this
18 scope takes that into consideration. It also
19 puts a waterproofing membrane onto the
20 breezeways to prevent water from penetrating
21 those areas, and also installs flashing
22 between the breezeway walking surface and the
23 wall surface of the wall.

24 Q. Let's just quickly go to item number six,
25 the balcony recommendations.

1 A. It's basically the same as the breeze-
2 ways. Mr. Glick and I talked about it and it
3 was the same concerns. So it's the exact same
4 scope, except it applies to the balconies that
5 are located off of the units.

6 Q. And what's item number seven?

7 A. Number seven is window units and flash-
8 ings for replacing all of the existing window
9 units.

10 Q. And this goes all the way through -- I
11 think it's item twelve. Just go over
12 generally what these other items are for the
13 correction of problems, kind of an overview of
14 what is needed.

15 A. Okay. Section eight is with reference to
16 new sealants. Once you put an all new wall
17 system on the building, you have to go back
18 and recaulk everything. So that's all new
19 sealants.

20 Section nine is project items that are
21 identified as things that you would remove,
22 store them onsite somewhere and reinstall.
23 For example, handrails that are attached
24 through the stucco. They need to come off,
25 temporarily be stored and put back up. There

1 are light fixture on that list. There are
2 dryer vents. These things can removed and
3 stored and reused. There are things like
4 garage doors, storage doors that can be
5 removed so that all proper building wraps can
6 be installed and you have a continuous
7 moisture barrier. Then those things can be
8 reinstalled. The gutters and downspouts need
9 to be temporarily taken down so that you can
10 do all this work and then put those back up.
11 There's gable attic vents on the outside that
12 can be temporarily taken down, stored and put
13 back. So basically section nine outlines
14 those things that are temporarily removed and
15 reused.

16 Number ten is part of the electrical and
17 mechanical deficiencies that were identified
18 by Orbital Engineering that has to do with
19 electrical work and mechanical work inside the
20 units.

21 Section eleven gives the project
22 allowances that we talked about earlier for
23 the unknown quantities. There's exterior
24 sheathing that will have to be replaced. We
25 don't know the quantity, so it's in the

1 allowances. There is framing board that will
2 have to be replaced. I've broken the
3 sheathing and framing allowances out for the
4 stucco -- areas that are just stucco. We have
5 four million square feet of stucco. I broke
6 out the repair allowances for that area. Then
7 I also broke out the repair allowances for the
8 siding areas. There's allowances in this
9 section eleven for the batt insulation in the
10 interior walls. There's also allowances in
11 here for repairing the interior. Because when
12 you start performing all this work on the
13 exterior of the buildings, you're going to
14 create drywall damage on the interior. You've
15 going to have nail pops. You're going to have
16 cracks in the drywall. There's going to be
17 damage on the inside as a result of pulling
18 all this stucco off and trying to get every-
19 thing off of these buildings and removing
20 windows. So we've set up allowances in these
21 -- in the allowance column to address
22 repairing all of that.

23 Number twelve is environmental remedia-
24 tion protocol. In talking with the project
25 group and Mr. Glick there was mold observed in

1 some areas. So we have a section in here to
2 address the proper removal of the mold so that
3 it doesn't get inside the buildings and
4 contaminate the indoor area.

5 And then section thirteen are the general
6 conditions. Those are things like the
7 scaffolding rental, the duct beads for
8 removing all this material off the site once
9 it's removed from the buildings. You have
10 forklifts involved. These are just basically
11 components that are required in order to do
12 this scale of a repair project.

13 And then the last section, fourteen, are
14 just basically project fees which encompasses
15 the operation and overhead fee, all of our
16 overhead costs back at the main office, such
17 as general liability insurance, builders' risk
18 insurance, the cost for the corporate office.
19 There's a fee percentage in there for
20 contracting -- carpets. There's also a
21 project contingency in there.

22 And the reason why it's important for
23 owners to have a project contingency is
24 because when you're doing renovation work,
25 there is absolutely no way to know every

1 existing problem or condition that you're
2 going to incur. For example, if you open up a
3 wall and you happen to remove some OSB
4 sheathing on the outside, now you're looking
5 at rotted studs. Well, there's electrical
6 that runs through those studs. That has to be
7 removed before you can start repairing studs.
8 So, that line item would come out of the
9 contingency. And that's typically an owner's
10 contingency to take care of.

11 Then we also identify architectural and
12 engineering fees that would be associated with
13 putting together proper plans and specifica-
14 tions for the repair of these buildings.
15 Also, that fee would cover the architect and
16 engineer to come out, monitor the work while
17 it's being performed, administer the contract
18 for the owner while the work was being
19 performed. And so we also include in this
20 estimate their fees, so that the owner under-
21 stands the magnitude and the impact on all
22 components of construction, not just one or
23 two.

24 I've done a lot of repair of buildings,
25 and this outline and this scope is what we

1. encounter every time you approach a wood-
2. framing building repair. These are the things
3. that you encounter. These are the challenges
4. in these type projects.

5. Q. Mr. Gallagher, these last things that you
6. noted, such as that contingency, architect and
7. engineering fees, are those standard costs for
8. a project of this size?

9. A. In my opinion, yes.

10. Q. Let me ask you this. If I go to the back
11. of this type two building, it looks like the
12. repair number for all those things is a
13. million-five-sixty-seven. Is that correct?

14. A. That's correct.

15. Q. Now, of those, I guess, thirteen --
16. actually fourteen different sections of that,
17. item number three relates to the repair and --
18. removal and repair of the Magna Wall system?

19. A. That's correct.

20. Q. Is that the largest single item in the
21. entire protocol?

22. A. Yes, because the stucco surfaces on these
23. buildings represents about eighty-three or
24. eighty-four percent of the total exterior wall
25. surface area when you combine all the