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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No.: 2013-001843
(Trial Court Case No.: 2011-CP-23-6376)

Kevin McCarthy and Courtney R. McCarthy, Appellants,

v.

The Cliffs Communities, LLC d/b/a The Cliffs at Keowee Falls South; Keowee Falls Investment Group, LLC; Cliffs Real Estate, Inc., The Cliffs Golf and Country Club, Inc.; and S&ME, Inc., Defendants,

Of whom S&ME, Inc. is the Respondent.

**RECORD ON APPEAL
VOLUME II OF III**

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kevin McCarthy and Courtney E. McCarthy,))

Plaintiffs,)

vs.)

Keowee Falls Investment Group, LLC, The)
Cliffs Communities, LLC d/b/a The Cliffs at)
Keowee Falls South, Cliffs Real Estate, Inc.,)
The Cliffs Golf and Country Club, Inc. and)
S&ME, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-23-6376

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANT
S&ME, INC.'S MOTION FOR
SUMMARY JUDGMENT**

TO: STEPHANIE H. BURTON, ATTORNEY FOR DEFENDANT S&ME, INC.

Plaintiffs, Kevin McCarthy and Courtney McCarthy (collectively "McCarthy" or "Plaintiffs"), by their undersigned attorney, hereby submits this brief in opposition to Defendant S&ME, Inc.'s ("S&ME") Motion for Summary Judgment in the above entitled case. McCarthy would respectfully show that upon review of the relevant factors, this Court should deny Defendant S&ME's Motion for Summary Judgment. McCarthy requests that this Court deny Defendant S&ME's Motion because there are material issues of fact that warrant a trial.

NATURE OF THE CASE

This dispute arises out of Defendants Keowee Falls Investment Group, LLC, The Cliffs Communities, LLC d/b/a The Cliffs at Keowee Falls South, Cliffs Real Estate, Inc., and The Cliffs Golf and Country Club, Inc. (collectively "the Cliffs") selling Plaintiffs a lot that the Cliffs were aware as having been identified as experiencing slope failure by a professional geologist only a few weeks prior to the Plaintiffs signing a contract. After Plaintiffs signed a contract for

Lot 32 on June 20, 2005, the Cliffs engaged Defendant S&ME to review the professional geologist report and offer a "second opinion".

Not wanting to be the one to tell their client (the Cliffs) that millions of dollars in lots were not saleable, S&ME ignored its own obligations in misdiagnosing that the lots were moving towards the lake. Further, despite statutes, regulations, industry standards and practices to the contrary, S&ME allowed the Cliffs to limit their investigation and S&ME failed to fully describe in its report the conditions observed extending onto Plaintiffs' lot.

The Cliffs shared neither the geologist report nor the S&ME report with Plaintiffs and Plaintiffs proceeded with the closing on Lot 32 in August of 2005.

Unbeknownst to Plaintiffs, after a water line break in 2009 on the cul-de-sac where Plaintiffs' lot was located, the Cliffs hired Bunnell Lammons Engineering ("BLE") to install inclinometers on Plaintiffs' lot and on the adjacent lots. The readings from these inclinometers indicated the ground on the lots were moving towards the lake. BLE opined that Lots 30, 31, and 32 were experiencing a deep seated slope failure.

Plaintiffs discovered this when the owner of Lot 31, Jack Harrell (who has also filed suit against all of the defendants herein), contacted Kevin McCarthy in April of 2011 and notified him of the problem.

Plaintiffs then hired an engineer who has opined that their lot is in fact experiencing slope failure, that no residence can be built on their lot, and that S&ME violated the standard of care in performing its duties during its investigation in 2005. Plaintiffs' million dollar residential lot cannot be used or sold for its intended purpose.

STATEMENT OF FACTS

Plaintiffs Kevin and Courtney McCarthy bought Lot 32 at the Cliffs at Keowee Falls South before they were married. At the time, Kevin McCarthy lived in Atlanta, Georgia and Courtney McCarthy lived in Charlotte, North Carolina. After they married, Kevin McCarthy got a job in Charlotte, so the need for a house at the Cliffs became less important.

In 2011, Kevin McCarthy received a call from the owner of Lot 31, Jack Harrell and learned for the first time of problems with their lot (32).

Lot 32 is a lake front lot on a cul-de-sac known as Jasmine Point or Jasmine Cove. The Harrells, also suing The Cliffs and S&ME, Inc., own Lot 31, the lot immediately north of Lot 32. Intervenor McCollum owns lot 30, which is immediately north of Lot 31.

The attached photos are Google earth photos of the Jasmine Cove point with the approximate location of the lots' property lines, as **Exhibit "A"**.

Presenting the facts that have come to light via depositions and written discovery in the following chronology clearly shows material issues of fact, such that Defendant KFIG's motion for summary judgment should be denied.

Chronology

The Cliffs at Keowee Falls South's HUD Disclosure Given To All Prospective Buyers

05/03/04 HUD disclosure for The Cliffs at Keowee Falls South (ILS - 30856). Keowee Falls Investment Group, LLC (a copy of the HUD Disclosure is attached hereto as **Exhibit "B"**)

Page 12 warning - septic buy back provision (refund the purchase price if septic permit not approved)

Page 20 - *"none of the lots in the subdivision ... contains any ... unstable or expansive soil conditions that could necessitate the use of special construction techniques to build."*

Lot 31 Inspected By Alpha Environmental Sciences

06/02/05 Alpha Environmental Sciences, Inc. ("AES") evaluated and issued a report to Larry Hutchinson of the Paragon Group. Paragon Group was the builder for the owner of Lot 31 at the time, the Rockwells (a copy of the Alpha Environmental Sciences, Inc. report is attached hereto as **Exhibit "C"**)

re: opinion of the subsurface conditions of Lot 31

-evidence of slope failure

-“the slope failure appears to extend beyond the boundaries of the lot in both north and south directions”

-“based on our findings, we strongly recommend that the building lot not be utilized for residential construction”

- “A strong potential exists that further movement may occur”

- “we would strongly urge that no construction be performed on this particular lot and perhaps the lots to the north and south”

Cliffs Agrees To Trade Lot 31

06/03/05 **Cliffs 732** Tom Salisbury to Scott Beville, and Brad Childs. Rockwell (actual owner of Lot 31) hired engineer upon recommendation of surveyor Builder Larry Hutchinson mentioned to Jim Anthony who said “would buy it back or allow them to trade”

06/03/05 **Cliffs 726** – (2:49pm) email from Scott Beville to Tom Salisbury, “I talked with Jim and we will trade Rockwell into another lot.”

Cliffs Starts Looking At Jasmine Cove Lots

06/03/05 **Cliffs 728** – (2:57pm) email from Tom Salisbury to Scott Beville, “I think it might be a good idea to have someone check out the lots JC-31 and 32 and the Emerald Bay 35-39. They are falling into the lake pretty bad lately and represents a huge investment for Jim.”

06/08/05 **Cliffs 723** Brandon Smith to Tom Salisbury, Scott Beville, “I’m going to

have a crew on Lots 30, 32, 34, and 35."

- 06/14/05 **Cliffs 716 – 717** emails between Cheryl Miller, Cliffs and Dick Rockwell
- Asking for permission for Cliffs to have core samples of Lot 31. Rockwell agrees but asks if engineering firms have differing opinions he wants option to trade.
- (A copy of each of the above referenced Cliffs bates numbered documents are attached hereto as **Exhibit "D"**)

McCarthy's Sign Contract For Lot 32

- 06/20/05 Cliffs Real Estate Sale and Purchase Agreement for Lot 32 (a copy of same is attached hereto as **Exhibit "E"**)
- p. 28 – Salesperson J. Scott signs
- no representation contrary to HUD
- The Cliffs does not disclose AES report nor that it agreed to buy back/trade Lot 31 *because of AES report*

S&ME Proposes To Evaluate "3 Lakefront Lots"

- 06/22/05 S&ME proposal to The Cliffs Communities, Don Nickell, Jr. P.E. (a copy of the S&ME proposal is attached hereto as **Exhibit "F"**)
- Nickell gives S&ME the AES report and asks them to evaluate Lot 31 (D. Nickell Deposition, pp. 33, 46) (a copy of all excerpts referenced herein of D. Nickell's Deposition are attached hereto as **Exhibit "G"**)
- references evaluation of "3 lakefront properties"
 - include:
 - (1) exploration of subsurface condition
 - (2) analysis
 - (3) opinions regarding the cause of unusual features on properties
 - (4) geotechnical engineers recommendation
 - Based on initial walk of lots, S&ME notes "...it appears that about 3 sloughs have occurred ..."
- "These surface features are very unique"

-report will present finding...regarding the cause of subsurface features and grading and foundation recommendations

-Project – “three lots” – Cliffs at Keowee Falls South (a copy of the S&ME Agreement for Services is attached hereto as **Exhibit “H”**)

07/06/05 Cliffs letter to Kevin & Courtney congratulating on contract and enclosing fully executed contract. The letterhead says “The Cliffs” at bottom www.cliffscommunities.com, no reference to KFIG (a copy of said letter is attached hereto as **Exhibit “I”**)

07/18/05 S&ME report to The Cliffs Communities, Inc.’s Don Nickell, Jr. P.E. (a copy of the S&ME July report is attached hereto as **Exhibit “J”**)

“Subsurface exploration findings” – Lot 31 Jasmine Cove

(Does not mention testing of other 2 lots)

Definition of work –

- 1) Exploration of subsurface conditions;
- 2) Analysis opinions regarding the cause of unusual factors on property;
- 3) Geotechnical engineer’s recommendations regarding supporting residential structures

Observation

“There are approximately three ‘scarp’ areas across the site, each approximately paralleling the water surface and the contour of the lots. These surface factors are very unique.”

“The boring data indicates that the lot contains some unique surface and subsurface anomalies.”

“Based on the subsurface data and our experience, it is our opinion that residential structures be supported on-site with some modification to improve the foundation soils.”

Recommend “Rammed Aggregate Piers” or undercutting of soils
- 50-75 of them at a cost of \$550 to \$600 per pier

(that is \$45,000.00 just to add support to foundations; ultimately, the Cliffs spent \$41,000.00 in undercutting the soil in 2008)

McCarthy Closing On Lot 32

- 08/05/05 Closing for sale on Lot 32 (a copy of the closing settlement documents are attached hereto as **Exhibit "K"**).
- \$104,857.00 sales commission to Cliffs Real Estate, Inc.; \$50,000.00 paid to Cliffs Golf and Country Club, Inc.
- Cliffs does not disclose AES or S&ME reports to McCarthys**
(Kevin McCarthy testified that had he known about the problems raised by AES or what S&ME observed regarding the foundation, he would not have bought the lot.- K. McCarthy deposition, p. 111) (a copy of all excerpts referenced herein of K. McCarthy's Deposition are attached hereto as Exhibit "L")
- 08/08/05 Cliffs sends request for information to Kevin McCarthy and Courtney Roundtree regarding car decals. "Thank you for choosing The Cliffs Communities as your homesite"; no reference to KFIG. (a copy of said request is attached hereto as **Exhibit "M"**)
- Deed is recorded on 08/08/05 "KFIG executes deed by **The Cliffs Communities, Inc., its sole member**" (a copy of the Deed is attached hereto as **Exhibit "N"**)

McCarthys List Lot 32 In 2008

- 07/12/08 Cliffs Communities Real Estate, Inc.
- Right to Sell Agreement – McCarthys hire The Cliffs to sell the lot for them in 2008 (a copy of said Agreement is attached hereto as **Exhibit "O"**)

Water Line Break 2009-2010

- 03/05/10 S&ME report prepared for the Cliffs Communities (a copy of that S&ME report is attached hereto as **Exhibit "P"**)
- "To the south of the line and water line segments, the pavement dropped down 4 inches."
- "There is the potential this separation was caused by the water pressure pushing the pavement upward, but if this was the case, water and soil would have been expected to flow out of the crack and there was no indication of

this.”

Conclusion

-cul-de-sac did not move laterally

– water line break caused pavement cracking

Bunnell Lammons Engineering

- 03/01/10 BLE report to owner of Lot 29 because of issues with distress driveway (a copy of the BLE report is attached hereto as **Exhibit “Q”**)
- 05/04/10 BLE proposal to Builder of Lot 31 to install inclinometers (a copy of BLE’s proposal is attached hereto as **Exhibit “R”**)
- 05/18/10 BLE to The Cliffs Communities proposal for inclinometers, including Lot 32, but never talked to McCarthys (a copy of BLE’s proposal to The Cliffs is attached hereto as **Exhibit “S”**)
- 07/15/10 BLE report to The Cliffs Communities concerning auger borings (a copy of BLE’s report is attached hereto as **Exhibit “T”**)
- 10/25/10 BLE report to The Cliffs Communities (a copy of BLE’s report is attached hereto as **Exhibit “U”**)
(no reports to KFIG – ever)
*Attn: Donald H. Nickell, Jr.

“...data report of the surveys obtained from the slope incline meters installed at Jasmine Point.”

“Evaluation ... movement is occurring in five of six inclinometers.”

“Indicate an apparent failure plane developing at depths ranging from approximately 35 ft to 53 ft below the ground surface.”

“S1-4 and S1-6 ... have indicated significant movement.”

“It should be expected that additional movement may occur in the remaining inclinometers during wet weather cycles.”

"It is our opinion that there is an active, deep seated slope failure occurring at the site."

11/08/10 Doug Chappell of Wurster Engineering emails to D. Nickell re: Proposal
11/22/10 for repairs to Lots 30, 31, and 32
12/14/12 Wurster Engineering's proposal to the Cliffs to repair Lots 30, 31, and 32 for
\$1,600,000.00 (a copy of both emails and proposal of Wurster Engineering
are all attached hereto as **Exhibit "V"**)

Wurster Engineering never contacted the McCarthys
(D. Chappel Deposition, p. 23) (a copy of all excerpts referenced herein of
D. Chappel's Deposition are attached hereto as **Exhibit "W"**)

4/11/11 BLE to The Cliffs Communities
Summary – predicated movement during wet weather cycles, during winter
wet weather and the same points have shown continued movement (a copy
of BLE's summary is attached hereto as **Exhibit "X"**)

"It is our opinion that there is an active, deep seated slope failure occurring at the site."

Harrell telephones Kevin McCarthy "we have a problem." (Ex. L, p. 75)

08/08/11 Report of Carroll Crowther
09/22/11 Affidavit of Carroll Crowther
(a copy of both Carroll Crowther's Report and Affidavit are attached hereto
as **Exhibit "Y"**)

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), S.C.R.C.P. Summary judgment is not appropriate, however, when further inquiry into the facts of the case is desirable to clarify the application of the law. *Brockbank v. Best Capital Corp.*, 534 S.E.2d 688 (S.C. 2000) (citing *Tupper v. Dorchester County*, 487 S.E.2d 187 (S.C. 1997)). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn

from the evidence in the light most favorable to the non-moving party. *Id.* (citing *Manning v. Quinn*, 365 S.E.2d 24 (S.C. 1988)).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Brandt v. Gooding*, 368 S.C. 618, 630 S.E.2d 259 (2006). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Wilson v. Style Crest Products, Inc.*, 367 S.C. 653, 627 S.E.2d 733 (2006). The standard for summary judgment mirrors the standard for a directed verdict. *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003), rehearing denied. Since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003).

LEGAL ARGUMENT

1. S&ME OWED A DUTY OF CARE TO PLAINTIFFS AND THE PROXIMATE CAUSE OF PLAINTIFFS' DAMAGES. FURTHER S&ME'S CONDUCT WAS WILLFUL, WANTON AND WITH DISREGARD TO PLAINTIFF'S RIGHTS.

In order to recover in a negligence action, the plaintiff must show a duty of care owed by the defendant to the plaintiff. *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). Whether the law recognizes a particular duty is an issue of law to be decided by the court. *Ellis by Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996). Pursuant to South Carolina law, "an affirmative duty to act exists only if created by statute, contract, relationship, status, property interest or other special circumstance". *Carson v. Adgar*, 326 SC 212 (1997). Whether a duty based on special circumstance exists, however, "depend[s] on the facts and circumstances of each case". *Tommy L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc.*,

320 S.C. 49, 55, 463 S.E.2d 85, 89 (1995) and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C.426, 433, 544 S.E.2d 838, 842) (2001).

In the matter at hand, there is no question that S&ME had a duty to "disclose and describe in detail the extent of the geotechnical investigation and factual results to its client", The Cliffs. See 4A Bruner & O'Connor Construction Law § 14:21 (citing Brierley, Subsurface Investigations and Geotechnical Report Preparation, in Subsurface Conditions 49 (1998)); See South Carolina Code Ann. § 40-22-20(14) (which defines "fraud" in the practice of engineering to be "to conceal, mislead or misrepresent the truth in a manner that others might take some action in reliance on or an act which provides incorrect, false or misleading information on which others might rely."); See South Carolina Code of Regulations § 49-303 (an engineer shall be completely objective and truthful in all professional reports; He shall include all relevant and pertinent information in such reports, statements or testimony); and See South Carolina Code of Regulations § 49-301 (an Engineer shall at all times recognize that his primary obligation is to protect the safety, health, property and welfare of the public and shall conduct his practice to fulfill this obligation. If the judgment of the engineer is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authority of the situation, as may be appropriate). The industry standard further requires that professional engineers disclose all relevant information and acknowledge the full extent of the geological condition they observe even if it goes onto adjacent property, as testified to by every engineer or geologist engaged in this matter:

Roger Moore (AES): Practice to fully describe conditions regardless of property lines. (R. Moore deposition, pp. 33-34). (a copy of all excerpts referenced herein of R. Moore's deposition are attached hereto as Exhibit "CC"). On two occasions, Moore's report mentions

conditions extending beyond Lot 31; says it is a part of his practice and that it is a practice in the industry. (Ex. CC, pp. 33-34)

Bill Matthews (BLE): When offering an opinion as to a geological condition, you describe the full extent of the condition observed - don't limit description to property line. (B. Matthews deposition, p. 106). (a copy of all excerpts referenced herein of B. Matthews' deposition are attached hereto as **Exhibit "DD"**) Industry standard to describe geological conditions to the fullest extent capable. (Ex. DD, pp. 107-108). Believes it is professional obligation when engaged to fully identify the conditions he is offering an opinion on. (Ex. DD, p. 109).

Doug Chappell (Wurster Engineering - Defendant's Damages Expert): Admits geological conditions do not respect property lines. (Ex. W, p. 41). An Engineer has to account for adjacent lots. (Ex. W, p. 41).

Carroll Crowther (Plaintiffs' Expert): S&ME would at least have to acknowledge that what it saw on Lot 31 extended into lot 32 and lot 30. (C. Crowther deposition, p. 96). (a copy of all excerpts referenced herein of C. Crowther's deposition are attached hereto as **Exhibit "EE"**). S&ME hired to look at lot 31, it cannot look at lot 31 without saying what observed extends into adjacent lot. (Ex. EE, p. 98). "I have an opinion that I think Dr. Borden is certainly an honest, forthright man. And he was asked the question by Mr. Dudley - and you'll have to take a look at the transcript - that if you were asked to go out and look at a crack in one corner of a slab and you see a crack in the other corner of the slab, do you have an obligation to comment on it. And his answer was yes. And I thought that was a very truthful opinion. [QUESTION] Meaning what? What's the point? [ANSWER] That you can't be restricted to say, I'm only going to look at one little portion. If your client ask you to look at a little portion, you have an

obligation to – if there are other things that would affect that property or that project, that you have an obligation to say so. [QUESTION] So what's the point, with respect to S&ME? You're obviously trying to make a point with respect to my client. What is it? [ANSWER] That if they saw a problem on [Lot] 31, they should have told their client that they – that problem likely extends to [Lot] 30 and [Lot] 32. " (Ex. EE, p. 101, l. 19 to p. 102, l. 16).

Dr. Roy Borden (S&ME's liability expert): Dr. Borden admitted that if an engineer sees a condition that "we believe endanger life, safety or property even if we are not contractually involved with an individual we do have a professional duty to bring that to someone's attention". (R. Borden deposition, p. 33) (a copy of all excerpts referenced herein of R. Borden's deposition are attached hereto as **Exhibit "FF"**)

Walker Birdsong (S&ME): Agrees slope failure does not stop at property lines (Ex. Z, p. 42).

However, instead of disclosing and describing in detail the extent of the geotechnical investigation and factual results in this matter to the Cliffs, S&ME failed to comply with this industry practice and its statutory obligation when it issued its report only lot 31 and failed to reference the condition it observed in preparing its proposal extending into lot 30 and lot 32. It is also important to note that when S&ME issued its report on Lot 31 in July 2005, the Cliffs did not own Lot 31, but did actually own Lots 30 and 32. S&ME had a professional obligation to acknowledge the condition and not allow its client to put professional blinders on it. S&ME, though, put on professional blinders and limited the scope of its review to Lot 31, where it recommended that major foundational work needed to be done in order to make it buildable. In doing so, not only did S&ME misdiagnose what was actually going on, it failed to disclose all relevant information as required by the statute governing engineers and the industry standard as

testified to by the other engineers in this case. Furthermore, an inference can be drawn that, S&ME had a pecuniary interest in limiting its review to just Lot 31 and not disclosing and describing in detail the extent of the geotechnical investigation and factual results, so that its long standing client did not have a report implicating a lot already under contract; Lot 32, the Plaintiff's lot..

S&ME had worked for the Cliffs for fifteen plus years. (Ex. Z, p. 52; Ex. G, p. 32). Don Nickell of the Cliffs asked S&ME to look at the Alpha Environmental Sciences, Inc. ("AES") report and evaluate the lots (Ex. Z, p. 38; Ex. G, pp. 34, 53). The purpose of the report on Lot 31 in July 2005 was "to determine if the lot would be suitable to support a residential structure". (Ex. AA, p. 16, l. 4-6). Walker Birdsong of S&ME had a copy and reviewed the AES report when S&ME did their work on Lot 31 in 2005. (Ex. Z, p. 37; Ex. G, p. 46). Walker Birdsong was told by the Cliffs that a geological firm had looked at the lot (31) and was concerned and that owner was given another lot. (Ex. Z, p. 26). Walker Birdsong visited the lots (Lots 30, 31 and 32) to generate a proposal. (Ex. Z, p. 43). Don Nickell assumed the S&ME proposal intended to look at Lots 30, 31 and 32 because they were the ones mentioned in the AES report. (Ex. G, pp. 46, 171, 173, 174). Walker Birdsong testified that he did not base the proposal on AES report. (Ex. Z, p. 42). Accordingly, it is clear that Birdsong's own walk of the property led to his proposal to evaluate the 3 lots. He at least initially recognized the condition spread across all 3 lots and that to do a thorough examination would require testing on all 3 lots. Yet in July, S&ME submitted a report to The Cliffs Communities only on Lot 31 and made zero reference to the conditions extending onto Lots 30 and 32; a clear violation of the statute and industry practice. Don Nickell could not explain why or how it went from 3 lots (Lots 30, 31, and 32) to one (Lot 31). (Ex. G, pp. 173-174). After unsuccessfully trying to sell another person Lot 31

after disclosing the S&ME report, Jim Anthony of the Cliffs takes Lot 31 off the market because it had issues. (Ex. G, p. 57).

The Cliffs, however, didn't have to take Lots 30 and 32 off the market since S&ME put on its professional blinders and limited the scope of its review to Lot 31 even though they knew that the geological conditions extended to those lots. Further, S&ME knew that the Cliffs were in the business of marketing and selling real estate and knew, or should have known, that the Cliffs would continue to actively market Lots 30 and 32. These above described circumstances¹ coupled with the following order of events are the basis for S&ME's duty extending to the Plaintiffs.

First, had S&ME properly diagnosed the lot, the Plaintiffs would not have bought the lot because the Cliffs would have taken it off the market like they did with Lot 31. Second, on or about June 2, 2005, AES provided a report of their investigation of the subsurface conditions at issue. That investigation reported evidence of a slope failure occurring on Lot 31 as well as Lots 30 and 32. on or about June 20, 2005, the Plaintiffs entered into a contract to purchase Lot 32.

¹ The specific circumstances are as follows:

(1) S&ME's duty to disclose and describe in detail the extent of the geotechnical investigation and factual results even if the condition goes onto adjacent property;

(2) S&ME's knowledge that the geological condition extended to Lots 30 and 32 from its walk through and proposal;

(3) S&ME's opinion in regard to Lot 31 that that major foundational work needed to be done in order to make it buildable;

(4) S&ME's failure to disclose and describe the full extent of the geotechnical condition by putting on professional blinders and not reporting the conditions extending into Lots 30 and 32;

(5) S&ME's pecuniary interest in maintaining its relationship with the Cliffs; and

(6) S&ME's knowledge that the Cliffs would sell or attempt to Lots 30 and 32

Then, on or about June 22, 2005, S&ME was brought in to provide a second opinion on the AES report. As discussed before, although S&ME, through its own walk of the premises and from having the AES report, knew that the geological condition extended to Lots 30, 31, and 32, and, accordingly, proposed an evaluation to look at all three lots. On or about July 18, 2005, S&ME, although they had proposed to do an evaluation of Lots 30, 31, and 32, provided a report only on Lot 31. The Plaintiffs closed on Lot 32 on or about August 5, 2005 without ever being aware of: 1) the geological condition; 2) that just a couple days after they signed their contract, S&ME had proposed to do an evaluation of their lot; or 3) that just a couple weeks before closing S&ME had determined that major foundational work needed to be done to Lot 31 in order to make it buildable. The Plaintiffs would not have purchased Lot 32 if they had known about the geological condition or about the need for major foundational work. (Ex. L, p. 111). Further, an inference can be drawn that S&ME limited its scope of review to Lot 31 when the Cliffs informed S&ME that the Cliffs had already entered into a contract to sell Lot 32. There can be no doubt, therefore, that S&ME knew that such information was material to any prospective buyer's purchase of Lots 30 or 32 and, upon information, had actual knowledge that reporting the geological condition in regard to Lot 32 may lead to the Plaintiffs voiding their contract to purchase Lot 32.

S&ME alleges that under Plaintiff's theory, whenever an engineer sees any potential issue on adjoining land, the engineer suddenly owes legal duties to the adjoining landowners and all future adjoining landowners in perpetuity. That could not be further from the facts and circumstances in this case and case law clearly supports these facts and circumstances creating duty from S&ME to Plaintiffs. As S&ME points out, the South Carolina Courts have recognized that under certain facts and circumstances a "special relationship" may exist between

professionals and third parties with whom they are not in privity of contract which creates a legal duty separate and distinct from any contractual duties. *Tommy L. Griffin Plumbing and Heating Co.*, 463 S.E.2d 85 (engineer owed a duty to contractor without privity based on working relationship between the parties); *Cullum Mechanical Construction, Inc.*, 544 S.E.2d 838, 842 (architect owed a duty to subcontractors without privity based on architect's contractual obligation to supervise payments); *Beachwalk Villas Condominium Assoc., Inc. v. Martin*, 305 S.C. 144, 406 S.E.2d 372 (1991) (architect owed a duty to homeowners without privity); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (builders owed a duty to home owner without privity based on future owners being foreseeable); *State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986) (consultant owed duty to non-contracting parties who reasonably relied on their reports in taking some action); *Georgetown Steel Corp v. Law Engineering Testing Co.*, 7 F.3rd 223 (4th Cir. 1993) (engineer owed a duty to 3rd party without privity based on discussion with 3rd party). The South Carolina Courts have further recognized that in the residential home building context, parties are entitled to additional protections as compared to commercial construction. *Terlinde v. Neely*, 275 S.C. 395, 398, 271 S.E.2d 768, 769 (1980); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (carving out an exception to the economic loss rule for homeowners); *Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 386 S.C. 143 (S.C. 2009) (recognizing the long line of South Carolina cases directed toward protecting consumers only in the residential home building context); *Ross Dress For Less, Inc. v. Lauth Construction Group, LLC* (unreported) 2012 WL 2572042 (D.S.C 2012) (recognizing the special relationships created in the residential construction context and distinguishing the case since it involved commercial property).

In Terlinde, the Court determined that a homebuilder had a duty to future homeowners because it was “clearly foreseeable that more than the original purchaser [would] seek to enjoy the fruits of the builder's efforts. *Terlinde*, 271 S.E.2d at 770. The Court reasoned, therefore, that “[t]he plaintiffs, being a member of the class for which the home was constructed, are entitled to a duty of care in construction commensurate with industry standards”. *Id.* Similarly, in Kennedy, the Court focused on foreseeability: “building a house which one knows or should know will later be sold by a party to an innocent buyer is an act adequate to constitute placing that house into the stream of commerce. Any builder who violates such a duty should justly be held accountable for the losses that his breach caused, whether they be physical harm or the diminution in the value of the house”. *Kennedy*, 384 S.E.2d at 737. Accordingly, S&ME’s reliance on Booz-Allen & Hamilton, Inc., Tommy L. Griffin Plumbing and Heating Co., Cullum Mechanical Construction, Inc., and Ross Dress For Less, Inc. to support its position that S&ME does not owe a duty to the Plaintiffs is misguided, since all of those cases address duties that arise in the commercial context, and in the residential context and, in the residential context, the foreseeability of a party is a much greater factor in giving rise to a duty. *Id.* and *Terlinde*, 271 S.E.2d at 770. Furthermore, while Tommy L. Griffin Plumbing and Heating Co. and Cullum Mechanical Construction, Inc. actually find that a duty does exist to parties not in privity based on their own facts and circumstances, Booz-Allen & Hamilton, Inc. would also hold that a duty exists if the Ports Authority had relied on the report. *Tommy L. Griffin Plumbing and Heating Co.*, 463 S.E.2d 85, *Cullum Mechanical Construction, Inc.*, 544 S.E.2d 838, *Booz-Allen & Hamilton, Inc.*, 346 S.E.2d 324. In the case at hand, the Plaintiffs have testified that they would not have purchased Lot 32 if they had known about the geological condition or about the need

for major foundational work; accordingly, the Plaintiffs relied on the non-existence of S&ME's report on Lot 32.

The facts and circumstances in the case at hand are not attenuated at all. S&ME had a duty to disclose and describe in detail the extent of the geotechnical investigation and factual results even if the condition goes onto adjacent property. S&ME's knew that the geological condition extended to Lot 32; relevant information in which S&ME did not disclose. S&ME failed to disclose and describe in detail the extent of the geotechnical investigation and factual results for its pecuniary interests. But for S&ME failing to disclose the geological condition, the Plaintiffs would not have closed on Lot 32 a couple of weeks after S&ME issued their report. (K. McCarthy deposition, p. 111). There is no doubt the Plaintiffs were foreseeable purchasers of Lot 32 and S&ME owed them a duty to disclose and describe in detail the extent of the geotechnical condition. Interestingly, S&ME would admit that if public health, safety, or welfare were endangered, it would have to seek out who the owners of Lots 30 and 32 were. (Ex. FF, p.33). Of course, they would not have had to search far, since the owner of both lots was in fact the Cliffs, their client. Accordingly, summary judgment under these facts and circumstances is not proper as a special relationship between the Plaintiffs and S&ME exists. The above also shows that S&ME's actions proximately caused Plaintiff's damages because had they done their job correctly Plaintiff would not have bought the lot. Finally, the fact that Walker Birdsong himself walked the lots and determined that to do his job he needed to investigate all three lots. He submitted a proposal and signed a contract to investigate all three lots. But when The Cliffs signs a contract with Plaintiffs for lot 32, S&ME's report only mentions lot 31 and he fails to include the relevant information related to lots 31 and 32. The clear inference is that he

tailored his report so his long standing client wouldn't lose another million dollar sale. Summary judgment is not warranted.

2. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE ECONOMIC LOSS RULE

With regards to the "economic loss rule", the Court need only look at the Kennedy case and the cases flowing from it since 1989. *Kennedy*, 384 SE2d 730. *Kennedy, supra*, was the culmination of the shift from caveat emptor to caveat venditor determined that in the residential context "a cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage. The "economic loss" rule will still apply where duties are created solely by contract. In that situation, no cause of action in negligence will lie". *Id.* at 735, 737.

Our Supreme Court took the opportunity in Kennedy to clear the air and clearly set the distinction between residential construction and other commercial transactions. The Court stated:

"We have therefore taken judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller."

Id. at 735-736, citing also *Terlinde v. Neely*, 275 SC 395, 271 SE2d 768, 769 (1980).

The Court went on to state:

"We have made it clear that it would be intolerable to allow builders to place defective and inferior construction into the stream of commerce."

Id. at 786.

In so finding, the Court concluded that it made common sense to allow a home buyer to proceed against both the seller and the builder. It makes perfect sense that the Court would view a developer of residential real estate, packaging lots within an infrastructure and amenities,

similarly. Plaintiffs would argue the same would not be true for a buyer purchasing raw land for a home site from a seller not in the business of selling land for residential purposes and not making government required disclosures and express representations, as the Cliffs did here in the 2004 HUD statement.

The Supreme Court clearly recognized and carved out distinct treatment for residential home buyers. Our Legislature has too. The licensing of residential home builders is completely separate from commercial contractors. Title 40, Chapter 59 governs residential builders with their own commission, while Title 40, Chapter 11, governs commercial contractors. Additionally, commercial contractors are allowed to use unlicensed subcontractors. S.C. Code Ann. § 40-11-10, *et. seq.*, but our Legislature requires even subcontractors performing residential work in excess of \$200.00 to be registered as a specialty subcontractor. S.C. Code Ann. § 40-59-10, *et. seq.* This requirement reflects the intent to protect the consumer.

Accordingly, in Kennedy, the Supreme Court not only expanded to whom a residential consumer could sue, it also expanded what it could sue for, eroding the economic loss rule defense. The Court recognized a violation of a legal duty, for example, a violation of a building code or an industry standard would not apply to limit the type of recovery to foreseeable parties. *Id.* at 737, citing *Kincaid v. Landing Dev. Corp.*, 289 SC 89, 344 SE2d 869 (Ct. App. 1986) and *Rogers v. Seyphers*, 251 SC 128, 161 SE2d 81 (1968). In Terlinde, the Court discounted the necessity of showing physical harm and recognized in Kennedy, that a builder who violates a legal duty should be held accountable for losses of either physical harm or diminution in value. *Id.* at 737.

There are no cases, yet, where our Courts have dealt with the work of a geotechnical engineer's work being used by a developer to evaluate lots for residential construction.

However, given our Supreme Court's willingness to protect new home buyers in Kennedy, it is logical that an engineer investigating, offering opinions and making recommendations to a developer as to the ability of a lot to be used for residential construction will be judged the same way. It would not make sense to treat the land upon which a new home will be built any differently.

Furthermore, in *Beachwalk Villas v. Martin*, 305 SC 144, 406 SE2d 372 (1991), the Supreme Court expanded the holding in *Kennedy*, *supra*, regarding the economic loss rule to also apply to architects in the residential construction area. The Court held that:

"the extension of the holding in *Kennedy* to architects is a logical expansion of our law to provide protection for home buyers."

Id. at 374.

It is equally logical that the Court would apply *Kennedy*, *supra*, to engineers regarding the evaluation of lots for residential construction, as well as in making recommendations for foundations for residential construction. It would be illogical to hold otherwise.

The holdings in *Kennedy*, *supra*, and *Beachwalk Villas*, *supra*, that spell out the policy of protecting residential homeowners establish both the duty of S&ME to Plaintiffs and also removes the economic loss rule defense. Accordingly, Plaintiffs are not barred by the economic loss rule and summary judgment is not proper.

3. DEFENDANTS CLAIM PLAINTIFFS CANNOT RECOVER THE PURCHASE PRICE OF THEIR LOT BECAUSE THE EVIDENCE ESTABLISHES THAT A REPAIR IS FEASIBLE

Recession entitles to recovery of purchase price

- o Contract allows for recovery of purchase price. Plaintiffs applied for and were not issued a septic permit, experts said imprudent to issue.

- o “feasible repair” of \$700,000 proposed (deposition of Doug Chappell, Defendants repair expert shows the breach goes to the very heart of the contract) (Ex. W).

The above arguments explain why Defendant Cliffs’ fifth basis for summary judgment must fail. Defendant contends the very heart of the contract has not been breached because “a repair is feasible.” While Defendant’s expert Wurster Engineering did opine that a repair was possible, Wurster’s initial cost estimate to repair Lot 32, without a yet completed design, was approximately \$680,000. (Ex. W, p. 21). Mr. Chappell of Wurster also testified that *no warranty* would accompany Wurster’s proposed repair. (Ex. W, pp. 47-48). Neither the Cliffs nor S&ME have proposed to have the repair made themselves and surely it is not Plaintiffs’ responsibility since both the Cliffs and S&ME were aware of the AES opinion of slope failure was occurring on the Lot and that a professional geologist recommended against building on the Lots prior to the Plaintiffs contracting the buy the property. Further, even S&ME identified the visual indicators of slope failure but failed to recognize the importance of what they observed (Ex. Y). Despite having the AES report and the S&ME proposal and report on Lot 31, the Cliffs never disclosed this material information to Plaintiffs, who testified that had these been shown to them, they would not have bought the Lot. (Ex. L, p. 111).

For the foregoing reasons, there is a material issue of fact where Plaintiffs are entitled to rescission of the contract.

4. DEFENDANTS CLAIM PLAINTIFFS CANNOT RECOVER FOR ANY LOSS OF INVESTMENT OPPORTUNITY BECAUSE THEIR CLAIMS ARE UNDULY SPECULATIVE.

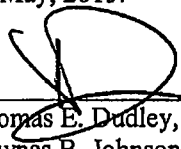
In a recovery rescission, simply refunding the purchase price only partially gives effect of rescission. At a minimum, prejudgment interest on the purchase price for the time period that money was tied up in a property seeks to accomplish the goal of rescission and is not speculative.

Plaintiffs produced a detailed spreadsheet and Defendant examined Plaintiffs on that spreadsheet and on the basis of the loss of investment opportunity (Courtney McCarthy deposition, pp. 48-55; explanation of Exhibit 18 and Exhibit 19 to Kevin McCarthy's deposition), which Courtney McCarthy generated. (a copy of all excerpts and exhibits referenced herein of C. McCarthy's deposition are attached hereto as **Exhibit "BB"**). This at least shows a material issue of fact exists as to those damages.

CONCLUSION

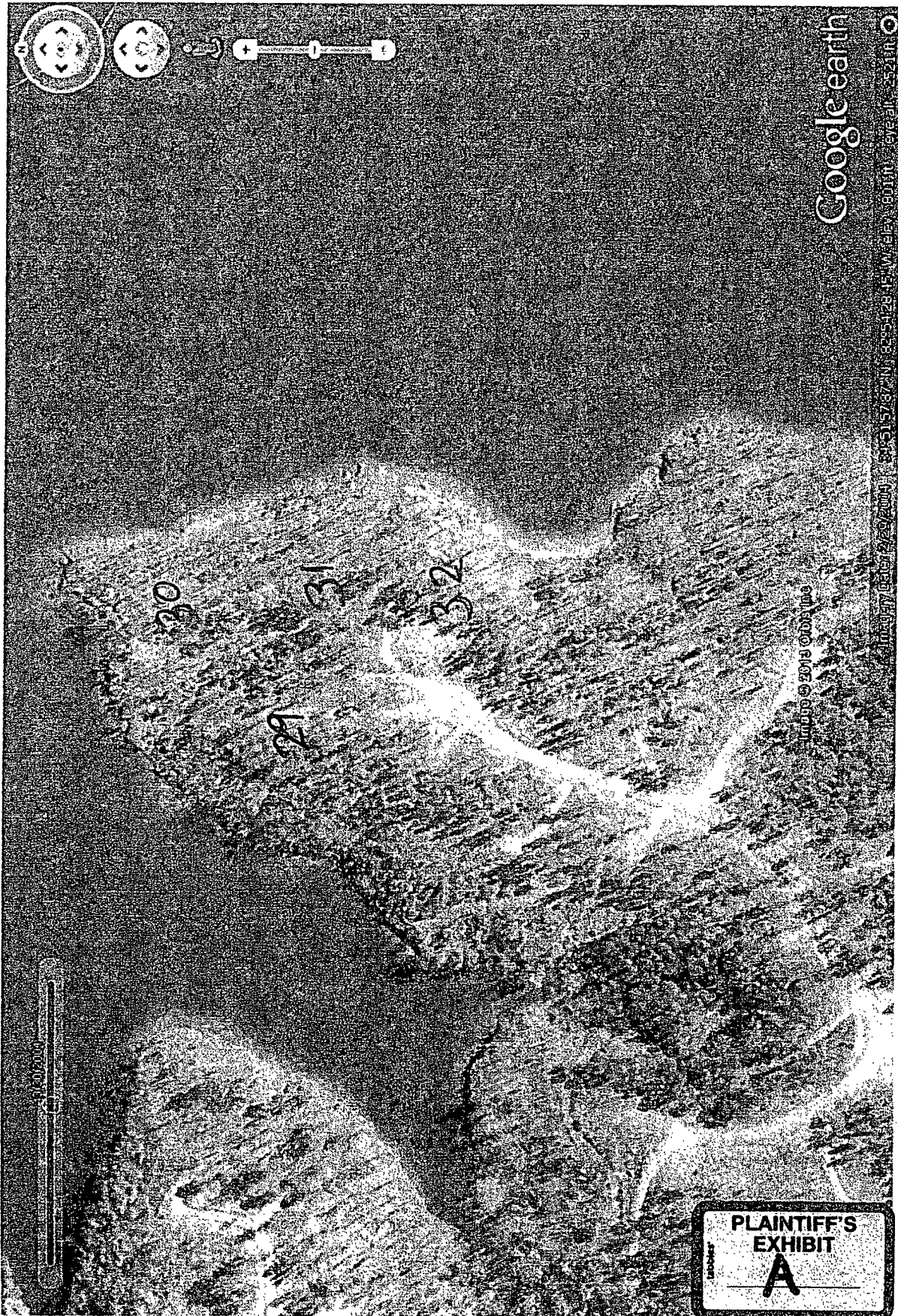
Material issues of fact exist as to all of Plaintiffs' causes of action and based on the foregoing, Defendant S&ME's Motion for Summary Judgment should be denied.

Respectfully submitted this 1st day of May, 2013.



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Imagery Date: 2/29/2014



Image Date: 2/11/2012

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This Report is prepared and issued by the developer of this subdivision. It is NOT prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report before you signed a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh (7th) day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two (2) years from the date of signing.

Name of Subdivision: The Cliffs at Keowee Falls South
Name of Developer: Keowee Falls Investment Group, LLC
Date of This Report: May 3, 2004

- ① Do we get the tax deduction?
- ② Missed most "development" deadlines
- ③ Carements on our lot? Pg 6

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NOTE: In this Property Report, the words "you" and "your" refer to the buyer. The words "we," "us," and "our" refer to the developer.

RISKS OF BUYING LAND

The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

Any value that your lot may have will be affected if the roads, utilities and all proposed improvements are not completed.

Resale of your lot may be difficult or impossible, since you may face the competition of our own sales program, and local real estate brokers may not be interested in listing your lot.

Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend on the location, size, planning, and extent of development. Subdivisions, which adversely affect the environment, may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality, and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

In the purchase of real estate, many technical requirements must be met in order to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

- WARNINGS -

THROUGHOUT THE PROPERTY REPORT THERE ARE SPECIFIC WARNINGS CONCERNING THE DEVELOPER, THE SUBDIVISION, OR INDIVIDUAL LOTS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY CONTRACT OR AGREEMENT.

GENERAL INFORMATION

This report covers two hundred thirty-seven (237) single-family building lots located in The Cliffs at Keowee Falls South in Oconee County, South Carolina. See page 24 for a listing of these lots. It is estimated that this subdivision will eventually contain approximately 250 lots.

The developer of this subdivision is:

Keowee Falls Investment Group, LLC
1849 Cleo Chapman Highway
Sunset, SC 29685

Telephone number: (864) 836-1120

Answers to questions and information about this subdivision may be obtained by telephoning the developer at the number listed above.

Please note the following additional warnings.

THE RECREATIONAL FACILITIES LOCATED, OR TO BE LOCATED, WITHIN THE CLIFFS AT KEOWEE FALLS SOUTH ARE OWNED BY A THIRD PARTY, PRIVATE CLUB AND NOT BY THE PROPERTY OWNERS' ASSOCIATION OF WHICH YOU WILL BE A MEMBER. USE OF THESE RECREATIONAL FACILITIES IS ONLY AVAILABLE TO PERSONS ACQUIRING A MEMBERSHIP IN THE PRIVATE CLUB. MEMBERSHIP AND USE OF THE RECREATIONAL FACILITIES ARE NOT INCLUDED IN THE PURCHASE PRICE OF A LOT. CURRENTLY, LOT OWNERS ARE ENTITLED TO APPLY FOR MEMBERSHIP SUBJECT TO AVAILABILITY AND PAYMENT OF THE MEMBERSHIP FEES, MONTHLY DUES AND USE FEES AS SET BY THE OWNER OF THE CLUB. YOU SHOULD CAREFULLY CONSIDER YOUR PURCHASE, IF IT IS BASED UPON AN ASSUMPTION THAT YOU WILL BE ABLE TO USE THE RECREATIONAL FACILITIES OWNED BY THE PRIVATE CLUB AND LOCATED WITHIN THE CLIFFS AT KEOWEE FALLS SOUTH. FURTHER INFORMATION REGARDING THE CLUB FACILITIES CAN BE FOUND ON PAGE 16 OF THIS PROPERTY REPORT.

-WARNING-

THE COST OF CLUB MEMBERSHIPS ARE SUBSTANTIAL AND NO REFUND OF THE PURCHASE PRICE OF YOUR LOT WILL BE MADE IF YOU ARE UNABLE TO BECOME A MEMBER.

TITLE TO THE PROPERTY AND LAND USE

GENERAL INSTRUCTIONS

A person with legal title to property generally has the right to own, use, and enjoy the property. A contract to buy a lot may give you possession but does not give you legal title. You will not have legal title until you receive a valid deed. A restriction or an encumbrance on your lot or on the subdivision could adversely affect your title.

Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.

METHOD OF SALE

Sales Contract and Delivery of Deed

In connection with the purchase of a lot, you will sign a sales contract in which you will agree to pay cash for a lot. We have not arranged for any financing for purchasers, and you will be responsible for arranging your own financing if desired.

We will deliver the deed to the property to you on the date of closing. In any event, we must deliver a deed to you within 180 days after the date on which the sales contract is signed by you.

Type of Deed

The transfer of legal title to all lots in the subdivision will be by a general warranty deed.

Oil, Gas, and Mineral Rights

The mineral and metallo rights to all lots in this subdivision will belong to each lot purchaser.

ENCUMBRANCES, MORTGAGES, AND LIENS

There are blanket encumbrances, mortgages or liens on some of the lots included in this offering. Those are: (1) a Mortgage of Real Estate from Keowee Falls Investment Group, LLC to The National Bank of South Carolina ("NBSC"); (2) two Mortgages of Real Estate from Keowee Falls Investment Group, LLC to Mike Cannon, Brenda Cannon and Isaac Anthony Saad ("Cannon & Saad"); (3) two Mortgages of Real Estate from Keowee Falls Investment Group, LLC to John Martin ("Martin"); (4) a Mortgage of Real Estate from Keowee Falls Investment Group, LLC to S&C, Inc. ("S&C, Inc."); (5) a Mortgage of Real Estate from Keowee Falls Investment Group, LLC to Wachovia Bank ("Wachovia"); and (6) a Mortgage of Real Estate from Keowee Falls Investment Group, LLC to Regions Bank ("Regions"), each such Mortgage of Real Estate covering the lots so indicated in the Listing of Lots on page 24 below.

Release Provisions

We will obtain a release from the mortgage liens covering your lot at the time of closing. The release fees will be paid to the mortgage holder simultaneously with the closing of your lot, and a document evidencing the release shall be recorded prior to the recording of your deed.

- 3 -

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Only we may exercise the release fees payable for each lot described above. Therefore, if we default on the mortgage prior to obtaining a release, you may lose your lot and all monies paid.

RECORDING THE CONTRACT AND DEED

Method and Purpose of Recording

The sales contract for the purchase of your lot does not contain acknowledgments, and therefore, may not be recorded. Under South Carolina law, recording a sales contract places third parties on notice that the subject property is under a contract for sale, but does not protect purchasers from claims of later purchasers or creditors of anyone having an interest in the land.

The deed to your lot may be recorded. It is the responsibility of the closing attorney to record the deed as soon as practicable after closing. You will be responsible for the cost of recording the deed. Under South Carolina law, recording a deed protects you from a claim by a third person after the date of recording the deed.

- WARNING -

UNLESS YOUR CONTRACT OR DEED IS RECORDED, YOU MAY LOSE YOUR LOT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

Title Insurance

The developer will not purchase a title insurance policy on your behalf. We recommend that you obtain an attorney's opinion of title or a title insurance policy that will describe the rights of ownership being acquired in the lot. We recommend that a professional interpret any title opinion or policy obtained.

PAYMENTS

Escrow

Pursuant to your contract, your earnest money deposits will be placed in a third party controlled trust account with Olson, Smith, Jordan & Cox, Attorneys at Law, whose address is PO Box 1633, Clemson, South Carolina 29633, Attention: Chris Olson, Esq.

The escrow agent will maintain your deposits in a segregated account. Your deposits will be maintained in a non-interest bearing attorney trust account. The escrow agent is responsible for disbursing funds at closing or otherwise as directed under your sales contract. In the event of a dispute, the escrow agent is authorized to pay over the funds to a court for settlement.

Prepayment

If an independent financial institution finances the purchase of your lot, you will need to review the financing documents to determine whether there is any prepayment penalty.

Default

In the event that the sale does not close because you default in the performance of your obligations under the terms of the sales contract, we must give you written notification of your default, and you will have 20 days after you receive the notice to correct the default. To the extent that such default is not corrected within said 20-day period, we have the right to terminate the sales contract and retain your earnest money deposit (not more than 10% of the purchase price) or seek all damages available under South Carolina law.

RESTRICTIONS ON THE USE OF YOUR LOT

Restrictive Covenants

The Declaration of Covenants, Conditions, and Restrictions for The Cliffs at Keowee Falls South have been recorded against the lots in the Oconee County Register of Deeds office. The restrictive covenants require lot owners to secure permissions, approvals, or take other actions prior to using or disposing of lots. These provisions will be discussed in the paragraphs below. This discussion will highlight only certain areas of the restrictive covenants and should not be a substitute for your careful study of them.

The restrictive covenants provide for our right, through an Architectural Review Committee ("ARC") to approve or disapprove the architectural plan for any house or lot improvement to be constructed on your lot, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials. All plans must be submitted to the ARC for review and approval prior to commencement of any such work. The ARC may refuse to approve your plans and specifications on any grounds that are inconsistent with the restrictive covenants, including, but not limited to, purely aesthetic considerations, as long as such grounds are not arbitrary or capricious.

The restrictive covenants also contain a repurchase provision that provides that we as the Declarant, during the Declarant Control Period, have the right and option to purchase any Lot, or Dwelling within the Development which is offered for sale by the property owner, such option to be at the price and on the terms and conditions of any bona fide offer which is acceptable to the owner and which is made in writing to the owner. The owner will promptly submit a copy of the offer to us as Declarant, and we as Declarant will have a period of ten (10) business days (exclusive of Saturday, Sunday and Federal holidays) from and after the presentation of such offer to us in which to exercise the purchase option by giving the owner written notice of exercise in accordance with the restrictive covenants. If an owner provides a copy of the offer and we fail to respond or to exercise the purchase option within said ten (10) -day period, we will be deemed to have waived the purchase option. If we decline to exercise the purchase option, we as Declarant will execute an instrument evidencing our waiver of the repurchase option, which instrument will be in recordable form. In the event we decline to exercise the purchase option and the sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer submitted to us within six (6) months of submission, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of the option to purchase will again be imposed upon any sale by the owner. If we as Declarant elect to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within thirty (30) days following delivery of written notice by us to such Owner of our decision to so purchase such Lot or Dwelling, whichever is later.

Section 6.1 of the restrictive covenants requires that the exterior of all dwellings and other structures constructed upon a lot must be completed within eighteen (18) months after the construction commences, except where such completion is impossible or would result in great hardship to the owner or the builder due to strikes, fires, national emergencies or natural calamities. No dwelling may be occupied until construction is completed.

and all necessary approvals of governmental authorities have been obtained. In addition, Article 6 sets out a number of restrictions on use of property within Keowee Falls South.

As additional lots are brought within the plan of development for Keowee Falls South, they are submitted to the restrictive covenants by the filing of a Supplemental Declaration of Covenants, Conditions and Restrictions. A Supplemental Declaration is filed on or before the closing of the first lot to which it relates, and may contain additional covenants, conditions and restrictions applicable solely to the lots described in such filing. For instance, if lots are to be part of a separately designated neighborhood, they may be subjected to additional covenants, restrictions and easements applicable only to the Lots within the designated neighborhood, and to neighborhood assessments for the maintenance, repair and replacement of the designated neighborhood's common property that the owners in the designated neighborhood have exclusive use.

Crescent Communities of S.C., LLC, the grantor of the land to us as the owner and developer of Keowee Falls South, has also imposed upon all the single-family lots hereunder General Deed Restrictions, which were appended to the deed to us.

A complete copy of these restrictive covenants is available upon request.

Easements

There are easements, which may affect your plans for building or using your lot, including drainage easements, and building set back easements as shown on the recorded plats for the subdivision. Each lot is surveyed to the centerline of the adjoining road, and, therefore, each lot is subject to a right-of-way easement over and across the front of the lot bordering the road and as shown on the recorded plat. Two or more Lots may also share a common access easement over and across one or more of the designated Lots for shared access, each such access being generally 30' wide, unless otherwise noted on the survey. The primary roads and shared access easements will be Common Areas to be maintained by the Association. Each Lot is subject to a 25' building setback on the front of the lot; measured from the right-of-way and easement line, unless otherwise indicated on the survey. Each lot is subject to a rear yard and side yard setback of 20' and each Lot bordering Lake Keowee is subject to a building setback of 50' measured from the 800' mean sea level ("MSL") contour, or 5' measured from the 804' MSL contour, whichever is greater.

Lots 11, 12, 20, 23, 25, and 27 in Emerald Bay (formerly known as, "Phase 1A") are subject to a 30' common access easement to Lake Keowee, which will be an Association Common Area providing pedestrian access to the lake. The same is true for Emerald Bay Lots 54, 55 and 56; Lots 28 and 29; and Lots 30 and 31, which are, as groups, also subject to 30' common access easements to Lake Keowee, to be Association Common Areas providing pedestrian access to the lake.

Emerald Bay Lots 46, 47 and 48 are subject to a trail easement.

Lots 64, 65, 68 and 69; Lots 9 and 10; Lots 10, 11 and 12; Lots 20 and 21; Lots 35 and 36, of Laurel Pointe are subject to a 30' common access easement to Lake Keowee; Lots 9 and 10, as well as Lots 10, 11 and 12, and Lots 20 and 21; Lots 63 and 64; Lots 65 and 66; Lots 72 and 73; Lots 74 and 75; and Lots 85 and 86, all in Laurel Pointe, are, as groups, subject to a 30' common access easement, which will be Association Common Areas, providing shared access to Lake Keowee.

Lots 2 and 3, Lots 8, 9 and 10, Lots 18 and 19, Lots 20 and 21, Lots 30, 31 and 32, Lots 38 and 39 of Jasmine Cove are subject to a 30' common access easement. Lot 83, Lots 87 and 88 of Emerald Bay are subject to a 30' common access easement.

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In addition, Article 7 of the restrictive covenants sets forth certain easements relating to encroachments, utilities, access and development of additional property, golf balls, and the golf course. You are advised to read Article 7 of the restrictive covenants in its entirety for an understanding of the particular provisions relating to such easements.

The entire subdivision is subject to one or more recorded flood easements to Duke Power Company over and across those portions of the subdivision lying below 810' MSL, for backing, ponding, raising, flooding and diverting waters of the Keowee River and its tributaries that are incident to the construction, operation, maintenance, repair, altering or replacing the dam and electric power plant across the Keowee River and creating Lake Keowee, the spillway of which dam shall not exceed 800' MSL.

PLATS, ZONING, SURVEYING, PERMITS, AND ENVIRONMENT

Plats

The plats covering the lots in this Property Report have been filed of record in the Oconee County Register of Deeds office. The descriptions of the lots on the recorded plats are legally adequate for the conveying of the lots.

Zoning

The lots may be used for single-family residences in accordance with the restrictive covenants.

Surveying

Each lot will be surveyed and marked for identification on the recorded subdivision plat. There will be no charge to you for the cost of the survey.

Permits

In order to begin construction on your lot, you must obtain a building permit. A building permit may be obtained from the Oconee County Planning/Building Permits office located at 415 S. Pine Street, Walhalla, SC 29691. In addition to the approval of the ARC discussed in the "Restrictive Covenants" section of this Property Report, you must obtain a permit for the installation of a septic system from the South Carolina Department of Health and Environmental Control located at 200 Booker Drive, Walhalla, SC 29691.

Environment

No determination has been made as to the possible adverse effects the subdivision may have upon the environment and surrounding area.

ROADS

ACCESS TO THE SUBDIVISION

A public, two-lane road, paved with asphalt and having a wearing surface of 24 feet in width, provides access to the subdivision. This road is maintained by the South Carolina Department of Transportation. There is no direct cost to lot purchasers for maintenance or improvements of this road.

ACCESS WITHIN THE SUBDIVISION

Access within the subdivision will be provided to the lots by private, paved, two-lane roads as shown on the recorded plats filed of record in the Oconee County Register of Deeds office. We are responsible for the construction costs of the interior roads within the subdivision, and there is no cost to you for such construction. We have entered into an Escrow Agreement with Nexsen, Pruet, Jacobs & Pollard, LLC, pursuant to which we deposit into the escrow at the closing of each Lot in Phase I and Emerald Bay Lots 11-82 the sum of \$7,083.87 and at the Closing of Emerald Bay Lots 101-103 and Laurel Pointe Lots 2-50 \$10,325.40, which represents 125% of the South Carolina Registered Engineer's estimate of the cost to complete roads within the subdivision serving the identified lots, as well as the cost to complete related drainage facilities and central water service to those lots.

The roads within the subdivision are currently being cleared and graded to permit access by conventional automobile. After completion, the interior roads will be conveyed to and owned by the property owners association. The following chart reflects the current status of the arterial roadways in the subdivision.

Roads

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated Completion Date (month/year)	Present surface	Final surface
Phase I					
2-3, 9-11, 18, 21, 23, 27-29, 32, 34-35, 37-39, 41, 43, 46, 49-56	1-Sep-2002	100%	Available	asphalt	asphalt
Emerald Bay 11-82	15-Jan-2003	60%	3/1/2006 *	gravel	asphalt
Emerald Bay 101-103	15-Jan-2003	30%	3/1/2006 *	gravel	asphalt
Laurel Pointe 2-50, 61-66, 67A, 67B, 68-84, 85A, 85B, 86-89	1-Aug-2003	60%	1-Sep-2006	gravel	asphalt
Jasmine Cove 1-42	1-Jan-2004	40%	1-Jan-2007	gravel	asphalt

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated Completion Date (month/year)	Present surface	Final surface
Emerald Bay 83-93	1-Jan-2004	60%	1-Jan-2007	gravel	asphalt
* The estimated completion dates for roads in the Emerald Bay Lots 11-82 phase was previously amended to September 1, 2004 because we failed to achieve development goals required for an earlier estimated completion date of January 2004. We have further amended the completion for Lots 11-82 to March 1, 2006 because we are unable to meet the September 1, 2004 completion date; and have further amended the previous estimate for Emerald Bay Lots 101-103 to March 1, 2006 because we are unable to meet the earlier estimate of September 1, 2004.					

We are responsible for maintenance of the interior roads until they are conveyed to the property owners association. After completion, the roads will be conveyed to the property owners association, which will assume full responsibility for maintenance of the roads.

An annual budget prepared by the property owners association includes assessments for contributions by the owners for the cost to maintain the roads, and therefore, all lot owners contribute to the maintenance costs of the roads. The roads will be maintained so as to permit access to lots on a year round basis.

The table below identifies the distance (in miles) from the center of the subdivision to nearby communities.

Community Name	Population	Distance Over Paved Roads (miles)	Distance Over Unpaved Roads (miles)	Total Distance
Walhalla	3,801	1	1	21
Salem	126	5	1	6
Seneca	8,200	14	1	15

Walhalla is the County seat of Oconee County, South Carolina.

UTILITIES

Here we will discuss the availability and costs of basic utilities. The areas covered will be water, sewer, electricity, telephone, and fuel or other energy sources.

-WATER

Central System

Water will be supplied to individual lots by a central water system. The supplier of water is Salem Water Company. The address for the supplier is Salem Water Company, 5-A Park Avenue, Salem, SC 29676.

Water lines will be extended in front of or adjacent to all lots in this offering. The current percentage of completion and the estimated availability dates for water service are set forth in the table below.

Water

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated service availability date (month/year)
Phase 1			
2-3, 9-11, 18, 21, 23, 27-29, 32, 34-35, 37-39, 41, 43, 46, 49-56	1-Feb-2003	100%	Available
Emerald Bay 11-82	9/1/2004 *	0%	1/1/2005 *
Emerald Bay 101-103	9/1/2004 *	0%	1/1/2005*
Laurel Pointe 2-50, 61-66, 67A, 67B, 68-84, 85A, 85B, 86-89	12/1/2004 *	0%	7/1/2005 *
Jasmine Cove 1-42	1/1-Jan-2005	0%	1/1-Jan-2007

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated service availability date (month/year)
Emerald Bay 83-93	1-Jan-2005	0%	1-Jan-2007
* The estimated start date for water in the Emerald Bay Lots 11-82 phase was previously amended to April 1, 2004 because we failed to achieve development goals required for an earlier estimated start date of January 2004. We have further amended the estimated construction start for Lots 11-82 to September 1, 2004 because we are unable to meet the April 1, 2004 start date, and have, as a result, amended the estimated completion date from January 1, 2005 to September 1, 2005. We have further amended the previous estimated start date for Emerald Bay Lots 101-103 to September 1, 2004 because we are unable to meet the earlier estimate of April 1, 2004, and have, as a result, amended the estimated completion date from January 1, 2005 to September 1, 2005. The estimated start date for water in the first phase of Laurel Pointe has also been amended to December 1, 2004 because we are unable to achieve development goals required for the earlier estimated construction start date of July 1, 2004, and have, as a result, amended the estimated completion date from July 1, 2005 to December 1, 2005.			

The present capacity of the central water system is sufficient to supply all of the lots in this subdivision. Water lines will not be extended to lots in future phases until the developer sells lots in said phases.

We are responsible for the construction and installation costs of extending central water service to your lot, and there is no cost to you for such construction and installation. We have entered into an Escrow Agreement with Nexsen, Pruet, Jacobs & Pollard, LLC, pursuant to which we deposit into the escrow at the closing of each Lot in Phase 1 and Emerald Bay Lots 11-82 the sum of \$7,085.87 and at the Closing of Emerald Bay Lots 101-103 and Laurel Pointe Lots 2-50 \$10,325.40, which represents 125% of the South Carolina Registered Engineer's estimate of the cost to complete central water service within the subdivision serving the identified lots, as well as the cost to complete related facilities and roads to those lots.

-WARNING-

THERE IS NO FINANCIAL ASSURANCE FOR ANY FUTURE EXPANSION OF THE WATER SYSTEM BEYOND THAT WHICH IS NECESSARY TO SERVE THE LOTS IN THIS INITIAL FILING.

There will be no cost to you for installation or construction of the water lines from the central water system to your lot. However, you will be responsible for the cost of constructing or installing lines from the lot line to the residence at an estimated cost of \$4.00 per lineal foot.

If you purchase a lot prior to the date that the central water system is available to your lot, you may not install a private well or other water system. Use of the central water system is mandatory.

SEWER

Individual Systems

Septic tanks will be used for sewage disposal. Each lot must be individually evaluated for suitability as to the use of a septic system by the issuer of the permit. You will be responsible for the costs of construction of

your individual system. A permit for constructing an individual sewage disposal system must be obtained from the South Carolina Department of Health and Environmental Control located at 200 Booker Drive, Walhalla, SC 29691, at a cost of \$105.

Lot owners will be required to have their individual sewage disposal system designed by a licensed installer. The total cost of installing an individual septic system on your lot, including the necessary testing, is estimated to be between \$3,000 and \$30,000 depending on the terrain of your lot and house size.

You will be responsible for maintaining and pumping the individual septic system on a regular basis. A pumping and hauling service is available, and the estimated cost of that service for a family of four living in a house on a year-round basis is \$300 to \$500.

-WARNING-

WE CANNOT PROVIDE ASSURANCE THAT YOUR LOT WILL BE APPROVED FOR A PERMIT FOR THE INSTALLATION AND USE OF AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM. IF YOUR LOT IS NOT APPROVED FOR A PERMIT AND WE ARE UNABLE TO RESOLVE THE PROBLEM SO AS TO PERMIT SUCH INSTALLATION AND USE OF A SEPTIC SYSTEM WITHIN 60 DAYS AFTER WE RECEIVE NOTICE OF DISAPPROVAL, WE WILL REFUND THE PURCHASE PRICE OF YOUR LOT. PLEASE REFER TO YOUR CONTRACT OF SALE FOR SPECIFIC INFORMATION REGARDING THIS CONTRACTUAL OBLIGATION.

ELECTRICITY

Duke Power will provide electrical service to the subdivision.

Primary electrical service lines will be extended to the front of or adjacent to all lots in the subdivision. Duke Power will be responsible for construction of the lines, and there will be no cost to you.

The current percentage of completion and the estimated availability dates for electrical service are set forth in the table below.

Electricity

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated service availability date (month/year)	Cost to Complete
Phase 1				
2-3, 9-11, 18, 21, 23, 27-29, 32, 34-35, 37-39, 41, 43, 46, 49-56	24-Mar-2003	100%	Available	\$0.00
Emerald Bay 11-82	4/1/2004 *	0%	1/1/2005 *	\$0.00
Emerald Bay 101-103	1-Apr-2004	0%	1-Jan-2005	\$0.00

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated service availability date (month/year)	Cost to Complete
Laurel Pointe 2-50, 61-66, 67A, 67B, 68-84, 85A, 85B, 86-89	1-Jul-2004	0%	1-Jul-2004	\$0.00
Jasmine Cove 1-42	1-Jan-2005	0%	1-Jan-2007	
Emerald Bay 83-93	1-Jan-2005	0%	1-Jan-2007	
* The estimated start date for electricity in the Emerald Bay Lots 11-82 phase was previously amended to April 1, 2004 because we failed to achieve development goals required for an earlier estimated start date of January 2004, and have, as a result, amended the estimated completion date from January 1, 2005 to September 1, 2006.				

Duke Power will be responsible for maintenance of the electric service lines. You will not be responsible for any construction costs in connection with construction of the electric service lines to your lot. You will be responsible for installing electric lines within each lot and dwelling. You may be charged a hook-up service fee, and such charge is subject to change.

-WARNING-

THERE ARE NO FUNDS SET ASIDE IN AN ESCROW OR TRUST ACCOUNT NOR HAVE ANY OTHER FINANCIAL ARRANGEMENTS BEEN MADE TO ASSURE COMPLETION OF THE ELECTRIC LINES.

TELEPHONE

Bell South will provide telephone service. Service lines are or will be extended in front of or adjacent to each of the lots in this filing. You will not be responsible for any construction costs in connection with the telephone service lines. You will be responsible for installing telephone lines within each lot and dwelling. The current percentage of completion and the estimated availability dates for electrical service are set forth in the table below.

Telephone

Unit	Estimated starting date (month/year)	Percentage of construction complete	Estimated service availability date (month/year)
Phase 1			
2-3, 9-11, 18, 21, 23, 27-29, 32, 34-35, 37-39, 41, 43, 46, 49-56	1-Jan-2004	0%	1-Jun-2004
Emerald Bay 11-82	1-Jun-2004	0%	1-Jan-2005
Emerald Bay 101-103	1-Jun-2004	0%	1-Jan-2005
Laurel Pointe 2-50, 61-66, 67A, 67B, 68-84, 85A, 85B, 86-89	1-Jan-2004	0%	1/1/2005*
Jasmine Cove 1-42	1-Jan-2005	0%	1-Jan-2007
Emerald Bay 83-93	1-Jan-2005	0%	1-Jan-2007
* The estimated completion date for telephone in the first phase of Laurel Pointe has been amended to January 1, 2005 because we are unable to achieve development goals required for the earlier estimated construction completion date of July 1, 2004.			

FUEL OR OTHER ENERGY SOURCE

There is no other fuel or energy source than the electrical service.

FINANCIAL INFORMATION

We were formed on September 10, 2002. From our formation to the date hereof, we have engaged primarily in development activities. Nevertheless, we have experienced an operating loss that may affect our ability to discharge our financial obligations.

A copy of our financial statements for the period ending December 31, 2003 is available from us upon request.

LOCAL SERVICES

In this topic, we will discuss the availability of fire and public protection and the location of schools, medical care, shopping facilities, mail services and public transportation.

FIRE PROTECTION

Salem Fire & Rescue Squad, approximately 5 miles from the subdivision, provides fire protection to the subdivision. Fire protection is available year round.

POLICE PROTECTION

The Oconee County Sheriff's Department provides police protection. Police protection is available year round.

SCHOOLS

The elementary school available to residents of the subdivision is Tamassee/Salem Elementary School, located approximately 5 1/4 miles from the subdivision. Tamassee/Salem Middle School is located approximately 5 miles from the subdivision, and Tamassee/Salem High School is located approximately 5 miles from the subdivision. School bus transportation is available from within the subdivision.

HOSPITAL

Oconee Memorial Hospital, located on 298 Memorial Drive in Seneca, South Carolina, is the nearest hospital to the subdivision, located approximately 16.4 miles from the Nimmons Bridge Road main gate to the subdivision. Ambulance service is available.

PHYSICIANS AND DENTISTS

The nearest Physicians office is located in Walhalla, South Carolina. The nearest Dentist office is located in Walhalla, South Carolina.

SHOPPING FACILITIES

Nearby shopping facilities include Key Mart Grocery, Amoco Gas Station, ~~Wine Emporium~~ and Hair Loft approximately 3.7 miles from the Nimmons Bridge Road main gate to the subdivision. Wachovia Bank is approximately 5.1 miles from the subdivision; Bi-Lo Grocery, Ingles Grocery and CVS Pharmacy approximately 13.6 miles; Eckerd Drugs approximately 13.8 miles; Lowes Home Improvement approximately 16.4 miles; and The Home Depot approximately 17.0 miles from the subdivision.

MAIL SERVICE

Mail for the subdivision will be by general delivery to individual lots located within the subdivision.

PUBLIC TRANSPORTATION

Public transportation is not available in the subdivision. The nearest public transportation is available in Clemson, South Carolina, approximately 15 miles from the subdivision.

RECREATIONAL FACILITIES

We will now discuss the recreational facilities located within the subdivision described in this report. The property owners association does not own any recreational facilities, and none of your assessments paid to the property owners association will be applied to the costs and expenses of maintaining the private recreational facilities described below.

The property owners association will not own or contribute to the construction or maintenance of the recreational facilities described in this section. Memberships to use the recreational facilities described below are available to lot owners only and are not available for public use. The facilities will be owned and operated by The Cliffs at Keowee Falls South Golf and Country Club, LLC (the "Club"), which is currently an affiliated entity.

THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB

THE RECREATIONAL FACILITIES TO BE LOCATED IN THE SUBDIVISION WILL BE OWNED AND OPERATED BY THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB, LLC, A PRIVATE, NON-EQUITY CLUB OWNED BY AN AFFILIATE OF THE DEVELOPER. THE FACILITIES WILL BE AVAILABLE SOLELY TO ITS MEMBERS. YOUR PURCHASE OF A LOT IN THIS SUBDIVISION GIVES YOU NO RIGHT TO USE THE FACILITIES OF THE CLUB UNLESS YOU ARE A MEMBER. THERE IS NO ASSURANCE THAT YOUR APPLICATION FOR MEMBERSHIP WILL BE ACCEPTED. THE INITIAL COST OF A MEMBERSHIP AND SUBSEQUENT ANNUAL DUES WILL BE SUBSTANTIAL. AT PRESENT, THE INITIAL COST OF A FULL "KEOWEE FALLS SOUTH FULL GOLF MEMBERSHIP" IS ESTIMATED TO BE SEVENTY-FIVE THOUSAND AND NO/100 (\$75,000) DOLLARS, AND THE ANNUAL DUES ARE ESTIMATED TO START AS HIGH AS FOUR THOUSAND EIGHT HUNDRED AND NO/100 (\$4,800.00) DOLLARS. THE COST OF A MEMBERSHIP WILL BE SUBSTANTIAL AND NO REFUND OF THE PURCHASE PRICE OF YOUR LOT WILL BE MADE IF YOU DO NOT BECOME A MEMBER OF THE PRIVATE CLUB. A MEMBERSHIP IN THE CLUB IS NOT TRANSFERABLE EXCEPT TO THE CLUB AND PURSUANT TO STRINGENT REQUIREMENTS SET FORTH IN THE CLUB DOCUMENTS. ANY PERSON TO WHOM YOU SELL YOUR LOT WILL HAVE TO APPLY FOR MEMBERSHIP AND BE ACCEPTED FOR MEMBERSHIP, AND PAY AN INITIATION DEPOSIT AND ANNUAL DUES, WHICH ARE OR MAY BE SUBSTANTIAL. YOUR FAILURE OR THE FAILURE OF THE PERSON TO WHOM YOU SELL YOUR LOT TO BECOME A MEMBER MAY ADVERSELY AFFECT THE VALUE OF YOUR LOT. YOU SHOULD CAREFULLY CONSIDER YOUR PURCHASE OF A LOT IN THIS SUBDIVISION IF IT IS BASED UPON THE ASSUMPTION THAT A MEMBERSHIP IN THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB WILL BE AVAILABLE TO YOU OR TO ANYONE TO WHOM YOU SELL YOUR LOT. FURTHERMORE, EVEN THOUGH THE CLUB FACILITIES ARE LOCATED IN THE SUBDIVISION, NO IMPLICATION IS INTENDED OR SHOULD BE DRAWN THAT THE CLUB FACILITIES ARE MAINTAINED FOR LOT OWNERS WITHIN THE SUBDIVISION.

The following chart lists the facilities of The Cliffs at Keowee Falls South Golf & Country Club, LLC, which lists the estimated date of the start of construction, the percentage of construction now complete, the estimated date of availability, financial assurance of completion and the estimated annual cost or assessment.

Facility	Percentage of construction now complete	Estimated date start of construction (month/year)	Estimated date available for use (month/year)	Financial assurance of completion	Buyer's annual cost or assessments
					The use of these facilities is dependent upon separate membership agreements between the lot owner and the owner of the facilities. No cost for the use of these facilities is assessed against Lot purchasers by the owners' association.
Golf Course	0%	April, 2005	April, 2007 *	None	
Clubhouse	0%	April, 2005	April, 2007 *	None	
Wellness Center	0%	April, 2006 *	April, 2008 *	None	
* The estimated completion date for the golf course and clubhouse has been amended to April, 2007 because the Club has advised us it is unable to achieve development goals required for the earlier estimated construction completion date of September, 2006. The estimated start date for the wellness facilities has been amended to April, 2006 because the Club is unable to achieve its development goals required for an earlier estimated start date of April, 2005 and has, as a result, amended the estimated completion date from April, 2007 to April, 2008.					

-WARNING-

WE DO NOT OWN THE RECREATIONAL FACILITIES; THEREFORE, WE CANNOT ASSURE THEIR CONTINUED AVAILABILITY

CONSTRUCTING THE FACILITIES

The Club is responsible for the construction of the facilities described above. Lot purchasers are not required to contribute to the construction costs of the facilities.

MAINTAINING THE FACILITIES

The Club will operate and be responsible for maintenance of the facilities.

TRANSFER OF FACILITIES

The Club will own the facilities. The recreational facilities of the Club are subject to transfer at the discretion of the Club, and are not common areas as described in the restrictive covenants.

PERMITS

The permits to construct the recreational facilities are not in place at this time; therefore, there is no assurance that members of the Club will be able to use the facilities.

WHO MAY USE THE FACILITIES

Membership in the Club is available only to lot owners and is not available to the public. Social Athletic Memberships are available to lot owners who make application for such memberships. A Social Athletic membership in the Club entitles lot owners to use the recreational facilities of the Club, except for the golf course. Subject to availability, lot owners may become eligible to utilize the golf facilities of the Club by acquiring a Golf Membership in the Club within 30 days from closing the acquisition of a lot. Until the Club's facilities are completed within the subdivision, Club members will have only reciprocal use privileges at affiliated Cliffs golf and country club facilities. Unless the initial lot owner elects to purchase a Golf Membership, future lot owners may not be able to use the facilities or acquire such memberships. Upon the resale of your lot you are required to resign all your memberships in the Club and receive a refund of 100% of the amount you paid for the membership at closing. The purchaser of your lot may be required to purchase a membership at the then current purchase price. See your contract of sale for more information regarding the terms and conditions of membership and use of the recreational facilities.

SUBDIVISION CHARACTERISTICS AND CLIMATE

In this section, we will discuss the basic terrain of this subdivision, its climate, and any nuisance or hazards in this area.

GENERAL TOPOGRAPHY

The general topography of the land within Keowee Falls South is a combination of gently rolling hills and valleys.

Approximately sixteen percent (16%) of the subdivision will remain as natural open space

None of the lots in this subdivision contains any steep slopes, rock, outcropping, unstable or expansive soil conditions that could necessitate the use of special construction techniques to build.

WATER COVERAGE

None of the lots or portions of lots are covered by water at any time during the year.

DRAINAGE AND FILL

None of the lots require draining or fill prior to being used for the construction of residences.

FLOOD PLAIN

The subdivision is not located within a flood plain or an area designated by any federal, state or local agency as being prone to flooding. Flood insurance is available, but is not customarily required in connection with financing for improvements on lots.

FLOODING AND SOIL EROSION

We will provide temporary and permanent control measures within the subdivision which will aggressively control storm water, erosion and sediment control, including sodding and seeding in areas of heavy grading or cut and fill, along with construction of diversion ditches and sediment control basins as necessary. The overall program is under development and is expected to be complete as each phase is completed. There is no financial assurance for completion of the program.

The measures to be exercised by the architectural control committee in the subdivision will include the requirement that each lot owner and/or builder furnish and comply with a temporary and permanent plan for controlling storm water, erosion and sediment during and after construction on a lot.

NUISANCES

We know of no land uses in close proximity of the subdivision that would adversely affect the subdivision.

HAZARDS

We are not aware of any unusual safety factors or hazards that affect the subdivision or any proposed plans for construction that may create a future nuisance or safety hazard. You should understand, however, that some lots in the subdivision are or will be adjacent or in close proximity to a golf course and other club facilities located in the subdivision, and that you might consider the flight and landing of golf balls, the noise of club recreational and maintenance activities, the spraying of chemicals and pesticides (in accordance with regulations applicable thereto) and other similar activities incident to the normal operation of a private club to be a nuisance or hazard.

YOU SHOULD CAREFULLY CONSIDER YOUR PURCHASE, IF IT IS BASED UPON AN ASSUMPTION THAT NORMAL RECREATIONAL AND MAINTENANCE ACTIVITIES INCIDENT TO OPERATIONS OF THE RECREATIONAL FACILITIES OWNED BY THE PRIVATE CLUB AND LOCATED WITHIN THE CLIFFS AT KEOWEE FALLS SOUTH MAY NEVER IMPACT AN OWNER'S USE AND ENJOYMENT OF A LOT IN THE SUBDIVISION.

The lots covered by this Property Report are not subject to unusual natural hazards, and no federal, state or local agency has formally identified the area as one subject to the frequent occurrence of natural hazards.

The South Carolina Department of Insurance has established a rating system for fire hazards based on the availability of water, the capability of the fire department and emergency communications systems. The rating for the subdivision is nine (9) on a scale from one to ten with ten representing the minimum recognized protection.

CLIMATE

The average temperature ranges for the area in which the subdivision is located are as follows:

	<u>Summer</u>	<u>Winter</u>
High	88.2°	50.0°
Low	68.3°	30.0°
Mean	78.2°	40.0°

The average rainfall is 51.27 inches per year. The average snowfall is 5.9 inches per year.

OCCUPANCY

There are currently no homes occupied on a full time basis as of the date of this Report.

ADDITIONAL INFORMATION

In this section, we will discuss the following issues:

- (a) the Property Owners Association;
- (b) Annual Real Estate Taxes;
- (c) Resale or Exchange Program;
- (d) Equal Opportunity in Lot Sales; and
- (e) Listing of Lots.

PROPERTY OWNERS ASSOCIATION

The Cliffs at Keowee Falls South Owners' Association ("Association"), a property owners association for The Cliffs at Keowee Falls South, has been formed as a nonprofit South Carolina corporation.

As the Declarant and Class B member under the restrictive covenants, we have the right to exercise management control over the Association through the appointment of the Board of Directors and officers. This control of the Association will continue until the earlier of the following: (i) December 31, 2032; or (ii) three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, property representing ninety-five percent (95%) of the total number of Lots intended for development in The Cliffs at Keowee Falls South, which number will be set forth in a Supplemental Declaration executed and filed in the Oconee County records on or before December 31, 2032, making specific reference to this limitation in the restrictive covenants; or (iii) three (3) months following the date we as Declarant surrenders our authority to appoint directors of the Association by an express, recorded amendment to the restrictive covenants.

~~Membership in the Association is mandatory.~~ Owners will be obligated to pay an annual assessment to the Association for each lot owned. The initial annual assessment will be approximately \$650 per lot, per year, payable annually, which covers the Association's general operating costs.

The Board of Directors will set the annual assessment at least ninety (90) days prior to the first day of the Association's full fiscal year. The budget will cover the estimated common expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. The annual budget and annual assessments, as determined by the Board of Directors will become effective unless disapproved (a) solely by us as Declarant during the Declarant Control Period, and (b) thereafter by seventy-five percent (75%) or more of the votes of the entire Association at a special meeting of Members called to consider disapproving of the budget.

Special assessments may be levied if: (a) during the Declarant Control Period we approve, in writing, such special assessment; and (b) after the Declarant Control Period, the special assessment is not disapproved by sixty-seven percent (67%) or more of the votes of the entire Association at a special meeting of Members called to vote on the special assessment.

The Association has powers and duties which include, but are not limited to, preparation and adoption of the annual budget, levying and collecting the assessments, providing for the operation and maintenance of the Association's common properties, hiring and firing personnel, making and amending rules and regulations, enforcing the provisions of the restrictive covenants, the By-Laws of the Association, and the rules and regulations of the Association, and keeping books and records of the Association. We as the Declarant will

exercise architectural control over construction and landscaping within the subdivision through our establishment of an architectural review committee ("ARC") and the appointment of its members. We reserve the right, but shall not have the obligation until 3 years following the expiration of our Declarant Control Period, to assign the ARC powers to the Association.

The projected income from assessments is estimated to be adequate; however, until there are sufficient owners to maintain the required level of funds, The Cliffs at Keowee Falls South, LLC will subsidize the property owners associations as necessary.

(TAXES)

Your obligation to pay taxes begins upon transfer of title. Taxes are paid to the Oconee County Tax Assessor. Taxes on an unimproved lot after transfer of title to you are based on 2003 ad valorem taxes, \$20.50 for every \$100.00 of assessed value, and unimproved lots are assessed at 6% of fair market value. Therefore, you would expect to be taxed \$1.23 for each \$100 of fair market value, based upon 2003 ad valorem taxes.

Per mth
4,168.50
Per Yr.
14,022

RESALE OR EXCHANGE PROGRAM

The restrictive covenants require that any sign, including "for sale" signs, must be approved by the ARC prior to posting.

As a developer, we have no program to assist you in the resale of your lot. An on-site broker will be available for your use in reselling your lot should you so choose.

We currently offer a Lot Exchange and Priority Selection Agreement. The exchange program is a trade-up program whereby the buyer entering into such agreement will be given at least one opportunity on a priority basis commensurate with a priority number issued by us in the order in which such agreements are fully executed, to choose among select lots offered by us in a future development phase. A buyer wishing to trade up must choose, from among the select lots offered by us, a lot that exceeds by \$100,000 or more the amount paid for the owned lot offered in trade, and the buyer will be given credit for the purchase price of the trade-in lot against the price of the chosen lot into which the buyer would trade. There are no currently subdivided lots set aside by us to meet a future demand by each and every person that may enter into a Lot Exchange and Priority Selection Agreement, but with a total of 2,200 acres comprising our property that we anticipate developing in future development phases and adding to the subdivision, at full development planned for 950 lots, we are confident of our ability to develop the requisite number of lots necessary to satisfy each person entering into a Lot Exchange and Priority Selection Agreement and with whom we will be contractually obligated to offer such an exchange lot.

WARNING

WE HAVE NOT SET ASIDE OR RESERVED ANY SPECIFIC LOTS FOR FUTURE EXCHANGE OPPORTUNITIES, AND WE DO NOT HAVE ANY OTHER PROGRAM THAT GUARANTEES THAT YOU WILL BE ABLE TO EXCHANGE YOUR LOT FOR ANOTHER.

EQUAL OPPORTUNITY IN LOT SALES

We are in compliance with Title VII of the Civil Rights Act of 1968 in that we do not directly or indirectly discriminate on the basis of race, religion, sex, or national origin in any of the following general areas: lot marketing and advertising, rendering of lot services, and requiring terms and conditions on lot sales and leases.

LISTING OF LOTS

THE CLIFFS AT KEOWEE FALLS SOUTH				
PHASE 1				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
2-3, 49-56	A928	5-10	March 19, 2003	NBSC
9-11, 21, 34-35, 39, 43, 46, 48	A912	1-6	Nov. 18, 2002	NBSC
18	A912	1-6	Nov. 18, 2002	Cannon & Saad & Wachovia
23, 27	A912	1-6	Nov. 18, 2002	Martin & Wachovia
28, 29	A912	1-6	Nov. 18, 2002	Cannon & Saad & Wachovia
32	A912	1-6	Nov. 18, 2002	Martin & Wachovia
37, 38, 41	A912	1-6	Nov. 18, 2002	S&C & Wachovia
TOTAL REGISTERED PHASE 1 LOTS:			29	
TOTAL REGISTERED PHASE 1 LOTS ACRES:			44.340	

EMERALD BAY LOTS 11-82 (FORMERLY PHASE 1A)				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
13-14, 22, 24, 26-34, 39-58, 60-61, 63, 65-66, 68-70, 72-73, 76-78, 80	A933	5-10	April 4, 2003	Regions Bank
11-12, 15-21, 23, 25, 35-38, 59, 62, 64, 67, 71, 74-75, 79, 81-82	A948	5-10	June 30, 2003	Regions Bank
TOTAL REGISTERED EMERALD BAY LOTS 11-82:			72	
TOTAL REGISTERED EMERALD BAY LOTS 11-82 ACRES:			104.710	

EMERALD BAY LOTS 101-103				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
101-103	A959	9 & 10	August 26, 2003	Regions Bank
TOTAL REGISTERED EMERALD BAY LOTS 101-103:			3	
TOTAL REGISTERED EMERALD BAY 101-103 ACRES:			4.200	

LAUREL POINTE LOTS 2-50, 61-89				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
2-8, 11-13, 18-19, 24-25, 28-32	A959	5-6	August 26, 2003	Regions Bank
9-10, 14-17, 20-23, 26-27	A971	5-6	October 30, 2003	Regions Bank
33-34, 37, 40-50	A959	7-8	August 26, 2003	Regions Bank
35-36, 38-39	A971	7-8	October 30, 2003	Regions Bank
71-73, 76-83, 86-89	A960	1-2	August 26, 2003	Regions Bank
61-66, 67A, 67B, 68-70, 74-75, 84, 85A, 85B	A971	9-10	October 30, 2003	Regions Bank
TOTAL REGISTERED LAUREL POINTE LOTS 2-50, 61-89:			80	
TOTAL LAUREL POINTE 2-50, 61-89 ACRES:			139.910	

JASMINE COVE LOTS 1-42				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
1-17	993	4-5	March 19, 2004	Regions Bank
18-42	993	6-7	March 19, 2004	Regions Bank
TOTAL REGISTERED JASMINE COVE 1-42:			42	
TOTAL REGISTERED JASMINE COVE 1-42 ACRES:			74.390	

EMERALD BAY LOTS 83-93				
Lot Number	Plat Book	Pages	Plat Recording Date	Mortgage Holder
83-93	993	8-9	March 19, 2004	Regions Bank
TOTAL REGISTERED EMERALD BAY LOTS 83-93:			11	
TOTAL REGISTERED EMERALD BAY 83-93 ACRES:			23.070	

COST SHEET, SIGNATURE OF SENIOR EXECUTIVE OFFICER

COST SHEET

In addition to the purchase price of your lot, there are other expenditures that must be made. Listed below are the major costs. All costs are subject to change.

		<u>Sales Price</u>
Cash Price of Lot		\$ _____
		<u>Estimated One-Time Charges</u>
1.	Water Tap Fee	\$ <u>550.00</u>
2.	Water Service Deposit	\$ <u>25.00</u>
3.	Electric connection fee	\$ _____
4.	Installation charge for telephone (connection)	\$ _____
5.	Architectural Review Fee	\$ <u>1,000.00</u>
6.	Architectural review Construction Deposit → Builder puts up during const period	\$ <u>5,000.00</u>
7.	Septic Permit	\$ <u>105.00</u>
8.	Septic Tank Costs (\$3,000 - \$30,000)	\$ _____
9.	Capitalization of property owners association	\$ <u>100.00</u>
Total of estimated sales price and one-time charges		\$ _____
		<u>Estimated annual charges, exclusive of utility use fees</u>
1.	Taxes -- Average unimproved lot after sale to purchaser	\$ _____
2.	The Cliffs at Keowee Falls South Owners' Association	\$ _____

The information contained in this Property Report is an accurate description of our subdivision and development plans.

Keowee Falls Investment Group, LLC

By: _____
James B. Anthony
Title: President

RECE AGENT CERTIFICATION, AND CANCEL ION PAGE

PURCHASER RECEIPT
IMPORTANT -- READ CAREFULLY

Name of Subdivision: The Cliffs at Keowee Falls South

ILS Number: 30856

Date of Report: May 3, 2004

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by: _____ Date: _____

Street Address: _____

City _____ State _____ Zip Code _____

If any representations are made to you, which are contrary to those in this Report, please notify:

Office of Interstate Land Sales Registration
HUD Building, 451 Seventh Street, S. W.
Washington, D.C. 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report, which are contrary to the information contained in this Property Report.

Lot 32 Section 12

Name of Salesperson: J. D. Drott

Signature: [Signature] Date: 6-20-05

PURCHASER CANCELLATION

If you are entitled to cancel your purchase contract and wish to do so, you may cancel by personal notice or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below:

Name of Subdivision: The Cliffs at Keowee Falls South

Date of Contract: _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature: _____ Date: _____



June 2, 2005

Mr. Larry Hutchinson
The Paragon Group
111 Trout Lilly Lane
Sunset, SC 29685

RE: Evaluation of Subsurface Conditions at the Keowee Falls South - Jasmine Cove - Lot 31
AES Project # 5270.02

Dear Mr. Hutchinson:

In accordance with your request, Alpha Environmental Sciences, Inc has visited the project site, with an initial visit on May 4th, 2005. During this visit we performed a walkover and examination of the site, Alpha proposed to return to the site with a small trailer mounted drill rig and perform subsurface borings to examine the conditions in the subsurface soils. Our return visit was performed on May 25, 2005 to perform the borings and the Senior Professional Geologist from Alpha Environmental Sciences, Inc also visited the site at this time. Based on our observations and on the subsurface conditions as determined in two shallow hollow stem auger borings performed at the site, it is our opinion that the major change in elevation between the upper and lower portions at the lot was caused by a slope failure. The slope failure appears to extend beyond the boundaries of the lot in both the north and south directions. The failure appears to have been associated with the impoundment of Lake Keowee. The raising of the general water table elevation caused by the impoundment of the lake appears to have saturated a fine grained weak zone within the residual soils and partially weathered rock along this portion of the shoreline. The actual movement appears to have occurred several years ago as evidenced by the covering of the failed slope and the other associated areas of movement with organic matter, leaves, brush, etc. Other evidence for the time period of movement is shown by the growth angle of the larger trees on the lot (see the attached photos). The larger trees show evidence that they originally started growth in a generally vertical direction, were then tilted by the slope failure and then corrected their growth back to vertical. In addition, small portions of the failure are breaking off close to the waters edge and gradually falling and failing into the lake. Large pieces of relatively competent bedrock can be noted along the shoreline where the residual soils have been washed away, but the resistant rock remains.

Additional evidence of the slope failure and the conditions in the subsurface were identified by our soil boring B-2 performed in the lower portion of the lot. In B-2 a zone from approximately three to five feet below existing site grade showed very loose, soft conditions, with the augers encountering no resistance. At this depth there appears to be a zone of failure in which movement occurred. Other evidence of the both lateral and downward movement of the mass of soil and rock toward the lake was noted during our field examination of lot 31 and the lots on the north and south sides consisting of numerous linear crevices and small pits. These linear features were observed running parallel to the exposed failure scarp. In some cases the pits and crevices have filled in with detritus and organic matter, however; several were noted to the north extending to as much as three to five feet in depth.

Based on our findings, we strongly recommend that the building lot not be utilized for residential construction. A strong potential exists that further movement may occur along the original slope failure plane. It is possible that fluctuations in water level or infiltration of heavy rainfall similar to the hurricanes of the recent past may induce further movement along the failure plane. We would strongly urge that no construction be performed on this particular lot and perhaps both the lots to the north and south, however; further evaluation would be necessary for the adjoining lots to determine if stable soils are available in these areas.

PROFESSIONAL ENVIRONMENTAL CONSULTING
Engineering Services Provided by Alpha Environmental Sciences, Inc.
www.alphaenviron.com



ALPHA-015

ALPHA

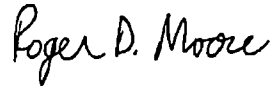
Please find attached the boring logs for the two borings performed on the property and photographs taken during our evaluation of the lot. Should you have any questions with regard to the information contained in this letter or require any additional information please do not hesitate to contact us.

Respectfully submitted,

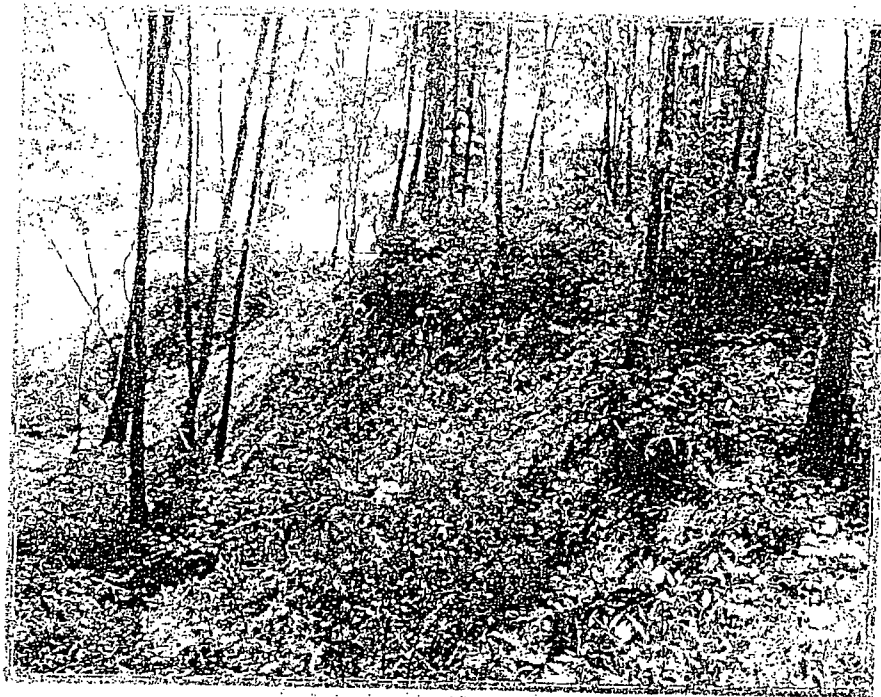
Alpha Environmental Sciences, Inc.



Bob Forbes
Geotechnical Project Manager

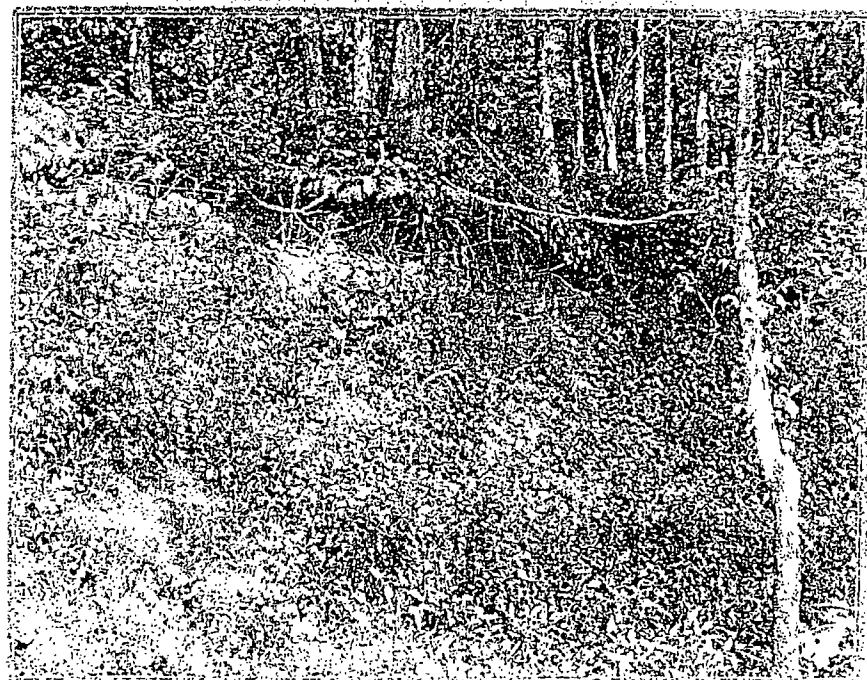
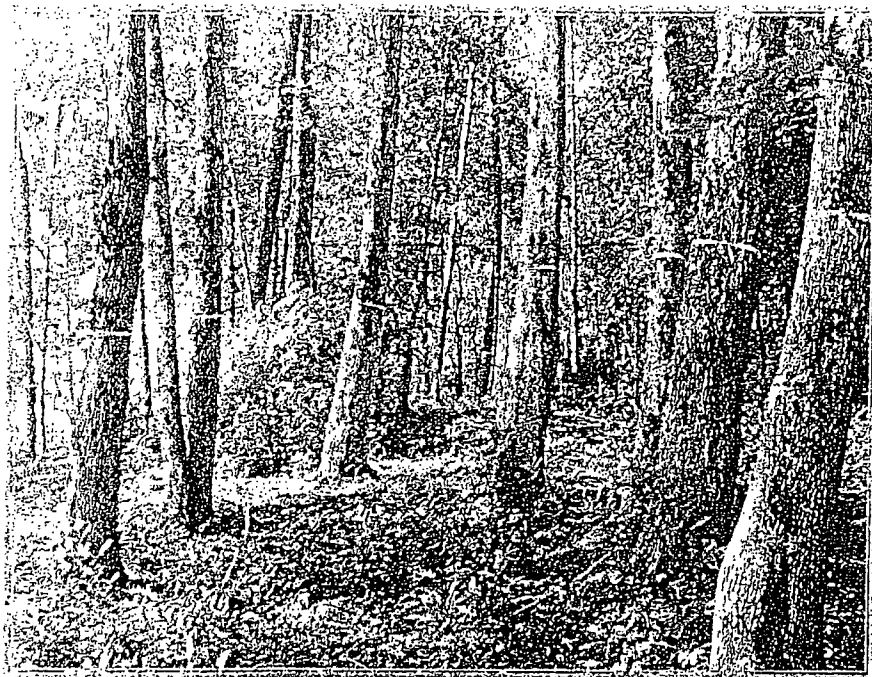


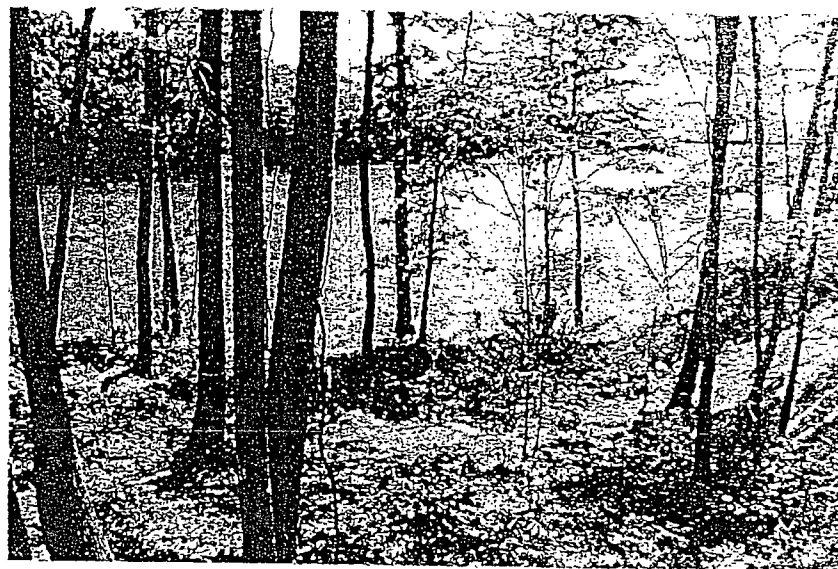
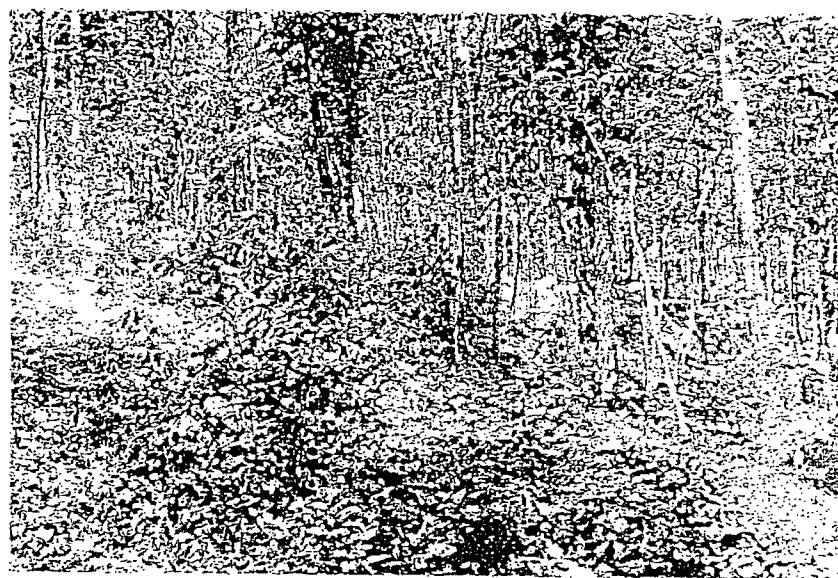
Roger D. Moore, PG
Professional Geologist/Division Manager



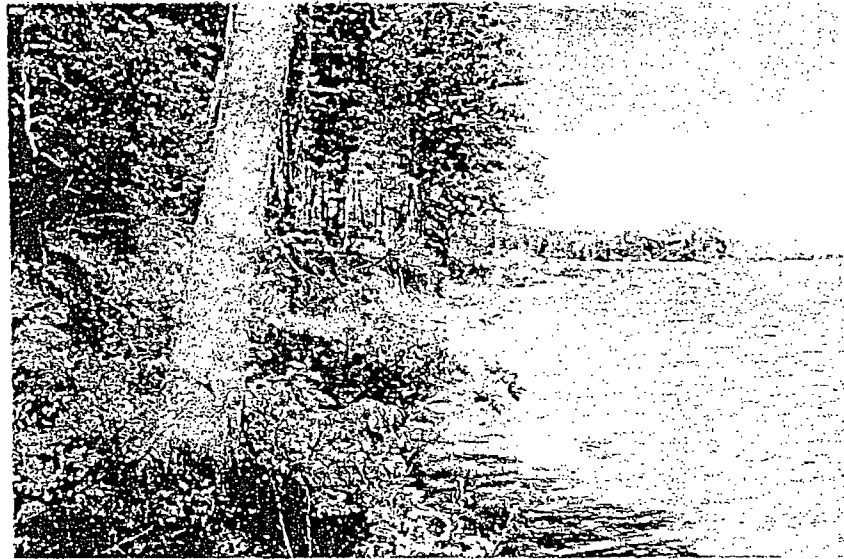
1. 100 ft. to 150 ft. high
2. 100 ft. to 150 ft. high
3. 100 ft. to 150 ft. high



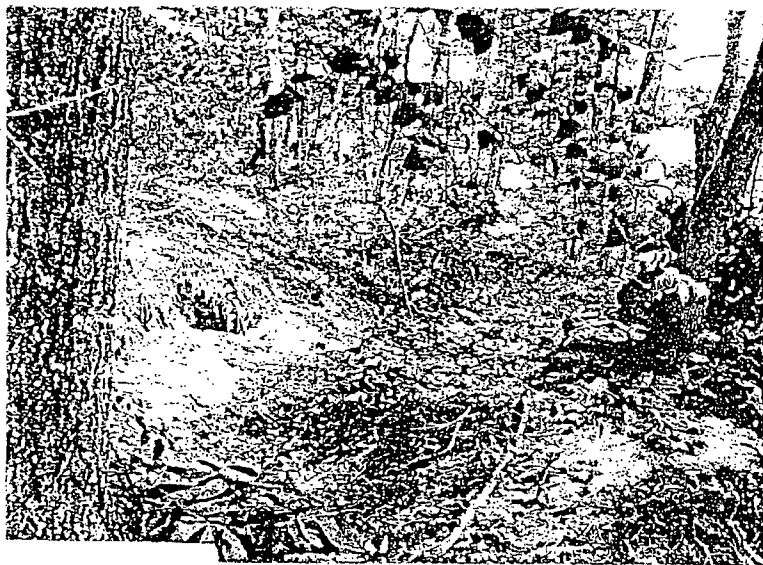




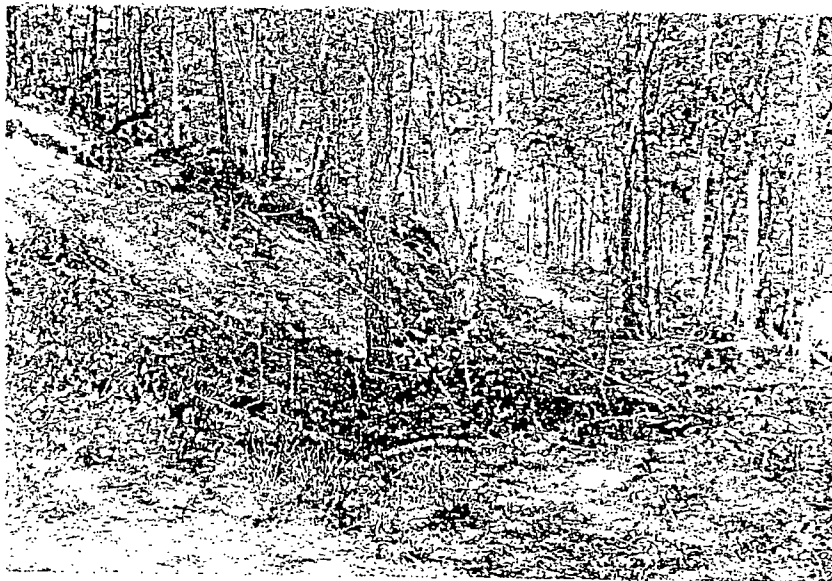
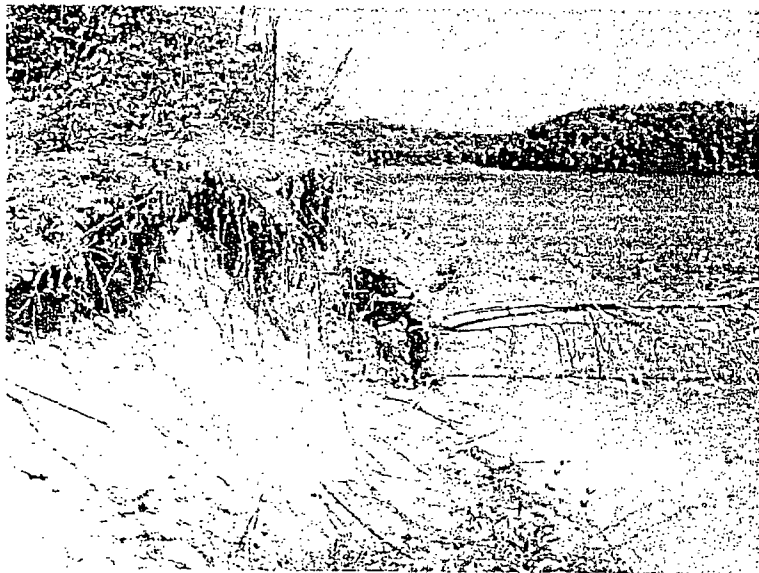
ALPHA-021



ALPHA-022



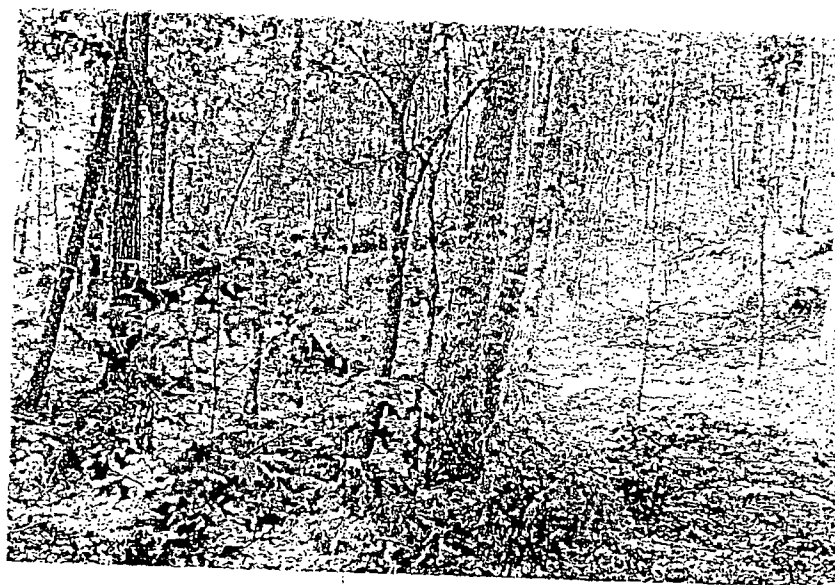
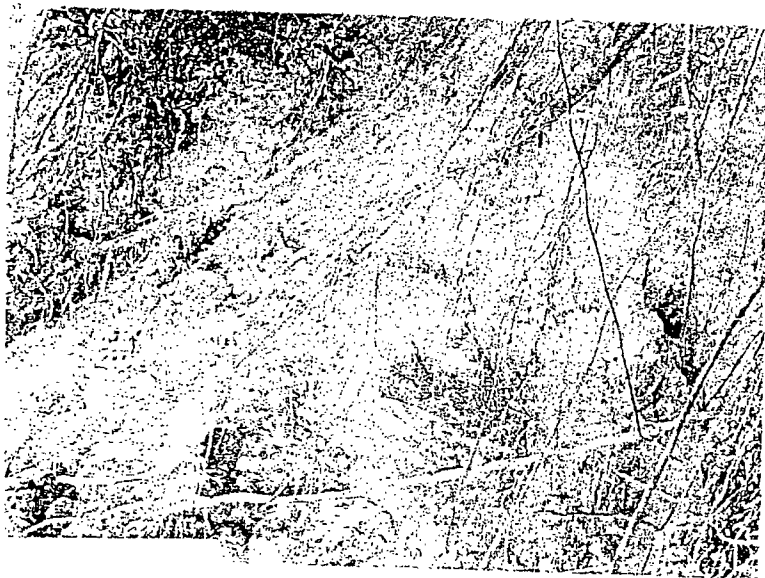
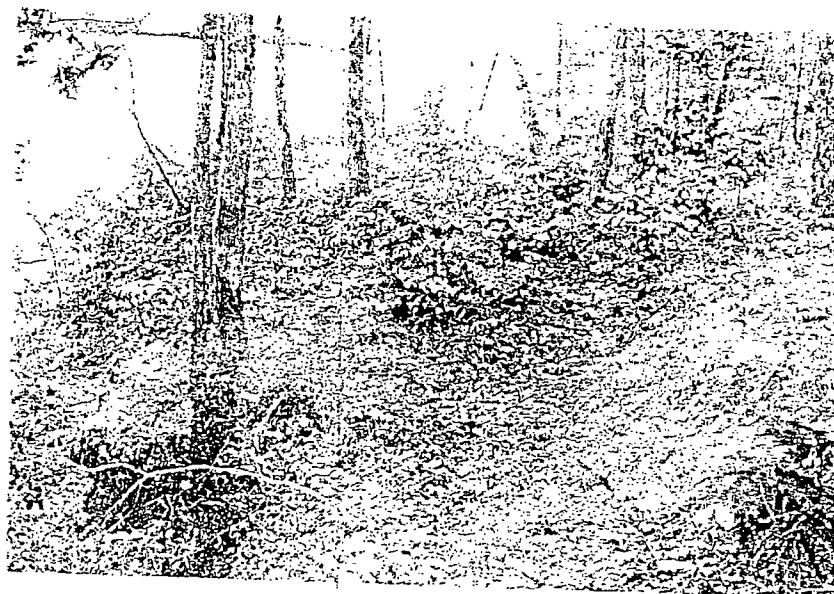
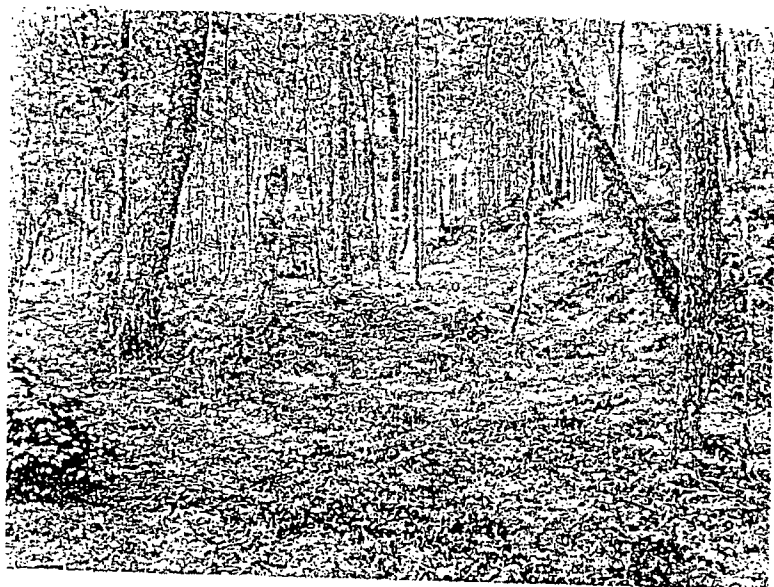
ALPHA-023



ALPHA-024



ALPHA-025



ALPHA-026



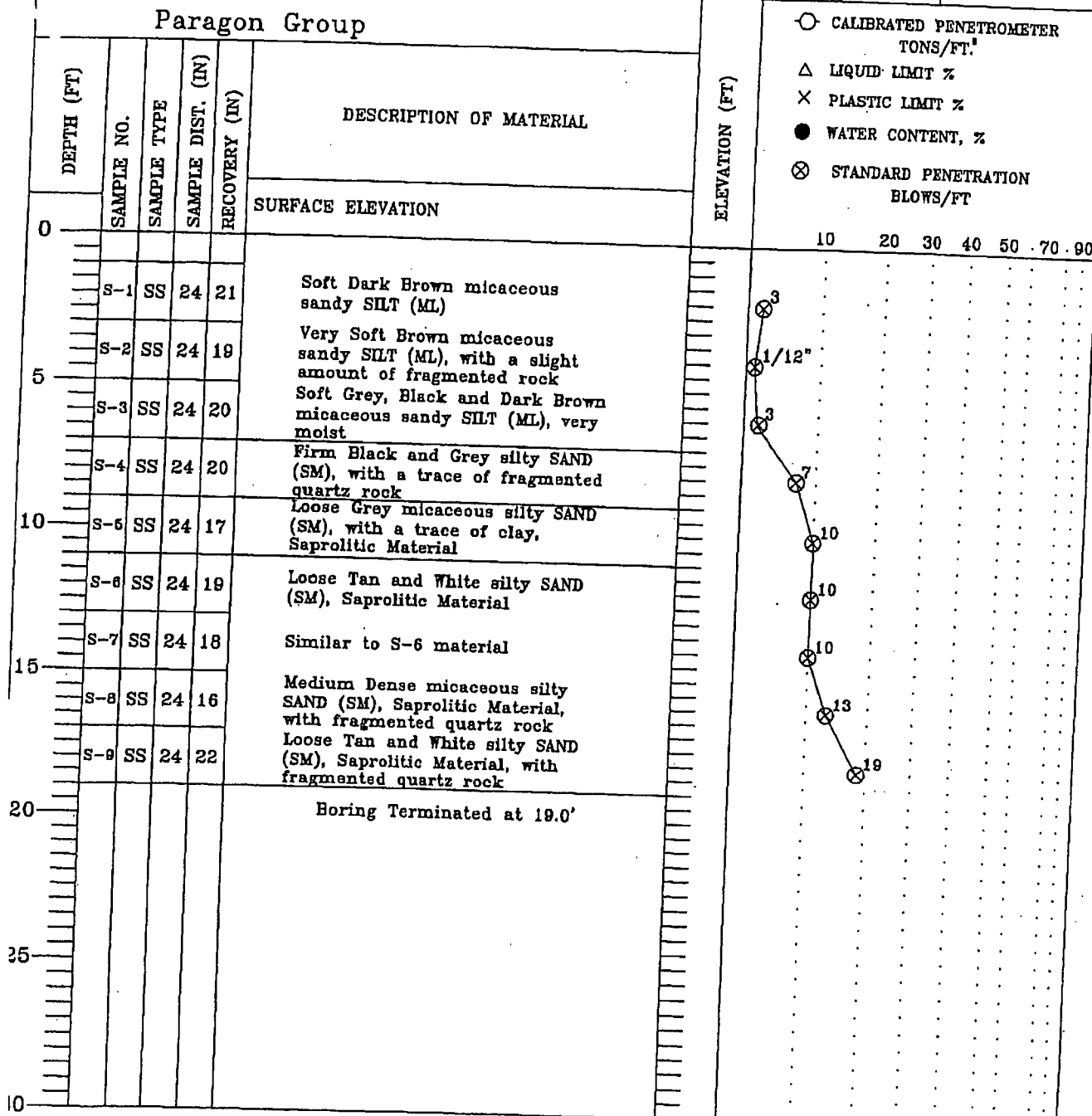
ALPHA-027

PROJECT NAME Jasmine Cove Lot 31		JOB # 5270.02	BORING # B - 1	SHEET 1 OF 1	ALPHA Environmental Sciences, Inc.
SITE LOCATION Lake Keowee, SC		DESIGNER			
CLIENT Paragon Group					

DEPTH (FT)	SAMPLE NO.	SAMPLE TYPE	SAMPLE DIST. (IN)	RECOVERY (IN)	DESCRIPTION OF MATERIAL	ELEVATION (FT)	TESTS
0					SURFACE ELEVATION		○ CALIBRATED PENETROMETER TONS/FT. ² △ LIQUID LIMIT % × PLASTIC LIMIT % ● WATER CONTENT, % ⊗ STANDARD PENETRATION BLOWS/FT
							10 20 30 40 50 60 70 80
	S-1	SS	24	20	Very Loose Dark Brown micaceous silty SAND (SM), moist		
	S-2	SS	24	19	Loose Dark Brown micaceous silty SAND (SM)		
5	S-3	SS	24	19	Very Loose Grey Brown micaceous silty SAND (SM)		
	S-4	SS	24	21	Similar to S-3 material, with a trace of fragmented rock		
10	S-5	SS	24	16	Soft White and Brown sandy SILT (ML), with fragmented rock		
	S-6	SS	24	20	Loose White and Light Brown silty SAND (SM), with fragmented rock		
	S-7	SS	24	18	Similar to S-6 material		
15	S-8	SS	24	18	Similar to S-7 material, darker		
	S-9	SS	24	21	Stiff White and Light Brown sandy SILT (ML), with fragmented rock		
20	S-10	SS	24	21	Similar to S-7 material, darker, with layers of quartz rock		
					Boring Terminated at 21.0'		
25							
30							
35							
40							
45							
50							
55							
60							
65							
70							
75							
80							
85							
90							

THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL TYPES, IN-SITU THE TRANSITION MAY BE GRADUAL			
AFTER LEVEL @ T.O.B.	N.A.	▽	BORING STARTED 5/25/05
At end LEVEL @ 24 HRS.	5.5'	▽	BORING COMPLETED 5/25/05
Ave IN DEPTH @ 24 HRS.	N.A.		LOGGED BY: JS RIG: SIMCO FOREMAN: BF DRILLING METHOD: HSA

PROJECT NAME Jasmine Cove Lot 31		JOB # 5270.02	BORING # B - 2	SHEET 1 OF 1	ALPHA Environmental Sciences, Inc.
SITE LOCATION Lake Keowee, SC		DESIGNER			
CLIENT Paragon Group					



THE STRATIFICATION LINES REPRESENT THE APPROXIMATE BOUNDARY LINES BETWEEN SOIL TYPES, IN-SITU THE TRANSITION MAY BE GRADUAL					
AT THE LEVEL @ T.O.B.	N.A.	▽	BORING STARTED	5/25/05	
AT THE LEVEL @ 24 HRS.	5.5'	▽	BORING COMPLETED	5/25/05	LOGGED BY: JS
AT THE LEVEL @ 24 HRS.	N.A.		RIG: SIMCO	FOREMAN: BF	DRILLING METHOD: HSA

From: Tom Salisbury
To: Scott Beville;
cc: Brad Childs;
Subject: Jasmine Cove Lot 31- Dick Rockwell
Date: Friday, June 03, 2005 2:18:05 PM

Scott,

Dick Rockwell bought this lot earlier this year and has been working with Larry Hutchinson for ideas about building a home. Larry gave him a guy to have a tree and topo survey done. The surveyor recommended that someone with more expertise take a look at this lot because he was concerned about being able to build on this lot. It looks like the land has failed at some point towards the lake. So, Larry found a hired a geologist for Dick for about \$2,800.00 to look at the lot and make sure it was suitable to build their home. I have attached the report from the geologist. Dick has already sent us one referral who bought lot 29 in Azalea Ridge and really wants to build a home here in the next 12 months. He has not told the Strachans about the geologist's report because he wants them to be here. He is coming down on June 18th with the Strachans for 3-4 days. Larry mentioned this to Jim Anthony recently, and Jim said that he would buy it back or allow them to trade to into something comparable. Lets talk about this soon. He is concerned and wants to be apart of The Cliffs for a long time.

Tom Salisbury
Sales Executive
The Cliffs Communities
800-992-8068 x1915
cell-864-270-6800
tsalisbury@cliffscommunities.com
www.cliffscommunities.com

Cheryl Miller
Sales Assistant
800-992-8068 x1914
cmiller@cliffscommunities.com



CLIFFS00732

From: Tom Salisbury
To: Scott Beville
Subject: RE: Jasmine Cove Lot 31- Dick Rockwell
Date: Saturday, June 04, 2005 9:40:32 AM

Scott,
If they can not find a lot that they like, can they trade into a lot of lesser value and make up the difference or buy a second lot to make up the difference in KFS or another lake community.
Tom

-----Original Message-----

From: Scott Beville
Sent: Friday, June 03, 2005 2:49 PM
To: Tom Salisbury
Subject: Re: Jasmine Cove Lot 31- Dick Rockwell

I talked with Jim and we will trade Mr. Rockwell into a lot of equal (or greater) value at Falls South. See if you can make this happen and let me know.

-----Original Message-----

From: Tom Salisbury <tsalisbury@cliffscommunities.com>
To: Scott Beville <sbeville@cliffscommunities.com>
CC: Brad Childs <bchilds@cliffscommunities.com>
Sent: Fri Jun 03 14:18:05 2005
Subject: Jasmine Cove Lot 31- Dick Rockwell

Scott,

Dick Rockwell bought this lot earlier this year and has been working with Larry Hutchinson for ideas about building a home. Larry gave him a guy to have a tree and topo survey done. The surveyor recommended that someone with more expertise take a look at this lot because he was concerned about being able to build on this lot. It looks like the land has failed at some point towards the lake. So, Larry found a hired a geologist for Dick for about \$2,800.00 to look at the lot and make sure it was suitable to build their home. I have attached the report from the geologist. Dick has already sent us one referral who bought lot 29 in Azalea Ridge and really wants to build a home here in the next 12 months. He has not told the Strachans about the geologist's report because he wants them to be here. He is coming down on June 18th with the Strachans for 3-4 days. Larry mentioned this to Jim Anthony recently, and Jim said that he would buy it

From: Brandon Smith
To: Scott Beville
Subject: Re: Jasmine Cove Lot 31- Dick Rockwell
Date: Friday, June 03, 2005 4:30:41 PM

I will check the other lots.
It will cost 49,000 dollars to rip rap and reclaim the entire 620' on JC 30.
Thanks,
Brandon

-----Original Message-----
From: Scott Beville <sbeville@cliffscommunities.com>
To: Brandon Smith <bsmith@cliffscommunities.com>
Sent: Fri Jun 03 15:03:12 2005
Subject: Fw: Jasmine Cove Lot 31- Dick Rockwell

Could you check these other lots out also?

-----Original Message-----
From: Tom Sallsbury <tsallsbury@cliffscommunities.com>
To: Scott Beville <sbeville@cliffscommunities.com>
Sent: Fri Jun 03 14:57:32 2005
Subject: RE: Jasmine Cove Lot 31- Dick Rockwell

Scott,
Since he bought in January, which pricing do I use. I think it might be a good idea to have someone check out the lots JC-31&32 and the lots in Emerald Bay 35-39. They are falling into the lake pretty bad lately and they represent a huge investment for Jim.
Tom

-----Original Message-----
From: Scott Beville
Sent: Friday, June 03, 2005 2:49 PM
To: Tom Sallsbury
Subject: Re: Jasmine Cove Lot 31- Dick Rockwell

I talked with Jim and we will trade Mr. Rockwell into a lot of equal (or greater) value at Falls South. See if you can make this happen and let me know.

From: Brandon Smith
To: Tom Salisbury;
cc: Scott Beville;
Subject: JC 31
Date: Wednesday, June 08, 2005 5:47:26 PM.

Tom,

What is the status on JC 31? I am going to have a crew on lots 30, 32, 34 and 35. If we are getting 31 back, I will clean it up while we are there.

Brandon

CLIFFS00723

From: Cheryl Miller
To: Tom Salisbury
cc: Scott Beville
Subject: FW: Core Samples
Date: Wednesday, June 15, 2005 9:24:10 AM

Regarding JC 31.... (I haven't responded to this e-mail)

-----Original Message-----

From: Christine Rockwell [<mailto:rocky2214@comcast.net>]
Sent: Tuesday, June 14, 2005 5:29 PM
To: Cheryl Miller
Subject: Re: Core Samples

Dear Cheryl,

I spoke with Tom today and he assured me the Cliffs will do their best to work with me regarding this issue. I am willing to give permission to further test the soil on Jasmine Cove 31. My only concern is that if the soil people have conflicting opinions I would expect to still have the option to trade lots. Would you please email me with the guarantee that my options will remain open.

Thanks, Dick Rockwell

On Jun 14, 2005, at 1:30 PM, Cheryl Miller wrote:

> Hello Dick-
>
> Our development staff is prepared to do core samples on Jasmine Cove
> 31 to assess the damage, if any, on the lot. All we need is your
> permission. If you would write me back saying we have the permission
> to go forward, that's all we need.
>
> Thanks-
> Cheryl
>
>
>
> Cheryl Miller
> The Cliffs Communities
> Executive Sales Assistant

> 800-992-8068 x1914
>
> Check out our websites!
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> Tom Salisbury
> Sales Executive
> 800-992-8068 x1915
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THE CLIFFS COMMUNITIES REAL ESTATE SALE AND PURCHASE AGREEMENT

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT (the "Agreement") made by and between the below-named seller (the "Seller") identified on the Seller's signature page below (the "Seller"), whose mailing address is as set forth on page 6, and the below-named purchaser (the "Purchaser") identified on the Purchaser's signature page below.

Part I. Identifications

A. The Lot and What is Included in Price. The property to be purchased (the "Lot") is located in Section JC, Lot 32, Cliffs at Keowee Falls South

The Lot is listed for sale for \$ 1,140,000.00

The purchase of the Lot does not include a membership in the Golf and Country Club (the "Club"), which is reserved solely to its members in accordance with the use rights conferred by the Club Membership Plan for the categories and classifications of membership offered. Seller does not operate the Club. The Club is operated by The Cliffs Golf & Country Club, Inc. Seller will, however, discount the list price of the Lot by \$35,000 if Purchaser agrees to acquire a membership, and Purchaser will pay that amount at Closing toward a membership.

Check one of the following:

☒ If checked and initialed, Purchaser wishes to acquire a membership in the Club, either a Cliffs Family Membership or a Cliffs Golf Membership, and wishes to receive a \$35,000 discount and apply it toward the required membership deposit, and has attached hereto a signed Club Membership Addendum. While Purchaser is guaranteed the availability of a golf membership under the Membership Plan only if Purchaser acquires one within 30 days following Purchaser's Closing. Purchaser will receive the discount only if the membership is acquired at the Closing. If this paragraph is checked and initialed, the Purchase Price in Paragraph B below is net of the discount.

☐ If checked and initialed, Purchaser does not wish to acquire a membership in the Club at this time. Purchaser understands that membership is subject to availability at the time Purchaser may wish to acquire one, and is not guaranteed. Purchaser will NOT receive any discount off the listed Purchase Price because Purchaser elects not to receive a membership.

Payment of Purchase Price. The "Purchase Price" is calculated and payable as follows:

Total Purchase Price:	\$ <u>1,105,000.00</u>
(i) Discount Applied to Membership Deposit. If checked and initialed, Purchaser has checked the first box in A above and wishes to acquire Full Family Membership privileges, paying at the Closing \$35,000.	\$ <u>35,000.00</u>
(ii) Golf Membership, Initiation Deposit Add-on. If checked and initialed, Purchaser has checked the first box in A above and wishes to upgrade to a Golf Membership by paying at the Closing an additional sum of \$40,000.	\$ <u>40,000.00</u>
(iii) SUB-TOTAL: Purchase Price of Lot plus Membership Deposit Due at Closing	\$ <u>1,180,000.00</u>
(iv) Initial Earnest Money Deposit. An Earnest Money Deposit paid to Escrow Agent herewith	\$ <u>5,000.00</u>
(v) Additional Deposit Due. An additional Earnest Money Deposit due Escrow Agent within <u>0</u> days of the Effective Date hereof.	\$ <u>0.00</u>
(vi) Balance at Closing. The balance required at Closing in cash or certified funds (not including all of Purchaser's closing costs, prepaids, and escrow deposits)	\$ <u>1,175,000.00</u>

- C. Escrow Agent. The "Escrow Agent" is Olson, Smith, Jordan & Cox, Attorneys at Law, whose address is set forth in Section 9.4 of Part II below; and all deposits to Escrow Agent should be made payable to Olson, Smith, Jordan & Cox Escrow Account.

Part II.
Terms and Conditions

For and in consideration of the Purchase Price set forth in Part I hereof and the mutual promises contained in this Agreement, Purchaser agrees to buy and Seller agrees to sell the Lot, conditioned upon there having not been a sale to a third party prior to the receipt of this Agreement by Seller, properly executed by Purchaser, together with the Earnest Money Deposit as provided in Part I, and execution hereof by Seller.

1. The Purchase Price. Purchaser will pay the Purchase Price of the Lot set forth in Paragraph B of Part I of this Agreement.

1.1 Earnest Money Deposit. The Escrow Agent will receive the Earnest Money Deposit set forth in Paragraph B of Part I, and will deposit said sums in its non-interest bearing escrow account, to be held by the Escrow Agent as the Earnest Money Deposit to be disbursed in accordance with this Part II. In the event of a termination of this Agreement under this Part II, except in the event of Purchaser's default (in which event the Earnest Money Deposit will be paid over to Seller as herein provided), all of the Earnest Money Deposit will be refunded to Purchaser without interest.

1.2 Payments at Closing. The Purchase Price, together with all of Purchaser's Closing costs, prepaids, and Closing escrow deposits, less the sum of Purchaser's Earnest Money Deposit, will be paid by Purchaser in cash or by certified, collected funds at the Closing hereinafter referred to.

2. Financing

2.1 No Financing Contingency. Purchaser acknowledges that this Agreement is not contingent upon Purchaser obtaining financing for the purchase of the Property. Seller makes no representations as to the availability or terms of financing, and the duties of Purchaser and Seller hereunder are not contingent upon Purchaser obtaining financing, or obtaining financing with any specific terms or conditions.

2.2 Purchaser's Responsibility. Purchaser is responsible for obtaining desired financing for the purchase of the Lot. By suggesting a source of financing and/or providing the application for such financing, Seller will not be deemed to have assumed any responsibility for obtaining such financing for Purchaser or to represent or warrant that such financing will be available to Purchaser. Purchaser represents that Purchaser has the financial means to purchase the Lot. Purchaser shall fully cooperate with Seller in procuring any evidence Seller reasonably requests that Purchaser has the financial means to pay the balance of the Purchase Price. Purchaser hereby gives Seller or Seller's designated agent permission to obtain one or more credit reports on Purchaser prior to the Closing Date. If Purchaser elects to obtain financing for the purchase of the Lot, Purchaser shall promptly apply for such financing and promptly deliver a loan commitment from an institutional lender to Seller. If Purchaser is not financing the purchase of the Lot, Purchaser shall promptly deliver account verifications to Seller upon Seller's request. If Seller determines, at any time prior to the Closing Date, in Seller's sole but reasonable discretion, that it is unlikely that Purchaser will be able to pay the balance of the Purchase Price on the Closing Date, Seller may terminate this transaction, and the Earnest Money Deposit shall be returned to Purchaser.

3. Completion of Infrastructure Improvements

3.1 Completion of Infrastructure. Seller agrees to provide roads and water service, and public utilities will provide electrical service and telephone service at no cost to Purchaser, as outlined in our Department of Housing and Urban Development ("HUD") Property Report made effective May 3, 2004, which is incorporated herein and made a part hereof by this reference. In all events, Seller agrees that Seller will complete the water and road infrastructure to Purchaser's Lot within the periods of time set forth in the Property Report, or, (a), in the case of water supply installation, on or before issuance of a certificate of occupancy for Purchaser's residence; and (b), in the case of paved roads to Purchaser's Lot, within sixty (60) days following Purchaser's notice to Seller that Purchaser has received a final certificate of occupancy for Purchaser's residence, whichever respective date occurs first, Seller will, at Seller's sole cost and

expense, provide on-site water for construction of Purchaser's residence if water service is not then available at Purchaser's Lot. Seller's obligation to complete the roads, water service, and electrical and telephone services within the time provided in the HUD Property Report is subject only to circumstances beyond Seller's control, such as acts of God, strikes, material shortages and other occurrences which are sufficient to constitute impossibility of performance under South Carolina law. In the event of such occurrences, Seller will proceed to completion within a reasonable time after the abatement of the event causing delay. In case the survey by which Seller will convey the Lot to Purchaser required bonding pursuant to Oconee County ordinance, Seller has posted a cash or surety bond or an irrevocable letter of credit issued on Seller's behalf to Oconee County, South Carolina, guaranteeing the completion of those roads and other infrastructure requiring bonding. If the approval of the survey by which Seller will convey the Lot to Purchaser did not require bonding by Oconee County ordinance, Seller has established one or more completion escrow accounts to assure completion of the water service and roads to the lots shown on that survey. Seller reserves the right to furnish Purchaser temporary easements for ingress and egress during development, and upon completion of permanent roads or rights-of-way providing ingress and egress, the temporary easements will automatically expire.

(a) **Installation of Infrastructure to Boundary of Lot.** With respect to completion of installation of roads and water service, as well as the installation of electrical and telephone services, Seller covenants these utilities and improvements will be brought to the boundary of Purchaser's Lot, not within the Lot lines to Purchaser's home. Therefore, all costs to connect such utilities or improvements to Purchaser's home will be Purchaser's sole obligation, and the electric utility company charges a set-up fee in conjunction with setting utility meters.

(b) **Septic System.** Purchaser will be responsible for installing and maintaining a septic tank system on the Lot when a dwelling is built on it. Purchaser will be required to make all arrangements for the permitting, governmental approval and installation of a septic tank system. In the event the Lot has not been previously tested and approved by the South Carolina Department of Health and Environmental Control for the installation of an individual sewage disposal system, and if Seller is then not able to resolve the issue within sixty (60) days following notice thereof, Seller will refund to Purchaser the Purchase Price and Purchaser will convey the Lot back to Seller, and thereafter, each of Seller and Purchaser will be fully released from any further liability to the other.

3.2 Completion of Other Infrastructure; Conveyance or Turnover to a Property Owners' Association. In addition to the infrastructure we are obligated to complete, as provided in Section 3.1 above, Seller agrees to complete construction and installation of approximately 25 miles of roads, including an overpass, constructed to governmentally-approved standards; drainage systems; water system storage tanks and water delivery booster stations, as well as pipes leading to Purchaser's Lot; and main electrical power feeds to the project, which will allow those public utilities serving Purchaser's Lot to extend service to the Lot; and manned and unmanned gate houses accessing the project; and approximately 10 miles of hiking and nature trails. The utility facilities will be turned over to the applicable utility company upon completion of construction and issuance of operating permits therefore, if any, and the constructed roads, drainage systems, gates and gatehouses, and hiking and nature trails described in this Section 3.2 will be conveyed or turned over to the Keowee Falls South Owners' Association on or before the expiration of two years from completion of construction, as set forth in the Declaration of Covenants, Conditions and Restrictions for the Cliffs at Keowee Falls South; provided, however, the obligation for maintenance, repair and replacement of the Common Areas will become the responsibility of the Keowee Falls South Owners' Association and its Members the date all required certificates or permits of occupancy or use are issued therefore, or the date such improvements may be used in the manner and for the purposes for which they are constructed, whichever is earlier.

4. Recorded Covenants.

4.1 The Declaration of Covenants & Property Owners' Association. The Lot will be conveyed subject to the Declaration of Covenants, Conditions and Restrictions for the Cliffs at Keowee Falls South recorded in the Office of Register of Deeds for Oconee County, as the same may be amended from time to time (herein, sometimes referred to as the "Declaration"), which includes the obligation that Purchaser pay regular and special assessments when levied for the common facilities and services of the Keowee Falls South Owners' Association (herein, sometimes referred to as the "Association") commencing with the date Seller conveys title to the Lot. Purchaser hereby acknowledges having received a copy of the Declaration, with appended Bylaws of the Association.

4.2 Architectural Review. Purchaser hereby acknowledges that any improvement to the Lot, including landscape improvements, will be subject to the architectural guidelines established, from time to time, pursuant to the

Declaration, and the prior written approval thereof by the architectural review committee established thereunder. Purchaser and Purchaser's builder will be solely responsible for the completion of construction of all improvements on the Lot and for proper drainage during and after house construction, as well as the published fee payable to architectural review committee for review and approval, prior to construction, of all construction and design plans with respect to any improvements to be placed on Purchaser's Lot. Purchaser will be responsible for paying a fee to the Architectural Review Committee for review and approval, prior to construction, of all construction and design plans with respect to any improvements to be placed on the Lot. Either Purchaser or Purchaser's contractor will also be responsible for posting a bond prior to commencing construction.

4.3 **Size of Residence.** Purchaser also acknowledges that the Declaration requires minimum square footages for residences constructed within Keowee Falls South based upon the area in which Purchaser's Lot is located. See Declaration and applicable amendments, if any, with respect to the application of such minimums.

5. **The Golf & Country Club.** Purchaser acknowledges the plan of development for the various Cliffs communities includes the Club's operation of various commercial, private golf and country club facilities. Purchaser further acknowledges that the Club's recreational facilities are operated by The Cliffs Golf & Country Club, Inc., a related third party of Seller, as a commercial business, and not as a non-profit enterprise, that Purchaser will have a license to use the facilities as herein described if Purchaser acquires a membership to do so, and that neither Purchaser nor any property owner association of which Purchaser may be a member has or will receive any ownership interest in the Club's facilities by virtue of Purchaser's acquisition of the Lot or membership in any such property owner association. The Club may, but will not be required to, add additional recreational facilities in the future. The Club operates and offers membership opportunities pursuant to a published Membership Plan, which the Club may supplement, amend, delete and change in its sole discretion at any time. If Purchaser wishes to become a member, Purchaser should take the time to read the Membership Plan prior to acquiring a membership. Purchaser acknowledges receiving a summary of The Cliffs Club membership opportunities. Such information is summary only, and Purchaser should refer to the Membership Plan for the actual terms and condition applicable to membership in the Club.

6. **Closing.** The sale and purchase contemplated by this Agreement will be closed by delivery to Purchaser of a properly executed and acknowledged general warranty deed, in proper, recordable form, in exchange for payment to Seller of the Purchase Price as hereinabove provided. Notwithstanding any provisions herein to the contrary, the legal description for Purchaser's Lot will be in accordance with and based upon the approved, bonded plat for the subdivision of which the Lot is a part (the "Plat").

6.1 **Deed to Lot.** The general warranty deed will convey to Purchaser a good and marketable or insurable (at regular rates), fee simple title to the Lot subject to matters of record, including, but not limited to, taxes and assessments not yet due, all special easements, restrictions and conditions shown and noted on the Plat, licenses and easements for utilities serving the property, the Declaration and the Bylaws of the Association, applicable ordinances and all other easements, rights-of-way, restrictive or utility easements, restrictions, covenants, affirmative obligations and conditions of record in the office of Register of Deeds.

If a title insurance company which is a member of the American Land Title Association will issue a binder to issue an owner's title insurance policy at Purchaser's expense, insuring the title to the Lot at regular rates in an amount equal to the Purchase Price (which owner's title insurance policy will have as exceptions only standard exceptions and those exceptions as are herein agreed and set forth), Seller will be deemed to be able to convey a marketable title in fee simple. If, at the Closing, Seller cannot deliver a general warranty deed to the Lot subject to the exceptions above, Seller will have the right to extend the Closing for an additional thirty (30) days to comply with the terms of the title policy.

6.2 **Closing Date and Time.** Closing will be conducted in the manner provided hereinafter, on the "Closing Date" set forth on Purchaser's signature page below, at the location set forth in Section 6.3 and at a time selected by Seller. Provided that Seller has fulfilled all of its obligations to Purchaser pursuant to this Agreement, Purchaser's failure or refusal to close at the time, place and date provided may, at Seller's option, be deemed a default by Purchaser.

6.3 **Closing Location.** Tender of the deed by Seller and the performance of Seller's requirements will be made at the Closing location designated by Seller on or before 10 days prior to the scheduled Closing. In no event will delivery of the deed exceed one hundred eighty (180) days from the date of Purchaser's execution of this Agreement. The Closing may take place in escrow, with Purchaser participating by making all deliveries required to be made by mail to

the Closing attorney prior to the Closing date, instead of in person; provided that all funds to be received from Purchaser on the Closing date, whether in person or by mail, must be in cash or certified, collected funds.

6.4 Closing Costs. Seller will pay for the preparation of the deed and the deed transfer fee required to record the deed, and Seller's attorney's fees. Purchaser shall pay for any and all other Closing costs, including but not limited to, loan service and origination fees, credit report and underwriting fees, appraisal expenses, recording fees, prepaid items, and title insurance premiums, and Purchaser's attorney's fees. A working capital contribution equal to two-months' Association assessments shall be paid to the Association, as provided in the Declaration.

(a) Prorations at Closing. Taxes and the Association's assessments will be prorated between Seller and Purchaser as of the date of closing, based upon information then available. Seller and Purchaser agree to adjust any such prorations following the Closing, as may be required by receipt of final bills therefor.

7. Defaults.

7.1 Default by Purchaser. In the event Purchaser defaults in the performance of any of Purchaser's obligations pursuant to this Agreement and Seller is not in default, Seller will have the right to specifically enforce this Agreement according to its terms and/or to pursue any and all other remedies available to Seller at law or in equity, or Seller will, at Seller's election, be released from any further obligations to Purchaser pursuant to this Agreement and in such event will be entitled to retain the Earnest Money Deposit (but not exceeding 10% of the Purchase Price) as agreed liquidated damages, it being the intention and agreement of Seller and Purchaser that the amount of such Earnest Money Deposit will act as a fair measure of compensation for actual damages incurred by Seller as a result of Purchaser's default. However, notwithstanding the provisions of this Section 7.1, Seller expressly agrees that Seller will give Purchaser written notification of Purchaser's default or breach of contract and the opportunity to correct the default or breach within twenty (20) days following the receipt of Seller's notice.

7.2 Default by Seller. If Seller defaults in the performance of any of Seller's obligations as set forth in this Agreement and such default is not cured within twenty (20) days after written notice of default is given to Purchaser by Seller, Purchaser's sole remedy will be to rescind this Agreement and receive the immediate return of Purchaser's Earnest Money Deposit, pay Purchaser's reasonable attorney's fees for any title examination by Purchaser's attorney and for such other reasonable closing expenses which Seller agrees, in its sole discretion, to pay; provided, however, that in the event of a non-material breach of any term or condition of this Agreement, Purchaser's remedies will not include termination of this Agreement.

8. Real Estate Commission. It is understood that Seller has by separate agreement appointed Cliffs Real Estate, Inc. as the exclusive real estate agent for sales of Lots within Cliffs at Keowee Falls South. Purchaser warrants and represents that, except as set forth to the contrary on the signature page of Purchaser, Purchaser has not dealt with any other real estate agent who may be entitled to claim a real estate commission in this transaction.

9. Miscellaneous.

9.1 Seller's Reserved Easements; Construction Setbacks. Purchaser acknowledges that Seller reserves the right to grant and/or reserve, in its reasonable discretion, various easements for ingress and egress, maintenance and use on and over the Lot and the remainder of the Cliffs at Keowee Falls South development. No such easement will materially reduce the value or the usefulness of Purchaser's Lot. Furthermore, Purchaser's Lot is subject to front, rear and side lot line easements shown on the Plat and/or set forth in the Declaration, which also constitute construction setback limits.

9.2 Seller's Adjacent Development. Except as otherwise provided herein and notwithstanding any statements contained in this Agreement or otherwise to the contrary, Seller does not warrant in any manner whatsoever the development of any other properties which are owned by Seller in Pickens County or Oconee County, South Carolina, whether or not in the general vicinity of Purchaser's Lot, and Seller reserves the right to develop such properties, if developed, in any manner whatsoever without interference from any subsequent grantee of the Purchaser's Lot, notwithstanding any plans, renderings or drawings which may have been brought to the Purchaser's attention through public zoning hearings, documents filed for zoning purposes, public or private showings or proposed or preliminary development plans or references therein in any recorded covenants. There is no assurance that any facilities or amenities

shown for planning or proposed development purposes will ever be constructed, except only those which Seller herein covenants to complete or which are disclosed to be completed in the HUD Property Report for the Lot.

9.3 **As-is Condition.** Except as otherwise provided herein, Purchaser is purchasing and Seller is selling the Lot in an "AS IS" condition.

9.4 **Notices.** Any and all notices or other communication provided for in this Agreement will be given in writing and delivered by personal delivery or by registered or certified mail, first class postage prepaid, or by facsimile transmission. Any notice mailed in accordance with this Section 9.4 will be deemed received upon actual receipt thereof or after the expiration of five (5) days, whichever is earlier. Notice sent by facsimile transmission will be deemed received on the date of its transmission, provided transmission occurs prior to 5:00 p.m., Eastern Time, and the sender retains proof of its transmittal and receipt without error. Notice will be addressed as follows:

If to Seller: Keowee Falls Investment Group, LLC
301 Beaver Dam Road
Travelers Rest, SC 29690
Attention: Marty Ritsch
FAX: 864-836-8176

If to the Escrow Agent: Olson, Smith, Jordan & Cox
PO Box 1633
Clemson, South Carolina 29633
Attention: Chris Olson, Esq.
FAX: 864-654-3696

Notices, if to Purchaser: As set forth on Purchaser's signature page of this Agreement

The notice requirements of this Section 9.4 do not apply to the Purchaser's right to cancel this Agreement as provided on page 8 below and in accordance with the Interstate Land Sales Full Disclosure Act.

9.5 **Purchaser's Acknowledgment Concerning Representations.** Purchaser understands that any sales associate or other person representing Seller in this transaction does not have the authority to make any statements in conflict with or in addition to the information contained in this Agreement, and any other documents received from Seller, including without limitation, any representation made regarding the resale of Purchaser's Lot or its rental or investment potential, and that Seller, for itself and in behalf of any such agent, specifically disclaims any responsibility for such statements. Further, if any such statements were made, Purchaser acknowledges that by execution of this Agreement, Purchaser affirms that Purchaser has not relied upon any such statements, if any, and waives any rights that Purchaser might have as a result of such statements unless they are incorporated in this Agreement.

9.6 **Documents Received By Purchaser.** Purchaser further acknowledges having received and reviewed prior to the execution of this Agreement the following:

- (a) Copy of the Declaration, as supplemented and amended to the date hereof, together with appended By-Laws of the Association.
- (b) Copy of Plat.
- (c) Design and Construction Guidelines.
- (d) The checked documents or instruments listed on the Purchaser's signature page below.

9.7 **Time is of the essence.** It is expressly understood and agreed that **TIME IS OF THE ESSENCE** as to all obligations hereunder, including the Purchaser obligation to obtain a mortgage commitment and provide the Lender with all information requested if Purchaser is acquiring financing, even though such financing is not a contingency hereof.

9.8 Entire Agreement. Seller and Purchaser covenant and agree with each other that this written instrument, executed in duplicate originals, expresses the entire agreement between them and there is no other agreement, oral or otherwise, varying or modifying the terms of this Agreement.

9.9 Modification of Agreement. This Agreement may not be otherwise changed or modified, in whole or in part, by any subsequent written instrument executed by both Seller and Purchaser.

9.10 Interpretation Presumption. Seller and Purchaser represent and warrant to one another that both have had the opportunity to consult with legal counsel or otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

9.11 Binding Effect; Assignment. This Agreement is binding upon the parties' respective heirs, devisees, personal representatives, successors and assigns; provided however, this Agreement and any of Purchaser's rights hereunder may not be assigned by Purchaser.

9.12 Resale Or Exchange Of Property. Seller has no program or provision for the sale or exchange of any Lots in the Cliffs at Keowee Falls South. There is no program, which assures that Purchaser will be able to exchange the Lot for other property.

9.13 Unenforceable Provisions. Should any provision of this Agreement be void or become unenforceable at law or in equity, the remaining provisions will remain in full force and effect and will not in any manner be thereby affected or impaired.

9.14 Survival. This Agreement and all the terms and conditions hereof will survive the Closing of the transaction contemplated hereby and will thereafter continue to bind the parties to this Agreement.

9.15 Counterpart Execution of Agreement. This Agreement may be signed by each of the parties upon a separate copy, and in such case one counterpart of this Agreement will consist of enough of such copies to reflect the signature of each. For purposes of this Agreement, a telecopy of an executed counterpart will constitute an original. Any person delivering an executed counterpart of this Agreement by telecopy will also deliver an original, executed counterpart of this Agreement, but the failure to deliver an original, executed counterpart will not affect the validity of this Agreement. This Agreement may also be executed in two or more counterparts, each of which will be deemed an original; but for purposes of proving the Agreement, it will not be necessary to produce or account for more than one such counterpart.

9.16 Effective Date. This Agreement will become effective, and the term "Effective Date" herein will mean, the last date executed by a party to be bound hereby.

9.17 Receipt of Agency Disclosure. RECEIPT AND EXPLANATION OF THE AGENCY DISCLOSURE FORM IS HEREBY ACKNOWLEDGED BY PURCHASER'S INITIALS BELOW THIS SECTION AND BY PURCHASER'S EXECUTION OF THIS AGREEMENT.

PURCHASER'S INITIALS HERE TO EVIDENCE HAVING RECEIVED THE AGENCY DISCLOSURE FORM

REFERENCED ABOVE


CER
For Purchaser

(BALANCE OF PAGE PURPOSELY BLANK)

9.8 Entire Agreement. Seller and Purchaser covenant and agree with each other that this written instrument, executed in duplicate originals, expresses the entire agreement between them and there is no other agreement, oral or otherwise, varying or modifying the terms of this Agreement.

9.9 Modification of Agreement. This Agreement may not be otherwise changed or modified, absent some subsequent written instrument executed by both Seller and Purchaser.

9.10 Interpretation Presumption. Seller and Purchaser represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

9.11 Binding Effect; Assignment. This Agreement is binding upon the parties' respective heirs, devisees, personal representatives, successors and assigns; provided however, this Agreement and any of Purchaser's rights hereunder may not be assigned by Purchaser.

9.12 Resale Or Exchange Of Property. Seller has no program or provision for the sale or exchange of any Lots in the Cliffs at Keowee Falls South. There is no program, which assures that Purchaser will be able to exchange the Lot for other property.

9.13 Unenforceable Provisions. Should any provision of this Agreement be void or become unenforceable at law or in equity, the remaining provisions will remain in full force and effect and will not in any manner be thereby affected or impaired.

9.14 Survival. This Agreement and all the terms and conditions hereof will survive the Closing of the transaction contemplated hereby and will thereafter continue to bind the parties to this Agreement.

9.15 Counterpart Execution of Agreement. This Agreement may be signed by each of the parties upon a separate copy, and in such case one counterpart of this Agreement will consist of enough of such copies to reflect the signature of each. For purposes of this Agreement, a telecopy of an executed counterpart will constitute an original. Any person delivering an executed counterpart of this Agreement by telecopy will also deliver an original, executed counterpart of this Agreement, but the failure to deliver an original, executed counterpart will not affect the validity of this Agreement. This Agreement may also be executed in two or more counterparts, each of which will be deemed an original; but for purposes of proving the Agreement, it will not be necessary to produce or account for more than one such counterpart.

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PURCHASER'S INITIALS HERE TO EVIDENCE HAVING RECEIVED THE AGENCY DISCLOSURE FORM REFERENCED ABOVE

law or in equity, the remaining provisions will remain in full force and effect and will not in any manner be thereby affected or impaired.

For Purchaser

9.14 (BALANCE OF PAGE PURPOSELY BLANK)

9.15 separate copy, and in such case one counterpart of this Agreement will consist of enough of such copies to reflect the signature of each. For purposes of this Agreement, a telecopy of an executed counterpart will constitute an original. Any person delivering an executed counterpart of this Agreement by telecopy will also deliver an original, executed counterpart of this Agreement, but the failure to deliver an original, executed counterpart will not affect the validity of this Agreement. This Agreement may also be executed in two or more counterparts, each of which will be deemed an original; but for purposes of proving the Agreement, it will not be necessary to produce or account for more than one such counterpart.

JUN-21-2005 11:06

RAVEY GREEN WAHLEN

P.05/08

Additional Documents Received By Purchaser. Pursuant to Section 9.6, the Purchaser acknowledges having received and reviewed prior to the execution of this Agreement the following (if none, leave blank):

☒ HUD
☒ CCR
☒ PLATT

PURCHASER'S INITIAL HERE TO EVIDENCE HAVING RECEIVED THE DOCUMENTS LISTED ABOVE

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU HAVE RECEIVED A FULLY SIGNED COPY OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

IN WITNESS WHEREOF, Purchaser and the Seller have each caused this instrument to be executed on the day and year set forth below their respective names.

WITNESS:

Purchaser:

[Signature]
(Signature)

(Signature)

6. 20 2005
Month Day Year

The "Closing Date" is: July 20, 2005

YOU HAVE BEEN ADVISED OF THE RIGHTS AND OBLIGATIONS OF A PURCHASER OF REAL ESTATE.

Name: Courtney Rountree
Address: 604 A Tim Valley Road
DEPARTMENT OF
THE CONTRACT
CANCELS AT

Telephone (Work): _____
Telephone (Home): _____
FAX Number: _____
E-mail Address: _____

Name in Which to Title Property: Kevin R. McCarthy & Courtney E. Rountree
(Insert the name or names to which Purchaser wishes title to the Lot to be deeded)

WITNESS:
Name of Real Estate Agent(s): Jay Scott
(Insert the name or names of both the Cliffs Real Estate agent representing Seller and any outside agent representing Purchaser)

(BALANCE OF PAGE PURPOSELY BLANK)

The "Closing Date" is: July 20, 2005

Page 8

v. 04/14/2005

ALL SIGNING
MAY BE

Additional Documents Received By Purchaser. Pursuant to Section 9.6, the Purchaser acknowledges having received and reviewed prior to the execution of this Agreement the following (if none, leave blank):

☒ HUD
☒ CCR
☒ PLATT

PURCHASER'S INITIAL HERE TO EVIDENCE HAVING RECEIVED THE DOCUMENTS LISTED ABOVE

J. Scott
For Purchaser

YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF SALE BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE SEVENTH DAY AFTER YOU HAVE RECEIVED A FULLY SIGNED COPY OF THE CONTRACT OR AGREEMENT.

IF YOU DID NOT RECEIVE A PROPERTY REPORT PREPARED PURSUANT TO THE RULES AND REGULATIONS OF THE OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, IN ADVANCE OF YOUR SIGNING THE CONTRACT OR AGREEMENT, THE CONTRACT OR AGREEMENT OF SALE MAY BE CANCELLED AT YOUR OPTION FOR TWO YEARS FROM THE DATE OF SIGNING.

IN WITNESS WHEREOF, Purchaser and the Seller have each caused this instrument to be executed on the day and year set forth below their respective names.

WITNESS:

Purchaser:

Courtney Rountree
(Signature)

(Signature)

Month

Day

Year

v. 04/14/2005

The "Closing Date" is: July 20, 2005

Print or Type:

Name: Kevin McCarthy

Name: Courtney Rountree

Address: 604 A Tim Valley Road

Courtney Rountree in to

Telephone (Work): (704) 745-1484

Telephone (Home): (704) 819-8749

FAX Number: (704) 382-6538

E-mail Address: c.rountree@bellsouth.net

Name in Which to Title Property: Courtney E. Rountree
(Insert the name or names to which Purchaser wishes title to the Lot to be deeded)

Name of Real Estate Agent(s): Jay Scott
(Insert the name or names of both the Cliff's Real Estate agent representing Seller and any outside agent representing Purchaser)

(BALANCE OF PAGE PURPOSELY BLANK)

Page 8

v. 04/14/2005

JUL 06 05 03:24P

P.2

Seller:

Keowee Falls Investment Group, LLC

By

Its:

TREASURER

07

06

05

Month

Day

Year

Property: Section: Jasmine Cove Lot 32

Lot Purchase

Price: \$ 1,105,000.00

Membership: \$ 75,000.00

Total: \$ 1,180,000.00

(BALANCE OF PAGE PURPOSELY BLANK)



423A

June 22, 2005

Mr. Donald H. Nickell, Jr., P.E.
The Cliffs Communities
301 Beaver Dam Road
Travelers Rest, South Carolina 29690

Reference: Three LOTS
Cliffs at Keowee Falls South
Oconee County, South Carolina
S&ME Proposal No. 05471

Dear Don:

We appreciate the opportunity to submit this proposal for performance of the evaluation of the three lakefront properties at The Cliffs at Keowee Falls South. Our work for the properties will include an exploration of subsurface conditions, analysis, opinions regarding the cause of unusual features on the property and our geotechnical engineering recommendations regarding supporting residential structures. This proposal presents a brief confirmation of our understanding of the project, the exploration work we propose, and our compensation.

The three lots front Lake Keowee. All of the lots slope upward away from the lake at a visually estimated inclination on the order of about 4 horizontal to 1 vertical. It appears that about three sloughs have occurred at the property, approximately paralleling the water surface and the contour of the lots. These surface features are very unique.

We propose to explore the lots with six soil test borings. The borings will be extended to depths of about 15 to 20 feet below the existing ground surface. This data will be supplemented by backhoe excavated test pits. The test pits allow a better visual evaluation of the character, composition, and stratification of the soil strata. The boring data will be evaluated and analyzed by our geotechnical engineering staff. A formal report will be submitted. This report will present the findings of the borings and test pits and our geotechnical engineering opinions

S&ME, Inc.
155 Tradd Street
Spartanburg, South Carolina 29301

(864) 574-2360
(864) 576-8730 fax
(864) 232-8987 Greenville

PLAINTIFF'S
EXHIBIT

F

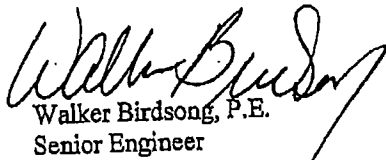
regarding the cause of the surface features and grading and foundation support recommendations for residential structures.

We have calculated our total compensation to be \$3,600.00. This includes the above-described work and four copies of our geotechnical engineering report. We assume that The Cliffs Communities will supply a backhoe for the test pits.

We look forward to continuing to work with the The Cliffs Communities. Two Copies of our Agreement for Services (Form AS-041) are included as part of this proposal. Please review this Agreement, sign them, retain one copy for your file, and return the other copy to us.

Should there be any questions regarding the proposed work or compensation, please contact us.

Sincerely,
S&ME, Inc.


Walker Birdsong, P.E.
Senior Engineer

Mike Revis, P.E.
Project Engineer

WB\DS\tac s\proposals\2005\05471\proposal - 3 lots - cliffs at keowee falls south.doc

Enclosures: Agreement for Services (Form AS-041)

1 suitability. That's the only other thing I can
2 recall involving anything geologic.

3 Q. So when geological questions arise, was S&ME the
4 entity that The Cliffs would refer to?

5 A. Pretty much exclusively, I think. I can't
6 recall when we went to anybody else. Other than
7 we did go to Bunnell-Lammons to put some
8 inclinometers in on the sites in question, here
9 at Jasmine Cove. But the S&ME had a long
10 history with The Cliffs and had done good work
11 and had a very long relationship with The
12 Cliffs. Long before I got there, actually.

13 Q. So is it fair to say that because -- strike
14 that.

15 (Exhibit No. 2 marked: Attached.)

16 Q. If you'd turn to page 23 in that document,
17 Mr. Nickell.

18 A. Okay.

19 Q. Look at the section that says: General
20 topography. Do you see where I'm referring to?

21 A. On page what -- oh.

22 Q. Page 23.

23 A. General topography. Let me see what this is
24 first. Okay. So this is the HUD report?

25 Q. Uh-huh. And my question to you is, did you

1 provide this information to Nancy Goldsmith?

2 A. No. Because I didn't work with The Cliffs at
3 the time. I didn't work four them when this
4 report was done.

5 Q. Do you know who would have provided this
6 information?

7 A. I don't.

8 (Exhibit No. 3 marked: Attached.)

9 Q. Okay. Exhibit 3. I'll wait here until your
10 counsel will get a copy of what we're referring
11 to.

12 Do you recall receiving copy of this report?

13 A. I do.

14 Q. And what does this report tell you?

15 A. Well, this report was done for a builder, for
16 the property owner of lot JC31, and it expresses
17 concerns about the buildability of the lot in
18 question.

19 Q. With whom did you discuss this report?

20 A. There's no telling who-all I might have
21 discussed it with. If you have any
22 particular -- I would have talked to Brandon
23 about it. I would have talked to Jim Anthony
24 about it. I would have talked to Scott Beville
25 about it. And I'm sure there would be others.

1 Q. Do you agree with the report's conclusions?

2 A. I don't.

3 Q. And why is that?

4 A. Well, let me rephrase that. I questioned -- at
5 the time that I received it, I questioned the
6 report's conclusions. And I called S&ME to get
7 an evaluation from their -- an independent
8 evaluation of the situation on this lot. So I
9 can't say that I disagreed with it, I was
10 questioning it at the time.

11 Q. What caused you to question it?

12 A. Well, number one, I was not familiar with Alpha
13 Engineering -- or Alpha Environmental Sciences.
14 Number two, it's not uncommon -- it's not
15 regular, but it's not -- it's also not uncommon
16 for property owners, when they want to get out
17 of a lot, to have folks -- you know, find
18 something wrong with it.

19 Q. Had that ever happened before?

20 A. I'm sure it has. But again, that was
21 Mr. Anthony's decision as to what he ultimately
22 would do. But there had been concerns in the
23 past about consultants coming in, saying that
24 this lot is no good, it can't be built on, I
25 want to trade.

- 1 there at the top of the first page -- see what
2 I'm referring to?
- 3 A. Uh-huh.
- 4 Q. Refers to three lots. What lots would these
5 have been?
- 6 A. I would assume that this would have been lots
7 30, 31 and 32. Yeah, 30, 31 and 32 of Jasmine
8 Cove.
- 9 Q. Why those lots?
- 10 A. I believe those were the ones that were
11 referenced -- if I can check the Alpha.
- 12 Q. Sure. Go ahead.
- 13 A. I believe those were the ones that were
14 referenced in the Alpha. Yeah. They focused on
15 lot 31, but they also said something about the
16 one on either side, so I would imagine those
17 were the three lots referenced here.
- 18 Q. So who would have made the decision to have S&ME
19 look at those three lots?
- 20 A. I would have contacted them after consulting
21 with Mr. Anthony. Jim Anthony.
- 22 Q. So you and Mr. Anthony agreed that those are the
23 three lots S&ME should look at?
- 24 A. No. I sent the Alpha report over and got a
25 proposal. This is a proposal to look at those

- 1 A. Well, I think for several reasons. Number one,
2 they are probably the most respected, if not the
3 most respected, geotech firm in this area.
4 Number two, they had a very long relationship
5 with The Cliffs. And number three, knowing --
6 they would have known about the Alpha report and
7 so -- in other words, they would have been
8 evaluating it in light of the information that
9 was contained in that report.
10 So this was, in a sense, a second party or a
11 second opinion, independent opinion, as to what
12 was going on and what could be done. Because
13 it's a pretty significant statement to say that
14 a lot is not buildable. And again, we did not
15 know who Alpha Engineering was or Alpha
16 Environmental was. And so we took that
17 information and we evaluated it and we took it
18 very seriously and we called in an expert to
19 evaluate the condition on the lot.
20 Q. Now, here's my question. Our proposal that you
21 looked at here a little while ago was for lots
22 30, 31 and 32. But when I'm looking here at
23 this report it just says lot 31. Did you get
24 separate reports for lots 30 and 32?
25 MS. BURTON:

1 know, and then we also notified -- you know, we
2 made sure that we notified the homeowner or
3 whoever bought this lot later, that this is
4 where the house needed to go, because we
5 remediated the soils in this area.

6 Q. Now, you've checked lot 31 and you've testified
7 that you decided to go with the undercut of
8 soils in lot 31.

9 A. Right.

10 Q. Did you investigate lots 30 or 32 to see if
11 undercutting would be necessary for those lots?

12 A. Not that I recall. No.

13 Q. Did you ask S&ME to investigate to see?

14 A. No. I don't believe we did. If there's not a
15 contract in the file, then we did not ask them
16 to do that.

17 Q. So who decided to take lot 31 off the market?

18 A. Mr. Anthony. Jim Anthony.

19 Q. And when was that decision made?

20 A. I don't know exactly.

21 Q. And why did he decide to take lot 31 off?

22 A. Well, because -- well, several reasons. One,
23 because of this issue here. He wasn't going to
24 sell a lot that -- you know, had an issue with
25 it. And I can't remember if this one was one

1 that needed to have the shoreline stabilized on
2 it or not. So again, he did not want to sell a
3 lot that -- he would want to have gotten those
4 things done before selling this lot.

5 Q. All right. And what would the undercutting of
6 the soils that Cliffs went with, what would that
7 have added to the cost to build a home on the
8 lot?

9 A. You mean, had the builder done it?

10 Q. Uh-huh.

11 A. I don't know. I can tell you, if memory serves
12 me, I think we spent about \$40,000 doing this --
13 undercutting it ourselves. We did not want that
14 to be an issue for the property owner.

15 Q. Take a look at page two in this report. Take a
16 look at the second paragraph. And there at the
17 end of the second paragraph, you can see there's
18 kind of a gray shading area over the sentence.
19 The sentence starts: The surface features could
20 be terraced alluvium, deposited during past
21 geologic events or possibly old road cuts
22 created during the construction of Lake Keowee.
23 Did you agree with this report that the exposed
24 scarp areas are not the result of lateral
25 movements or surface sloughing?

1 MR. STERN:

2 That's Exhibit 5.

3 EXAMINATION RESUMED BY MS. BURTON:

4 Q. And I don't recall that the three lots is
5 particularly identified in the proposal.

6 A. Yeah. I guess you're right.

7 Q. It just talks about three lots at The Cliffs at
8 Keowee Falls South.

9 A. Yes.

10 Q. And I think you said that based upon the report
11 you saw from Alpha Engineering, that you
12 believed the three lots to include lot 31, the
13 Harrells's lot, and lots 30 and 32. Was that
14 what you said?

15 A. Yeah. That would have been my assumption. But
16 you're right. I hadn't noticed it. It doesn't
17 really specify what lot numbers.

18 Q. No. And I didn't see anything that did. That's
19 why I was bringing this up with you.

20 A. And again, I know I'm in the supposed to -- I
21 won't suppose. I don't know. But when I
22 answered Beth's question, my assumption was that
23 it related to the three that were referenced in
24 the Alpha proposal.

25 (Exhibit No. 32 marked: Attached.)

- 1 A. I guess it is. But it's interesting that the
2 project number is different.
- 3 Q. Show me that. 423A?
- 4 A. Well, there's a 1261 versus 5471.
- 5 Q. Help me. You're going to have to help me. On
6 Exhibit 32 --
- 7 A. I'm looking at this (indicating).
- 8 Q. -- look at Exhibit 32, the contract --
- 9 A. Right.
- 10 Q. -- and look at --
- 11 A. Oh, I'm sorry. I'm sorry.
- 12 Q. -- the report --
- 13 A. Yes. You are correct.
- 14 Q. Do those job numbers look like the same numbers?
- 15 A. Yes, they do. I'm sorry.
- 16 Q. And do you believe that Exhibit No. 6 is the
17 report that was prepared pursuant to the
18 agreement for services that we marked Exhibit
19 32?
- 20 A. Yes, I do.
- 21 Q. Now, can you help me understand -- initially, we
22 saw a proposal that talks about three lots. We
23 have an agreement for services that talks about
24 three lots. But then the report talks about lot
25 31 --

1 A. Right.

2 Q. -- and doesn't talk about two other lots, does
3 it?

4 A. Correct.

5 Q. At some point after the agreement for services
6 was signed, did you talk with anybody at S&ME
7 and indicate to them that you wanted to first
8 start an investigation on the lot that was
9 purchased by the Harrells?

10 A. That's -- I mean, I -- I can't explain exactly
11 why -- how we went from the three to the one,
12 but that would be my assumption, is that we
13 went -- rather than do the three, we wanted to
14 see what happened on this first one.

15 Q. And have you ever seen any subsequent
16 geotechnical investigation that was performed by
17 S&ME on either lot 30 or on lot 32?

18 A. Not that I can recall.

19 Q. And you -- well, did you see any today, where
20 there were borings on those lots or --

21 A. No, not that I remember. I've seen a bunch of
22 them. I know that -- in the proposal that I was
23 given to do the inclinometers, there was -- it
24 was referenced, but I never accepted that
25 proposal from S&ME.

**AGREEMENT FOR SERVICES**

Form AS-041

Date: June 22, 2005	Job Number: 12d-05-423A
S&ME, Inc. (hereafter Consultant)	Client Name: The Cliffs Communities (hereafter Client)
Address: 155 Tradd Street City: Spartanburg State: SC Zip: 29301	Address: 301 Beaver Dam Road City: Travelers Rest State: SC Zip: 29690
Telephone: (864) 574-2360 Fax: (864) 576-8730	Telephone: Fax:
PROJECT	
Project Name: Three Lots - Cliffs at Keowee Falls South Project location: (Street Address) City: Oconee County State: SC Zip:	
SERVICES TO BE RENDERED	
Proposal Number: 05471 dated: June 22, 2005 is incorporated into this Agreement For Services. This Agreement For Services is incorporated into the above Proposal.	

WITNESSETH: WHEREAS, Client desires to contract with Consultant to furnish Services to Client's project identified above.

WHEREAS, Consultant is engaged in the business of providing Services and related labor, materials, and equipment. (Herein individually and collectively referred to as Services.)

NOW, THEREFORE; in consideration of the Mutual Covenants and Promises Included herein, Client and Consultant agree as follows:

- 1. OFFER ACCEPTANCE:** Client hereby accepts Consultant's offer to provide Services as described in Consultant's proposal for Services referenced under "SERVICES TO BE RENDERED" and agrees that such Services and any additional Services authorized by Client shall be governed by this Agreement. If Client requests Consultant to start performing Services prior to receipt of this Agreement, Client agrees that Consultant's beginning of performance is based on reliance that Client will accept and execute this Agreement for Services. If Client requests Consultant to start performing Services prior to the execution of this Agreement For Services by the Client, then such request is an acceptance of this Agreement for Services to the same extent as if Client had executed this Agreement. Should Client choose to accept this Agreement for Services through the use of a Purchase Order, all preprinted terms and conditions on Client's purchase order are inapplicable to this Agreement as this Agreement is for Services that are not compatible with purchase order agreements. Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, ninety (90) days from the date of issue.
- 2. CONTRACT DOCUMENTS:** "Contract Documents" shall mean this document as well as the proposal listed under "SERVICES TO BE RENDERED" each of which is incorporated into the other.
- 3. PAYMENT:** Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not established under SERVICES TO BE RENDERED then the current fee schedule in effect for the location providing the Services shall be used as the amount to be paid by Client for Services provided. Consultant will submit progress invoices to Client monthly and a final invoice upon completion of its Services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late payment fee of one and one-half percent per month (18 percent per annum) or the highest amount allowed by applicable law on the outstanding balance.

AS-041
VER 1 -- Rev 6 -- 03-17-05

1 of 8



fees and other costs incurred in collecting past due amounts shall be paid by Client. The Client's obligation to pay under this Agreement is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or upon the Client's successful completion of the Project.

Consultant shall be paid in full for all Services rendered under this Agreement, including any additional Services authorized by Client in excess of those stated in this Agreement. However, if Client objects to all or any portion of any invoice, Client shall so notify Consultant in writing of the objection within fifteen (15) days from date of invoice, give reasons for the objection, and pay that portion of the invoice not subject to Client's objection. Client and Consultant will informally discuss Client's objections to the invoice and attempt to reach a resolution mutually acceptable to Client and Consultant. If Client or Consultant determine that an informal resolution is not possible then that party shall so state in writing to the other party and initiate a final resolution pursuant to the Dispute Resolution provisions of this Agreement for Services. If the Client does not object in writing to all or a portion of the invoice within fifteen (15) calendar days from date of invoice then the full amount of the invoice is due and payable and all objections are waived.

Without incurring any liability to the Client, Consultant may either suspend or terminate this Agreement if Client fails to pay any undisputed invoice amounts within 60 calendar days of the invoice date, or if Client states its intention not to pay forthcoming invoices. Such suspension or termination will not waive any other claim Consultant may have against Client. Following such suspension or termination, Consultant may resume work by mutual agreement with Client after payment by Client of all outstanding invoiced amounts and collection expenses. In case of such suspension or termination, Client waives all claims for damages or delay as a result of such suspension or termination.

Any invoices that are not paid within thirty (30) calendar days of Client's receipt of letter from Consultant demanding payment of the invoices or a collection action notification by an attorney or collection agency shall constitute a release of Consultant by Client from any and all claims whatsoever, including, but not limited to, tort or contractual claims which Client may have against Consultant for Services performed under said invoice(s).

4. **STANDARD OF CARE:** Consultant and its agents, employees and subcontractors shall endeavor to perform Services for Client using that degree of care and skill ordinarily exercised, under similar circumstances, by others ordinarily providing Services in the same or similar locality as the project at the time Services are provided. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. **THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE.** This STANDARD OF CARE is in lieu of all other warranties and standards of care. No other warranty or standard of care, expressed or implied, is made or intended by this Agreement, or by the proposal, by oral communications, or by any representations made regarding the Services included in this Agreement.
5. **LIMITATION OF LIABILITY:** CONSULTANT AND CLIENT MUTUALLY AGREE THAT THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT INVOLVE RISKS OF LIABILITY WHICH CANNOT BE ADEQUATELY COMPENSATED FOR BY THE PAYMENTS CLIENT WILL MAKE UNDER THIS AGREEMENT. THEREFORE, THE TOTAL CUMULATIVE LIABILITY OF CONSULTANT, ITS AGENTS, EMPLOYEES, AND SUBCONTRACTORS WHETHER IN CONTRACT, TORT INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERRORS OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CLIENT OR FIFTY THOUSAND DOLLARS, WHICHEVER IS GREATER. CLIENT AGREES THAT PAYMENT OF THE LIMIT OF LIABILITY AMOUNT IS THE SOLE REMEDY TO THE EXCLUSION OF ALL OTHER REMEDIES AVAILABLE FOR THE TOTAL CUMULATIVE LIABILITY OF CONSULTANT, ITS AGENTS, EMPLOYEES, AND SUBCONTRACTORS ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE SERVICES PROVIDED PURSUANT TO THIS AGREEMENT. AT ADDITIONAL COST, CLIENT MAY OBTAIN A HIGHER LIMIT OF LIABILITY PRIOR TO COMMENCEMENT OF SERVICES. THE ADDITIONAL COST IS COMPENSATION TO CONSULTANT FOR INCREASING THE CONSULTANT'S LIMIT OF LIABILITY. THE ADDITIONAL COST IS NOT AN INSURANCE COST. THE HIGHER LIMIT OF LIABILITY APPLIES ONLY IF MUTUALLY AGREED TO IN WRITING BY CONSULTANT AND CLIENT AT THE TIME CLIENT ACCEPTS THIS AGREEMENT FOR SERVICES AND THE ADDITIONAL COST PAID WITHIN SEVEN DAYS OF THE DATE OF THE MUTUAL AGREEMENT TO INCREASE THE LIMIT OF LIABILITY. CLIENT MAY AT THE TIME OF EXECUTION OF THIS AGREEMENT ELECT TO INCREASE THE LIMIT OF LIABILITY AMOUNT TO FIVE HUNDRED THOUSAND DOLLARS UPON THE PAYMENT OF FIVE HUNDRED DOLLARS OR TO ONE MILLION DOLLARS UPON THE PAYMENT OF ONE THOUSAND DOLLARS IN ADDITIONAL COST AS CONSIDERATION FOR THE HIGHER LIMIT OF LIABILITY. CONSULTANT'S CONSIDERATION TO CLIENT FOR THIS LIMIT OF LIABILITY IS SPECIFICALLY REFLECTED IN CONSULTANT'S FEES FOR SERVICES UNDER THIS AGREEMENT AS SUCH FEES ARE LESS THAN CONSULTANT WOULD BE PAID FOR SERVICES UNDER THIS AGREEMENT WITHOUT A LIMITATION OF LIABILITY. CLIENT MUST ELECT THE HIGHER LIMIT OF LIABILITY BY CHECKING AND INITIALING BELOW:
I HEREBY AGREE TO PAY ☐ \$500.00 TO INCREASE THE LIMIT OF LIABILITY TO \$ 500,000. _____ (INITIAL)
I HEREBY AGREE TO PAY ☐ \$1000.00 TO INCREASE THE LIMIT OF LIABILITY TO \$ 1,000,000 _____ (INITIAL)
CLIENT IS CAUTIONED THAT THIS IS A LIMITED LIABILITY AGREEMENT LIMITING THE LIABILITY OF CONSULTANT; THEREFORE, CLIENT IS ADVISED TO CAREFULLY REVIEW CLIENT'S RISKS OF LIABILITY RELATED TO THIS CONTRACT AND ADDRESS SUCH RISKS THROUGH CLIENT'S INSURANCE OR OTHER MEANS.

6. **DISCLAIMER OF CONSEQUENTIAL DAMAGES:** In no event shall Consultant or Client be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits and loss of use arising from or related to Services provided by Consultant.
7. **REPORTS:** In connection with the performance of the Services, Consultant shall deliver to Client one or more reports or other written documents reflecting Services provided and the results of such Services. All reports and written documents delivered to Client are Instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and Client's agents and employees for the Project and are not to be used or relied upon by third parties or in connection with other projects. Subject to the authorized use of Client, and Client's agents, and employees, all Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Unless a shorter period is stated in the Instrument of Service, all Instruments of Service provided pursuant to this Agreement will be valid for a period of three years from the date of this Agreement after which the Instruments of Service are void and can no longer be used or relied upon by anyone for any purpose whatsoever. The period for which an Instrument of Service is valid may be extended by mutual written consent of the Consultant and Client.

Documents that may be relied upon by Client are limited to the printed copies (also known as hardcopies) that are signed or sealed by Consultant. Files in electronic media format of text, data, graphics or of other types that are furnished by Consultant to Client are only for the convenience of Consultant and Client. Any conclusion or information obtained or derived from such electronic files will be at the Client's or other user's sole risk. Data stored in electronic format can deteriorate or be modified inadvertently or otherwise. Consultant shall not be responsible to maintain documents stored in electronic media. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Consultant.

Consultant shall not be responsible for any alterations, modifications, or additions made in the electronic data by the Client or any reuse of the electronic data by the Client or any other party for this project or any other project without Consultant's written consent. Client shall indemnify, and hold Consultant harmless against any claims, damages or losses arising out of the reuse of the electronic data without Consultant's consent or arising out of alterations, modifications, or additions to the electronic data made by anyone other than Consultant.

Any Instruments of Service, including reports, generated as part of this Agreement are intended solely for use by Client and shall not be provided to any other person or entity without Consultant's written authorization. To the fullest extent permitted by law, Client shall indemnify and hold harmless Consultant from and against any action or claim brought by any person or entity claiming to rely on the information or opinions contained in the Instrument of Service without Consultant's written authorization.

8. **SAFETY:** Consultant will maintain a safety program for its employees. Consultant specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.

Field Personnel: The presence of Consultant's field personnel, either full-time or part-time, may be for the purpose of providing project administration, assessment, observation or field testing of specific aspects of the project as authorized by Client. Should Client retain the Services of a Contractor(s) for the project, Consultant is not responsible in any way whatsoever for the supervision or direction of the work of the Contractor(s), its employees or agents. The presence of Consultant's field personnel for project administration, assessment, observation or testing shall not relieve the Contractor(s) of his responsibility for performing work in accordance with the project plans and specifications.

If a Contractor (not a subcontractor of Consultant) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the Contractor will be solely responsible for working conditions on the jobsite, including safety of all persons and property during performance of the work, and compliance with OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that Consultant will not be responsible for job or jobsite safety on the project, other than for Consultant's employees and subcontractors, and that Consultant does not have the duty or right to stop the work of the Contractor.

9. **CONFIDENTIALITY:** Subject to any obligation Consultant may have under applicable law or regulation, Consultant will endeavor to release information relating to the Services only to its employees and subcontractors in the performance of the Services, to Client's authorized representative(s) and to persons designated by the authorized representative to receive such information.

10. **SAMPLES:** Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests and analysis. Upon written request, Consultant will retain samples for a mutually acceptable storage charge and period of time. In the event that samples contain or may contain hazardous materials, Consultant shall, after completion of testing and at Client's expense, return such samples to Client or make samples available for disposal by Client's agent. Client recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said samples.
11. **INVENTIONS:** Any and all inventions or discoveries relating to the Services, including improvements and modifications to existing products or processes made or conceived by Consultant or its employees during the term of this Agreement are and shall remain the sole and exclusive property of Consultant.
12. **REPRESENTATIONS OF CLIENT:** Client warrants and covenants that sufficient funds are available or will be available upon receipt of Consultant's invoice to make payment in full for the Services rendered by Consultant. Client warrants that all information provided to Consultant regarding the project and project location are complete and accurate to the best of Client's knowledge.
13. **CLIENT OBLIGATIONS:** Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement. Consultant will take reasonable precautions to minimize damage to the Project Site from Consultant's activities and use of equipment. Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the site. Client accepts the fact that this is inherent in the work and will not look to Consultant for reimbursement or hold Consultant liable or responsible for any such alteration or damage. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and to indemnify, and hold harmless Consultant against any claims and claims related costs including attorney's fees by the owner or persons having possession of the site through the owner which are related to such alteration or damage.
14. **UTILITIES:** Client agrees to disclose the identity of all utilities serving the Project Site and the presence and accurate location of hidden or obscure man-made objects known to Client relative to field tests or boring locations. Client agrees to indemnify and hold harmless Consultant from all claims, suits, losses, personal injuries, death, and property liability including costs and attorney's fees resulting from damage or injury to utilities or subterranean structures (pipes, tanks, etc.) arising from the performance of Consultant's Services when the existence of such are not called to Consultant's attention or the location not correctly identified in information furnished Consultant.
15. **CERTIFICATIONS:** Client agrees not to require that Consultant execute any certification with regard to work performed, tested or observed under this Agreement unless: 1) Consultant believes that it has performed sufficient work to provide a sufficient basis to issue the certification; 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the Services performed by the Consultant, and does not constitute a warranty or guarantee, either expressed or implied.
16. **FAILURE TO FOLLOW RECOMMENDATIONS:** The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed. Accordingly, the Client waives any claim against the Consultant, and agrees to indemnify, and hold harmless the Consultant from any claim or liability for injury or loss that results from failure to implement the Consultant's recommendations or from implementation of the Consultant's recommendations in a manner that is not in strict accordance with them.
17. **TERMINATION:**
 - For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon dispatch or receipt of the termination notice, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within 30 days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
 - For Cause - In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon 10 days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within ten days of receipt of the written notice. Upon Termination for Cause, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within 30 days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.

18. **UNFORESEEN CONDITIONS OR OCCURRENCES:** If, during the performance of service hereunder, any unforeseen hazardous substance, material, element or constituent or other unforeseen conditions or occurrences are encountered which, in Consultant's judgment significantly affects or may affect the services, the risk involved in providing the Services, or the recommended scope of Services, Consultant will notify Client thereof. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein; or (c) Terminate the Services effective on the date of notification pursuant to the terms of **TERMINATION FOR CONVENIENCE**. Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client waives any claim against Consultant and will indemnify and hold Consultant harmless from any claim, injury or loss arising from the discovery of unforeseen hazardous substances.
19. **FORCE MAJEURE:** Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of an obligation (other than the payment of money) results from any causes beyond its reasonable control and without its fault or negligence. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and inability, within reasonable diligence to supply personnel, information or material to the project. In the event that such acts or events occur, it is agreed that both parties shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services covered by this Agreement. The time for performance shall be extended for a period equal to the delay.
20. **INSURANCE:** Consultant shall maintain at its own expense the following insurance subject to normal industry exclusions: (1) Worker's Compensation Insurance and Employer's Liability Insurance. (2) Commercial Automobile Liability Insurance with limits of \$1,000,000.00. (3) Commercial General Liability Insurance with limits of \$1,000,000.00. (4) Professional Liability Insurance. Certificates can be issued upon request identifying details and limits of coverage.
21. **INDEMNITY:** Client agrees to indemnify, and save harmless Consultant, its agents, employees, and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant, its agents, employees, and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Client's negligence or willful misconduct.
- Subject to the Limitation of Liability in Article 5, Consultant agrees to indemnify, and save harmless Client from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Client may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Consultant's negligence or willful misconduct.
- Subject to the Limitation of Liability in Article 5, Client and Consultant shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify, and save harmless each other in proportion to their relative degree of fault.
22. **DISPUTE RESOLUTION:** Consultant may in Consultant's sole discretion pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultant's collection of past due invoices, in the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be subject to mediation in accordance with the mediation rules of the American Arbitration Association or similar Dispute Resolution organization. Mediation in good faith shall be a condition precedent to the institution of legal or equitable proceedings by either party. Once a party files a request for mediation with the other party and with the American Arbitration Association, or similar Dispute Resolution organization, the parties agree to commence such mediation within thirty (30) days of the filing of the request. The costs of such mediation shall be borne equally by both parties. If the dispute is not resolved after such mediation, then the dispute shall be resolved by litigation in a court of competent jurisdiction.
23. **CAPTIONS AND HEADINGS:** The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, modify, or add to the interpretation, construction, or meaning of any provision of or scope or intent of this Agreement.
24. **SEVERABILITY:** If any provision of this Agreement, or application thereof to any person or circumstance, shall to any extent be invalid, then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
25. **ASSIGNMENT AND SUBCONTRACTS:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Consultant may subcontract for the Services of others without obtaining Client's consent if Consultant deems it necessary or desirable to have others perform Services.

26. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

27. **LAW TO APPLY:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which the project is located.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

ENTIRE AGREEMENT - This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same.

TO THE EXTENT that any additional or different Provisions conflict with the Provisions of this Agreement, the Provisions of this Agreement shall govern. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT: The Cliffs Communities

S&ME, Inc.

BY: [Signature]

BY: [Signature]

D. Mcken Sr. Dir. of P.E.D.
(Print Name / Title)

Walker Birdsong, P.E., Sr. V.P.
(Print Name / Title)

DATE: 6/27/05

DATE: 6/22/05

PROPOSAL NUMBER: 05471

WB

Client's FAXED or DIGITAL signature to be treated as original signature.



July 6, 2005

Mr. Kevin McCarthy and Ms. Courtney Rountree
604 A Timm Valley Road
Atlanta, GA 30305

Dear Mr. McCarthy and Ms. Rountree:

Congratulations on the purchase of your new property at The Cliffs! I will be your Closing Coordinator, and I look forward to assisting you in this exciting endeavor. I will help facilitate the transaction to close in accordance with your purchase agreement and I am anticipating closing on or before July 20, 2005.

Enclosed is a copy of the fully executed purchase agreement. You will want to keep this for your records.

The Club Membership office will be notified of your closing schedule and membership preferences. You will receive all membership information and documents directly from Mirsy DeMars, Membership Services Coordinator. Please return all signed documents to the Club. In order to finalize and activate your membership, all membership documents should be returned to the Club Membership office by closing. If you have any questions in this regard, please call 864-660-1100 and ask for the Club Membership department.

If at any time you have questions concerning the status of your closing, please do not hesitate to call me at 864-895-4267 or 1-800-745-2779, ext 1252.

Sincerely,

Sandra Hyder
Closing Coordinator

Enclosure

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee, and The Cliffs at Walnut Cove
15 Fair Green Lane, Travelers Rest, South Carolina 29690-4080
1-800-884-2958
www.cliffscommunities.com





SANDRA HYDER
Closing Coordinator

864-895-4267, Ext. 1252
800-745-2779, Ext. 1252
Fax: 864-895-8763
shyder@cliffscommunities.com

1712 Hwy. 11, Landrum, SC 29356
www.cliffscommunities.com



July 18, 2005

Mr. Donald H. Nickell, Jr., P.E.
The Cliffs Communities, Inc.
301 Beaver Dam Road
Travelers Rest, South Carolina 29690

Reference: **SUBSURFACE EXPLORATION FINDINGS**
Cliffs Keowee Falls South - Lot #31 Jasmine Cove
Oconee County, South Carolina
S&ME Project No. 1261-05-423A

Dear Don:

S&ME, Inc. is pleased to submit this Subsurface Exploration Findings letter for Lot #31 (Jasmine Cove) at the Cliffs Keowee Falls South development. Our work for the property included an exploration of subsurface conditions, analysis, opinions regarding the cause of unusual features on the property and our geotechnical engineering recommendations regarding supporting residential structures. This letter presents a brief confirmation of our understanding of the project, the exploration results, and our geotechnical conclusions and recommendations regarding the above considerations.

Lot #31 fronts Lake Keowee along its western shoreline. The lot slopes upward away from the lake at a visually estimated inclination on the order of about 4 horizontal to 1 vertical. There are approximately three "scarp" areas across the site, each approximately paralleling the water surface and the contour of the lots. These surface features are very unique.

The lot was explored with two soil testing borings (L-1 and L-2) performed below the main "scarp" area and one boring (L-3) above the main "scarp" area. Additionally, three trackhoe excavated test pits were performed at similar locations as the borings. At each test pit and boring location, soils that appear to be residual in nature and common to the Piedmont Geologic Province were encountered to termination or refusal depths of 20 to

S&ME, Inc.
133 Tradd Street
Spartanburg, South Carolina 29301

(864) 574-2360
(864) 576-8730 fax
(864) 232-8987 Greenville

www.knight.com

PLAINTIFF'S
EXHIBIT

J

30 feet below the ground surface. The residual soils generally consist of silty sand or sandy silt; however, an upper layer of sandy clay was present in boring L-1. The Standard Penetration Resistance (N) values in the residual soils varied from 2 to 31 blows per foot with the majority of the values in the 2 to 5 blows per foot range. These values indicate a very soft to soft consistency for silts and clays, and a very loose to loose relative density for sands.

The boring data indicates that the lot contains some unique surface and subsurface anomalies. Although the boring data indicates very low consistency soils extend well below the ground surface, it did not indicate that the exposed "scarp" areas are the result of lateral movements or surface sloughing. The surface features could be terraced alluvium deposited during past geologic events or possibly old road cuts created during construction of Lake Keowee.

Based on the subsurface data and our experience, it is our opinion that residential structures can be supported on-site with some modification to improve the foundation soils. Several options are available for soil improvement, but we would recommend undercut and replacement or rammed aggregate piers as the most practical. The undercut area would include the building limits and an area extending at least 15 feet outside the building limits, and would extend 5 to 7 feet.

Rammed Aggregate Piers are a patented system consisting of drilling vertical holes (typically 30-inches in diameter) and filling them in layers with compacted crushed stone to the foundation bearing level. Rammed Aggregate Piers are stiffer than the surrounding soil and support a disproportionate share of the foundation load while reducing foundation settlement. After Rammed Aggregate Pier construction, foundations and/or floor slabs may be constructed conventionally.

For planning purposes, the cost of undercutting soils, replacing them with off-site borrow soils, and wasting the undercut soils off site is typically about \$12 to \$15 per cubic yard. However, a majority of the undercut soils would most likely be suitable for reuse as structural fill. As for the Rammed Aggregate Piers, we estimate that approximately 50 to

75 piers would be required to support the structure and floor slab. The piers could be installed in 4 to 5 days (including a modulus load test) with an anticipated cost on the order of \$550 to \$600 per pier. However, this cost will vary depending on project specific variables. We can provide additional design and cost information as the project is further advanced.

We appreciate the opportunity to work with The Cliffs Communities, Inc. by providing the geotechnical engineering for this project. Should any questions arise regarding the information in this report or when we may be of further service, please contact us.

Sincerely,
S&ME, Inc.


Michael Revis, P.E.
Project Engineer
mrevis@smelnc.com


Howard Perry, P.E.
Senior Engineer
hperry@smelnc.com

Keowee Sales Contract Info

PLAINTIFF'S
EXHIBIT

K

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN	
		1. ☐ FHA	2. ☐ FmHA
		3. ☒ CONV. UNINS.	4. ☐ VA
		5. ☐ CONV. INS.	
6. FILE NUMBER MCCARTHY, K.		7. LOAN NUMBER:	
8. MORTGAGE INS CASE NUMBER:			
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "FOC" were paid outside the closing; they are shown here for informational purposes and are not included in the total.			
D. NAME AND ADDRESS OF BORROWER:		E. NAME AND ADDRESS OF SELLER:	
Kevin R. McCarthy 804 A Timon Valley Road Atlanta, GA 30305		Koores Falls Investment Group, LLC	
		F. NAME AND ADDRESS OF LENDER:	
		Wachovia Bank, NA 1525 W. W. Harris Blvd. Charlotte, NC 28282	
G. PROPERTY LOCATION:		H. SETTLEMENT AGENT:	
Lot 32, Koores Falls South, Jasmine Cove		67-0622927 Horton Dravay Ward & Jenkins, P.A.	
Oconee County		I. SETTLEMENT DATE:	
		August 5, 2005	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price 1,105,000.00		401. Contract Sales Price 1,105,000.00	
102. Personal Property 8,874.78		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)		403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller In Advance		Adjustments For Items Paid By Seller In Advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109. Family Membership 35,000.00		409. Family Membership 35,000.00	
110. Golf Membership Financed \$40000		410. Golf Membership Financed \$40000	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER 1,148,874.78		420. GROSS AMOUNT DUE TO SELLER 1,140,000.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money 5,000.00		501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s) 1,031,130.00		502. Settlement Charges to Seller (Line 1400) 259,909.34	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage to Regions Bank 437,719.16	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507. (Deposit disb. as proceeds)	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/05 to 02/02/05 4,652.35		511. County Taxes 01/01/05 to 02/02/05 4,652.35	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/ FOR BORROWER 1,040,782.35		520. TOTAL REDUCTION AMOUNT DUE SELLER 702,280.55	
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120) 1,148,874.78		601. Gross Amount Due To Seller (Line 420) 1,140,000.00	
302. Less Amount Paid By/ For Borrower (Line 220) (1,040,782.35)		602. Less Reductions Due Seller (Line 520) (702,280.55)	
303. CASH (X FROM) (TO) BORROWER 108,092.40		603. CASH (X TO) (FROM) SELLER 437,719.16	

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.
I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower

Kevin R. McCarthy

Seller

Koores Falls Investment Group, LLC

BY:

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION.

Horton Dravay Ward & Jenkins, P.A.
Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

Page 2

L. SETTLEMENT CHARGES				PAY FROM BONDS/RENT FUNDS AT SETTLEMENT	PAY FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price			\$ 1,048,570.00 @ 12.2500 %	128,448.63	
Division of Commission (line 700) as follows:					
701. \$ 104,857.00	to	Cliff Real Estate, Inc.			
702. \$ 33,392.63	to	UNI Real Properties, LLC			
703. Commission Paid at Settlement					
704.	to				128,448.63
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	0.475 %	to Wachovia Bank, NA		6,130.00	
802. Loan Discount	%	to			
803. Appraisal Fee		to Wachovia Bank, NA		325.00	
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Ins. App. Fee		to			
807. Assumption Fee		to			
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 08/05/05 to 09/01/05 @ \$		Day (27 days) %			
902. Mortgage Insurance Premium for	months to				
903. Hazard Insurance Premium for	1.0 years to				
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City/Town Taxes	months @ \$	per month			
1004. County Taxes	months @ \$	per month			
1005. Assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008.	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to Palmetto Title Agency		218.50		
1103. Title Commission	to				
1104. Title Insurance Binder	to Petigru Title Company, Inc.		115.00		
1105. Deed Preparation	to Olson, Smith, Jordan & Cox, PA			215.00	
1106. Notary Fees	to				
1107. Attorney's Fees	to Horton Drenth Ward & Jenkins, P.A.		475.00		
Includes above item numbers:					
1108. Title Insurance	to Petigru Title Company, Inc.		1,837.60		
Includes above item numbers:					
1109. Lender's Coverage	\$ 1,051,130.00	75.00			
1110. Owner's Coverage	\$ 1,105,000.00	1,682.50			
1111. Family Membership	to Cliffs Golf and Country Club, Inc.			35,000.00	
1112. Dues Credit	to Cliffs Golf and Country Club, Inc.			16,000.00	
1113. Infrastructure Escrow	to Naussen, Frost, Jacobs & Pollard			8,839.75	
1114. Charity Donation	to Cliffs Charity Fund			10,463.70	
1115. Prepaid Interest Credit	to Wachovia Bank, NA			66,430.00	
1116. 2005 POA Dues	to Knoxe Falls South Homeowners Assoc.		205.44		
1117. Working Capital Contribution	to Knoxe Falls South Homeowners Assoc. Reserve		108.32		
1118. Document Preparation	to Horton Drenth Ward & Jenkins, P.A.		223.00		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$	20.00 ; Mortgage \$	15.00 ;	Releases \$	14.00	
1202. City/County Tax/Stamp: Deed		Mortgage		35.00	14.00
1203. State Tax/Stamp: Revenue Stamp	4,000.507 Mortgage				4,006.50
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to				
1303. Overnight Fee	to Horton Drenth Ward & Jenkins, P.A.		25.00		
1304.					
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 602, Section K)				8,874.78	259,808.34

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 of this two page statement.

Certified to be a true copy.

Horton Drenth Ward & Jenkins, P.A.
Settlement Agent

(MCCARTHY, M. / MCCARTHY, M. / 21)

WIRING INSTRUCTIONS FOR ARTHUR STATE BANK

REAL ESTATE TRUST ACCOUNT

Arthur State Bank
1410 N. Pleasantburg Drive
Greenville, SC 29607
864-268-8290

ABA Routing # 053201034

Beneficiary:

HORTON, DRAWDY, WARD & JENKINS, PA
Account # 9566 2607

(864) 233-4351

Julie
Tommy Douglas

Thomas F. Dugas

July 13, 2005

Mr. Kevin McCarthy
Ms. Courtney Rountree
604 A Timm Valley Road
Atlanta, GA 30305



Dear Mr. McCarthy & Ms. Rountree,

Congratulations on your recent decision to purchase property in The Cliffs at Keowee Falls South Community! We are excited about the realization of new club facilities at Keowee Falls South for you to enjoy in the near future. I want to take this opportunity to introduce myself and extend to you an early welcome.

It is my understanding that you have opted to purchase a Keowee Falls South Golf membership. Enclosed in this membership packet are forms that need completion in order to process your memberships. Please be reminded that in order to activate and finalize your membership, your real estate transaction must be closed, membership fees received and all membership forms must be completed and returned to the club.

1. **Membership application:** Please complete this form for your membership file and return to the club. There are two designated areas for Member Name. Married couples should use one section for the husband and the other one for the wife. Please indicate your preferred mailing address (business or home) with an asterisk by the line.
2. **Membership agreement form:** Two copies are provided. Please sign and return one to the club, and retain the other copy for your files.
3. **Keowee Falls South Golf Membership or Keowee Falls South Family enrollment form:** For those who have elected to purchase a Keowee Falls South Golf or Family membership, please sign and return one copy to the club, and retain the other copy for your files.
4. **Membership card with account number:** This permanent card indicates your assigned membership account number.

All property owners at the Cliffs at Keowee Falls South are processed as Honorary Family Members of our existing Cliffs Clubs, until which time the Keowee Falls South golf course opens for play. You and your family have unlimited usage of the Cliffs Clubhouses and general recreational facilities. Golf access is provided through our reciprocal golf program. Please refer to the enclosed reciprocal golf program outline for details.

I would like to emphasize that I am available to assist you at all times. Please feel free to call me about any of the enclosed forms, or for additional information regarding the above. Watch for your club monthly newsletter to stay updated on all of the happenings. I look forward to seeing you soon!

Kind regards,

Mimsy DeMars
Manager, Membership Services
The Cliffs Communities

© The Cliffs Clubs ©

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee Vineyards and The Cliffs at Walnut Cove
250 Knightsridge Road, Travelers Rest, South Carolina 29690

864-660-1100

www.cliffscommunities.com

**THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB
MEMBERSHIP AGREEMENT**

I have received and reviewed official club documents, specifically The Cliffs at Keowee Falls South Golf and Country Club constitution and by-laws, rules and regulations, outlining the Keowee Falls South Membership Program. I agree to participate and become enrolled as a member of The Cliffs at Keowee Falls South Golf and Country Club, which is managed and operated by The Cliffs Golf and Country Club, Inc. and agree to pay the applicable membership fees in the amount(s) indicated below:

<u>Membership Classification</u>	<u>Membership Fees</u>
<u> </u> Keowee Falls South Family	\$ <u> </u>
<u> X </u> Keowee Falls South Golf	\$75,000.00

My rights and privileges as a member shall be governed by the plan documents and the club's by-laws, rules and regulations. Membership in the club does not convey any ownership, stock or equity certificate or other rights of ownership. As a member, I cannot be assessed as a matter of contract with the Club, and I assume no liability whatsoever in connection with the membership other than the payment of an applicable membership fee, dues and charges incurred by myself, my family and guests.

The Club reserves the right to set membership classification limitations. The Club has the plenary power to modify classes of memberships, their definitions, privileges, requirements and availability.

I shall be bound by the terms and conditions of the plan documents, as they may be amended from time to time in accordance with their terms and this membership purchase agreement.

I agree to pay the dues, fees and charges applicable to my membership classification(s) set forth by the club ownership, as it may be amended from time to time.

I hereby agree to release and discharge the Club, its ownership, affiliates, employees and agents from any and all claims and causes of actions that I may have against any of them regarding the Club membership program and facilities, except claims and causes of action arising from misrepresentations or omissions in the club documents.

 7-13-05
Date MM
Mimsy DeMars
Manager, Membership Services
The Cliffs at Keowee Falls South Golf & Country Club

Date

Member Signature

Member Signature

**THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB
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7.13.05
Date MM
Mimsy DeMars
Manager, Membership Services
The Cliffs at Keowee Falls South Golf & Country Club

Date

Member Signature

Member Signature



THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB
KEOWEE FALLS SOUTH GOLF ENROLLMENT FORM

This is to certify that Kevin McCarthy & Courtney Rountree have made application for membership in the CLIFFS GOLF AND COUNTRY CLUB. The membership classification applied for is Keowee Falls South Golf membership. It is acknowledged that the applicant will submit a payment of Seventy-five thousand dollars (\$75,000).

The following is the scheduled due dates and amounts of future payments:

Per terms of Real Estate Purchase Agreement & Membership Finance Addendum

By signing this form, the Member(s) acknowledges, as a matter of record, the type of Membership classification, and its privileges, and the refund value of initiation deposit paid in the event of resignation or transfer of membership. Furthermore, the Member(s) has received a copy of the club by-laws, rules and regulations, and has an understanding of the same.

MEMBERSHIP CLASSIFICATION:	Keowee Falls South Golf
MEMBERSHIP ACCOUNT NUMBER:	M404
INITIATION DEPOSIT TO BE PAID:	\$75,000
TOTAL FEES TO BE PAID:	\$75,000
PROPERTY REFERENCE:	Section JC Lot 32

7.13.05
Date Mimsy DeMars
Mimsy DeMars
Manager, Membership Services
The Cliffs at Keowee Falls South Golf & Country Club

Date _____
Member Signature _____
Member Signature _____

∞ The Cliffs Clubs ∞

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee Vineyards and The Cliffs at Walnut Cove
260 Knightsridge Road, Travelers Rest, South Carolina 29690

864-660-1100
www.cliffscommunities.com



THE CLIFFS AT KEOWEE FALLS SOUTH GOLF & COUNTRY CLUB
KEOWEE FALLS SOUTH GOLF ENROLLMENT FORM

This is to certify that Kevin McCarthy & Courtney Rountree have made application for membership in the CLIFFS GOLF AND COUNTRY CLUB. The membership classification applied for is Keowee Falls South Golf membership. It is acknowledged that the applicant will submit a payment of Seventy-five thousand dollars (\$75,000). The following is the scheduled due dates and amounts of future payments:

Per terms of Real Estate Purchase Agreement & Membership Finance Addendum
By signing this form, the Member(s) acknowledges, as a matter of record, the type of Membership classification, and its privileges, and the refund value of initiation deposit paid in the event of resignation or transfer of membership. Furthermore, the Member(s) has received a copy of the club by-laws, rules and regulations, and has an understanding of the same.

MEMBERSHIP CLASSIFICATION:	Keowee Falls South Golf
MEMBERSHIP ACCOUNT NUMBER:	M404
INITIATION DEPOSIT TO BE PAID:	\$75,000
TOTAL FEES TO BE PAID:	\$75,000
PROPERTY REFERENCE:	Section JC Lot 32

7.13.05
Date MM
Mimsy DeMars
Manager, Membership Services
The Cliffs at Keowee Falls South Golf & Country Club

Date

Member Signature

Member Signature

∞ The Cliffs Clubs ∞
The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee Vineyards and The Cliffs at Walnut Cove
250 Knightsridge Road, Travelers Rest, South Carolina 29690
864-660-1100
www.cliffscommunities.com



THE CLIFFS GOLF & COUNTRY CLUBS

250 KNIGHTSRIDGE ROAD - TRAVELERS REST, SC 29690 - (864) 660-1100

APPLICATION FOR MEMBERSHIP PRIVILEGES

☐ The Cliffs at Glassey ☐ The Cliffs Valley ☐ The Cliffs at Keowee Vineyards
☐ The Cliffs at Walnut Cove ☐ The Cliffs at Keowee Falls South ☐ The Cliffs at Keowee Springs
☐ Cliffs Golf Membership ☐ Cliffs Family Membership

GENERAL INFORMATION

Member Name _____
Home Address _____ *Zip Code* _____
Telephone Residence _____
Fax Residence _____
E-Mail Residence _____
Employer & Title _____
Business Address _____
Telephone Business _____
Fax Business _____
E-Mail Business _____

Member Name _____
Home Address _____ *Zip Code* _____
Telephone Residence _____
Fax Residence _____
E-Mail Residence _____
Employer & Title _____
Business Address _____
Telephone Business _____
Fax Business _____
E-Mail Business _____

Please indicate your preferred mailing address (home or Business) with an asterisk by the line.

Member Signature and Date

Member Signature and Date



The Cliffs at Keowee Falls South Honorary Membership and Reciprocal Club Privilege

- All individuals electing a membership in the Cliffs at Keowee Falls South will be processed as Honorary Social Athletic Members of the existing Cliffs Clubs, until which time the Keowee Falls South golf course opens for play.
 - There are no additional fees or dues required. Honorary Social Athletic Members have dining and recreational usage of all existing club facilities, which include swimming pools, tennis courts, fitness centers, hiking and nature trails, etc. A membership charge account will be established for charging privileges at all locations.
 - The Honorary Social Athletic membership provides for reciprocal golf playing privileges at all existing Cliffs courses.
 - Members may play unlimited golf rounds using a one day advance tee time. Reciprocal play times cannot interfere with member preferred tee times as determined by the respective course golf shop personnel. Member preferred tee times are defined as before 10:00 am during the week and before 11:00 am on weekends.
 - A golf reciprocal fee is applicable, plus cart fee and tax. (Currently, the reciprocal fee is \$50.00 and the cart fee is \$19.00)
 - Guests playing with the Member are obligated for the Guest-of-Member rate at that particular course. (Currently, the Guest-of-Member rate is \$70.00 plus cart fee and tax.)
 - Reciprocal programs are subject to revision from year to year at the sole discretion of the ownership and management. Availability for reciprocal play is subject to special events and conditions at a particular course on specific days.
 - Reciprocal golf privileges are provided for the two adult members of a membership and their children as defined under Family Privileges in the club by-laws.
- All Honorary Membership and Reciprocal club privileges are contingent upon compliance with the Cliffs Clubs by-laws, rules and regulations.

July, 2005

∞ The Cliffs Clubs ∞

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee Vineyards and The Cliffs at Walnut Cove
250 Knightsbridge Road, Travelers Rest, South Carolina 29690

864-660-1100

www.cliffscommunities.com



The Cliffs at Keowee Falls South Interim Membership Program

All individuals purchasing a Keowee Falls South Full Golf in the Cliffs at Keowee Falls South Club will be offered an opportunity to participate in an interim membership program for full golf access at one of the existing Cliffs Courses, until which time the Keowee Falls South golf course opens for play.

Interim Members are invited to select which course they desire interim privilege to. Interim membership requires the payment of monthly dues.

In addition to access to all club facilities, Interim Members have full golf privilege at their selected interim course. Golf tee times are limited to a four-day advance tee time. Participation in golf events and tournaments is not provided. Interim Members may participate in all social and other recreational activities.

Current monthly dues for participation in an interim membership privilege is \$400.00 monthly.

Cart fees plus tax are applicable. The current cart fee is \$19.00 per person per eighteen holes.

Interim membership privilege is contingent upon compliance with all Cliffs Clubs by-laws, rules and regulations.

July, 2005

∞ The Cliffs Clubs ∞

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee Vineyards and The Cliffs at Walnut Cove
250 Knightsbridge Road, Travelers Rest, South Carolina 29690

864-650-1100

www.cliffscommunities.com

The Cliffs Valley
250 Knightsridge Road
Travelers Rest, South Carolina 29690

LOT 32/Jasmine Cove

M404-KFS

CHRON

CLUB MEMBERSHIP
PROMISSORY NOTE

Kevin R. McCarthy
EIN or SS No.

EIN or SS No.

PROMISSORY NOTE

\$40,000.00

August 5, 2005

(Date)

KEVIN R. MCCARTHY
FOR VALUE RECEIVED, the below subscribing individual(s) ("Borrower") promise(s) to pay to the order of The Cliffs Communities, Inc. ("Lender") with an address at 301 Beaver Dam Road, Travelers Rest, S.C. 29690, Attention: James B. Anthony (or at such other place or places as the Lender may designate) the principal sum of Forty Thousand and No/100 (\$40,000.00) Dollars under the terms and conditions of this promissory note (the "Note").

1. Interest. Interest shall accrue on any outstanding balance under this Note at an annual rate of interest equal to 0.00%

2. Payments.

(a) One year from the date hereof, Borrower will pay Lender the principal amount of Twenty Thousand and No/100 (\$20,000.00) Dollars, together with accrued and unpaid interest, if any is due hereunder. Due 08/05/06
pd 8/24/06 ck# 5645

(b) Two years from the date hereof, Borrower will pay Lender the remaining principal amount of Twenty Thousand and No/100 (\$20,000.00) Dollars, together with accrued and unpaid interest, if any is due hereunder. Due 08/05/07

3. Prepayment. This Note may be prepaid in whole or in part at any time without any premium or penalty.

4. Late Charges. In the event any payment is delinquent more than five (5) days, the Borrower will pay to the Lender a late charge of one and one-half percent (1½%) of the amount of the overdue payment. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Borrower a right to cure a default condition. Imposition of late charges is not contingent upon the giving of any notice or lapse of any cure period provided for in the Pledge Agreement. Additionally, interest shall begin to accrue at the rate of eighteen percent (18%) per annum on the outstanding balance under this Note from the expiration of the five-day period until Lender receives payment.

5. Application of Payments. All sums received by the Lender for application to the loan may be applied by the Lender to late charges, expenses, costs, principal and other amounts

7. Taxpayer Identification Number. This Note provides for the Borrower's federal taxpayer identification (or social security) number to be inserted on the first page of this Note. If such number is not available at the time of execution of this Note or is not inserted by Borrower, Borrower hereby authorizes and directs the Lender to fill in such number on the first page of this Note when the Borrower advises the Lender of such number.

8. Right of Offset. The Lender is granted a lien on and security interest in all property or assets (including Borrower's Cliffs Clubs Membership Deposits and other credits) of Borrower, at any time in the possession or control of (or owing to) the Lender under the Cliffs Clubs Membership Plan. The Lender shall have the right to exercise set-off by applying any such Deposits or credits toward the payment of amounts owed hereunder, without notice. The Lender shall be deemed to have exercised such right to set-off and to have made a charge against any such property or assets immediately upon the occurrence of such default even though the charge is made or entered on the books of the Lender subsequent thereto.

9. Waiver. Borrower waives demand, notice, presentment, protest, demand for payment, notice of dishonor, notice of protest and diligence of collection of this Note. Borrower consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Lender with respect to the payment or other provisions of this Note. Borrower agrees that makers, endorsers, guarantors and sureties may be added or released without notice and without affecting Borrower's liability hereunder. The liability of Borrower shall be absolute and unconditional and without regard to the liability of any other party hereto.

10. Jurisdiction. Borrower hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of South Carolina by service of process on any such owner, partner and/or officer; and Borrower agrees that the courts of such State shall have jurisdiction with respect to the subject matter hereof and the person of Borrower. Borrower agrees not to assert any defense to any action or proceeding initiated by the Lender based upon improper venue or inconvenient forum.

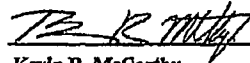
11. Governing Law. This Note was executed and delivered in the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina without reference to conflict of laws principles.

12. Waiver of Jury Trial. BORROWER AND THE LENDER AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY THE LENDER OR BORROWER, ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. THE LENDER AND THE BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR

IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT THE LENDER WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS NOTE.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed as of the day and year first above written.

BORROWER:


Kevin R. McCarthy

1 because the market was getting better, when I got a
2 call from Jack Harrell.

3 And my reaction to Jack's introduction and:

4 Hey, Kevin, this is Jack Harrell. Do you own
5 property down at The Cliffs?

6 I said, Yes, I do.

7 He's a very pleasant man that I've spoken with
8 on numerous occasions.

9 Well, I'm your neighbor down there, and we got a
10 problem. The lots are falling into the lake.

11 That was two sentences, three sentences in my
12 introduction to Jack Harrell

13 Q. So that's the first time you talked with Mr. Harrell?

14 A. First time I ever talked to him. Called me in the
15 office.

16 So where that intersects with your question is,
17 we were considering, because market conditions were
18 improving, relisting it.

19 And with Jack Harrell's news, my first reaction
20 was, geez, what a nightmare. And then my guts
21 reaction was, well, we can't, we can't list this in
22 good conscience, knowing what we know. We need to
23 investigate this, based on what he's telling us, and
24 we need to get to the bottom of this problem.

25 And so at that point relisting it came

DEPOSITIONS AND..., INC.
864-235-3518

PLAINTIFF'S
EXHIBIT

L

1 What I do understand from all the documents I've
2 seen, is that S&ME, this is what they do, this is
3 their bailiwick, to understand geotechnical
4 conditions in land.

5 And I understand that they were on my lot.

6 And I understand that they knew before I bought
7 my lot that there was a potential problem with it.

8 And so that's what I understand.

9 I also would tell you unequivocally, we would
10 not have bought this lot, or we would have
11 investigated further with our own engineering firm,
12 these issues, had they been, had we been made aware
13 of them.

14 Q. Okay.

15 A. So I don't know how that translates into this
16 Paragraph 53. But I understand S&ME knew about a
17 potential problem, and that I was never told about
18 it, and it would have had a material impact on our
19 decision.

20 Q. And your understanding about S&ME being on your lot,
21 you got from Jack Harrell?

22 A. Either directly or I inferred it from a conversation
23 I had with Jack Harrell. Either explicitly, or I
24 inferred it from a conversation with Jack Harrell.

25 We're getting to the end of your stack.



August 8, 2005

Mr. Kevin McCarthy
Ms. Courtney Rountree
604 A Timm Valley Road
Atlanta, GA 30305

Dear Mr. McCarthy and Ms. Rountree:

Thank you very much for choosing the Cliffs Communities as your new homesite. It was my pleasure to assist you with your purchase.

The original deed will be delivered to the Oconee County RMC Office for recording. After it is recorded, the deed will be forwarded to you within approximately eight weeks by the closing attorney's office.

Now that you are a property owner, I have enclosed a vehicle registration form for you. Please complete and return to the address listed on the form. Our public safety staff will issue your property owners' decals for your automobiles.

Should you have any questions, please feel free to call our office at 1-800-745-2779 or 864-895-4267. Thank you again, and welcome to The Cliffs Communities!

Sincerely,

Sandra Hyder
Closing Coordinator

Encs.

The Cliffs at Glassy, Cliffs Valley, The Cliffs at Keowee, and The Cliffs at Walnut Cove
15 Fair Green Lane, Travelers Rest, South Carolina 29690-4080
1-800-884-2958
www.cliffscommunities.com





VEHICLE DECAL INFORMATION SHEET

Property Owner | Resident | Member

☒ Original
 ☐ Additional:
 ☐ Decal
 ☐ Gate Card
☐ Update
 ☐ Other: _____

Return Form To:
 Cliffs Security
 1655 Cleo Chapman
 Sunset, SC 29685

Name: Kevin & Courtney ~~McCarthy~~ McCarthy
 Street: 604-A Timm Valley Rd.
 City: Atlanta State: GA Zip: 30305
 Home Phone: (404) 869-9090 Business Phone: (404) 816-3255
 Email: KMcCarthy@Bellsouth.NET Other: Cell (404) 664-9592

Member Type and Community Information:

Member Type: Community:
☐ Resident
 ☐ The Cliffs at Glassy
 ☒ The Cliffs at Keowee Falls
☒ Property Owner
 ☐ The Cliffs at Valley
 ☐ The Cliffs at Walnut Cove
☒ Member
 ☐ The Cliffs at Keowee Vineyards
 ☐ The Cliffs Heritage
☐ Other: _____

Vehicle Information:

Vehicle #	Year	Make	Model	Color	License Tag	State	Decal # Assigned	INT
1	2003	Mercedes	E500	Silver		GA		
2	2002	BMW	330 ci	silver		NC		

Decals and gate cards are available to residents, property owners and members.

Please leave completed form at any of the Cliffs Communities gatehouse or mail to the address listed above. Decals will be mailed.

Vehicle decals and gate cards remain the property of The Cliffs Communities and must be surrendered upon sale of property or at the discretion of the Property Owners Association.

Signature: _____

TB R. Matley

Date: 3-22-06



DAVID B. WARD
JOSEPH M. JENKINS, JR.
WALLACE A. MULLINAX, JR.
MICHAEL A. PARRY
THOMAS F. DUGAS
DAVID A. WILSON
BRUCE B. CAMPBELL

October 10, 2005

VANCE B. DRAWDY
1928-1997
JAMES G. JOHNSON, III
1944-1990
J. WRIGHT HORTON
RETIRED

Mr. Kevin R. McCarthy
604A Timm Valley Road
Atlanta, GA 30305

RE: Lot 32, The Cliffs at Keowee Falls South, Jasmine Cove, Oconee

Dear Mr. McCarthy:

Enclosed herewith please find your original recorded deed and title insurance policy for the above described property which we are sending to you for safekeeping.

It was a pleasure handling this transaction for you and if we can be of further assistance to you in the future, please do not hesitate to contact us.

Sincerely,

HORTON, DRAWDY, WARD & JENKINS

Vickie R. Little

Vickie R. Little
Legal Assistant for Thomas F. Dugas

Enclosures

107 PETTIGRU STREET (29601) • POST OFFICE BOX 10167 (29603) • GREENVILLE, SOUTH CAROLINA
864.233.4351 • FAX 864.233.7142 • WWW.HORTONLAWFIRM.NET



STATE TAX 2873.00
COUNTY TAX 1215.50
EXEMPT _____

Doc ID: 000799900002 Type: DEE
BK 1437 PG 183-184
Speed above this line for recording information

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2005 AUG -8 P 3 32

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, KEOWEE FALLS INVESTMENT GROUP, LLC, herein referred to as Grantor, for and in consideration of the sum of ONE MILLION ONE HUNDRED ONE THOUSAND AND NO/100 (\$1,100,000.00) Dollars, paid by KEVIN R. MCCARTHY, hereinafter referred to as Grantee, in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto:

KEVIN R. MCCARTHY,
his heirs, successors, and assigns forever

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Lot Number Thirty-Two (32) The Cliffs at Keowee Falls South, Jasmine Cove, as shown on a plat of "Survey for Keowee Falls Investment Group, LLC" prepared by Robert B. Threalt, PLS #15519, dated March 10, 2004 and recorded March 19, 2004 in the Office of the Register of Deeds for Oconee County, South Carolina in Plat Book A993, Pages 6 and 7, said lot having the metes and bounds, courses and distances as upon said plat appear.

This conveyance is specifically subject to Restrictive Covenants contained in Deed from Crescent Resources, LLC to Keowee Falls Investment Group, LLC dated 12/16/02 and recorded 12/18/02 in Deed Book 1256, Page 257, Oconee County, SC; amended by "Amendment and Restatement of General Deed Restrictions" dated 04/12/2004 and recorded 04/20/04 in Deed Book 1341, Page 6, Oconee County records; Declaration of Covenants, Conditions and Restrictions for The Cliffs at Keowee Falls South recorded in Deed Book 1251 at Page 221; also First Amendment of Declaration of Covenants, Conditions and Restrictions for Keowee Falls South dated 11/19/03 and recorded 11/25/03 in Book 1314, Page 224; also Supplemental Declaration of Covenants, Conditions, and Restrictions for the Cliffs at Keowee Falls South dated 3/19/04 and recorded 3/19/04 in Deed Book 1334, Page 284, Oconee County records.

By this deed, the Grantee accepts the burdens or benefits regarding dock location as provided in Paragraph 2(d) of the First Amendment of Declaration of Covenants, Conditions and Restrictions for Keowee Falls South dated 11/19/2003, and recorded in Deed Book 1314, Page 224, Oconee County records.

This is a portion of the same property conveyed unto the Grantor herein by deed from Crescent Resources, LLC dated December 16, 2002 and recorded in the Office of the Recorder's Office in Deed Book 1256 at Page 257.

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions of record, including matters shown on recorded plats.

Grantee's Address: 604A Timm Valley Rd Atlanta, GA 30305

Tax/Map No. part of 077-00-01-001

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever. AND THE GRANTOR does hereby bind Grantor's successors, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and Grantor's successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

THIS PROPERTY DESIGNATED AS
MAP 000 SUB 00 BLK 01 PARC 001 p10
ON OCONEE COUNTY TAX MAPS

Leslie Smith
OCONEE COUNTY ASSESSOR

Recorded this 2005 day of August
Book 2005 Page 504181
Fee _____

Shirley R. Nix
Auditor Oconee County, S.C.

WITNESS our Hand and Seal this 5th day of August, 2005.

Signed, Sealed and Delivered
in the Presence of:

Mavis Owens
Julie M. Shealy

Keowee Falls Investment Group, LLC
By its Sole Member:
The Cliffs Communities, Inc.

BY Charles R. Smith

STATE OF SOUTH CAROLINA

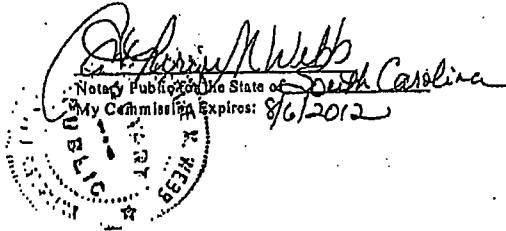
COUNTY OF OCONEE

PROBATE

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and as its act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
5th day of August, 2005.

Mavis Owens



Prepared By:

NO TITLE EXAMINATION
OLSON, SMITH, JORDAN & COX, P.A.
P.O. BOX 1433
CLEMSON, SC 29633
85-0438C

FATIG 519
ALTA Owner's Policy (10/17/92)

Policy No. FA-32- 249871

POLICY OF TITLE INSURANCE



ISSUED BY

First American Title Insurance Company

COINSURANCE CONTRACT

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY *Gary L. Kenworthy* PRESIDENT

ATTEST *Mark R. Amerson* SECRETARY

ALTA OWNER'S POLICY (10/17/92)

(TP 11/88)



DAVID B. WARD
JOSEPH M. JENKINS, JR.
WALLACE A. MULLINAX, JR.
MICHAEL A. PARRY
THOMAS F. DUGAS
DAVID A. WILSON
BRUCE B. CAMPBELL

October 10, 2005

VANCE B. DRAWDY
1928-1997
JAMES O. JOHNSON, III
1944-1990
J. WRIGHT HORTON
RETIRED

Ms. Courtney E. Rountree
604A Timm Valley Road
Atlanta, GA 30305

RE: Lot 32, The Cliffs at Keowee Falls South, Jasmine Cove

Dear Ms. Rountree:

Enclosed herewith please find your original recorded deed for the above described property which we are sending to you for safekeeping.

It was a pleasure handling this transaction for you and if we can be of further assistance to you in the future, please do not hesitate to contact us.

Sincerely,

HORTON, DRAWDY, WARD & JENKINS

Vickie R. Little

Vickie R. Little
Legal Assistant for Thomas F. Dugas

Enclosure

107 PETTIGRU STREET (29001) • POST OFFICE BOX 10167 (29603) • GREENVILLE, SOUTH CAROLINA
864.233.4151 • FAX 864.233.7142 • WWW.HORTONLAWFIRM.NET

002350
Ref
1000

HORTON, DRAWDY, WARD & JENKINS, P.A.
307 Pettigru Street, Greenville, SC 29601
PO Box 10167 29603
STATE OF SOUTH CAROLINA)



Doc ID: 000799910002 Type: DEE
BK 1437 Pg 185-186

TITLE TO REAL ESTATE

COUNTY OF OCONEE)

OCONEE COUNTY

STATE TAX _____

Grantees Address:

604 A Timm Valley Road
Atlanta, GA 30305

COUNTY TAX _____

EXEMPT ☒

KNOW ALL MEN BY THESE PRESENTS, that

KEVIN R. MCCARTHY

In consideration of ONE DOLLAR (\$1.00) LOVE AND AFFECTION the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

COURTNEY E. ROUNTREE, her heirs and assigns forever:

AN UNDIVIDED ONE-HALF INTEREST IN AND TO THE FOLLOWING:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Oconee, being known and designated as Lot Number Thirty Two (32), of The Cliffs at Keowee Falls South, Jasmine Cove, as shown on a plat thereof prepared by Robert E. Threatt, PLS 15519, dated March 10, 2004, and recorded in Plat Book A993 at Pages 6 and 7, and having the metes and bounds, courses and distances as upon said plat appear, together with a non-exclusive right of way and easement for the purpose of ingress and egress over and across the right of ways and easements shown on the aforementioned plat.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2005 AUG -8 P 3:33

This being the same property conveyed unto Kevin R. McCarthy by deed of Keowee Falls Investment Group, LLC, dated August 5, 2005, recorded in the Office of the Register of Deeds for Oconee County, SC on August 8, 2005 in Deed Book 1437 at Page 183.

This conveyance is subject to all restrictions, set-back lines, roadways, zoning ordinances, easements, and rights-of-way, if any, affecting the above described property.

Tca Map - part of 079-00-01-001

THIS PROPERTY DESIGNATED AS
MAP 079 SUB 00 BLK 01 PAR 001 p10 1
ON OCONEE COUNTY TAX MAPS

Heath Smith
OCONEE COUNTY ASSESSOR

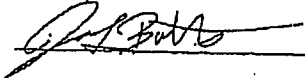
Recorded this 9th day of August
Book 1437 Page 185-186
Fee _____

Andrea R. Telf
Auditors Oconee County, S.C.

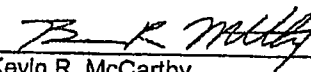
appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and assigns against the grantor(s) and the grantor's(s') heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 5th day of August, 2005.

SIGNED, sealed and delivered
in the presence of



Robin Young



Kevin R. McCarthy

STATE OF GEORGIA)

COUNTY OF FULTON)

ACKNOWLEDGMENT

SWORN, subscribed and acknowledged before me this 5th day of August, 2005 by
Kevin R. McCarthy.



Notary Public for Georgia (SEAL)

My commission expires:

PATRICIA A. ALTOMARO
NOTARY PUBLIC, FULTON COUNTY, GEORGIA
MY COMMISSION EXPIRES JANUARY 12, 2008



Paula Floren

From: Marie Owens
Sent: Monday, June 16, 2008 8:29 AM
To: Paula Floren
Subject: FW: JC 31

Paula, can you get me approval on the new price of 1.6 million on Jasmine Cove Lot 31?

Thanks!

Marie Owens
Mgr. Sales and General Accounting
The Cliffs Communities
864.371.1037 | office
864.371.1540 | fax
mowens@cliffscommunities.com

From: Scott Beville
Sent: Thursday, June 12, 2008 12:21 PM
To: JC Taylor
Cc: Marie Owens; Jim Anthony; Marty Rijsch
Subject: RE: JC 31

Approved.

Marie - I have discussed with JBA. Let's get this lot back in inventory. Please put an asterisk next to this lot and make sure the Executive includes the June 3, 2008 letter from SM & E with the contract on this lot. The wording can read - **must include SM & E letter with contract.* We want to make sure we have full disclosure on this lot before someone moves forward with the purchase.

JC - please review and work with the Kennee team to make sure they cover this with the Customers/Buyers.

Thanks,



Scott D. Beville
President
Cliffs Real Estate, Inc.
864.836.2227 | office
864.371.1398 | fax
800.884.2933 | toll-free
sbeville@cliffscommunities.com
www.cliffscommunities.com

"...one of the most comprehensive and impressive club memberships in the world." - *Resort Living*

JBA

From: JC Taylor [mailto:jctaylor@blueskysells.com]
Sent: Wednesday, June 11, 2008 2:00 PM
To: Scott Beville
Subject: JC 31

Scott,
Just got off the phone with Brandon. There's still a little work to do on JC 31, but should be done shortly. As we previously discussed, can you approve a price of 1.6 million so we can get it back on the market. Thanks.

PLAINTIFF'S
EXHIBIT

D



5-21-08
7.12.08

CLIFFS COMMUNITIES REAL ESTATE, INC.
EXCLUSIVE RIGHT TO SELL AGREEMENT, HOME-SITES

THIS AGREEMENT IS SUBJECT TO THE S. C. UNIFORM ARBITRATION ACT, 15-48-10 ET SEQ.

1. PARTIES, AUTHORIZATION PERIOD, PROPERTY DESCRIPTION: In consideration of the covenants herein contained, Kevin R. McCarthy and Courtney E. Rountree, sole Owner(s) (hereinafter called "OWNER") of the real described below and Cliffs Communities Real Estate, Inc. (hereinafter called "BROKER") agree as follows: For the period of time beginning on May 21, 2008 and ending at midnight on November 21, 2008 (Authorization Period) Owner hereby grants to Broker the sole and exclusive right to sell the real Property known as:

Address: Section KFS Jasmine Cove, Lot 32; Oconee County; Tax Map # 088-06-01-015, State of South Carolina, hereinafter called "the Property".

Broker hereby accepts the employment as the sole and exclusive agent of the Owner to sell the Property, subject to the following terms and conditions:

2. AGENCY DISCLOSURE: (Owner must initial all applicable choices)

☒ Owner acknowledges receiving an explanation of the types of agency relationships that are offered by brokerage and an Agency Disclosure Form at the first practical opportunity at which substantive contact occurred between the agent and Owner.

Owner acknowledges that after entering into this written agency contract, agent might request a modification in order to act as dual agent or a designated agent in a specific transaction, if asked:

☐ Permission to act as a dual agent will not be considered.

☒ Owner Permission to act as a dual agent may be considered at the time I am provided with information about the other party to a transaction. If I agree, I will execute a separate written Dual Agency Agreement.

3. AUTHORIZED COOPERATION & COMPENSATION: Broker has advised Owner of Broker's general company policy regarding cooperation with other brokerages as Subagents, Buyer's Agents or both. Owner authorizes the Broker to cooperate with and to compensate the following: (INITIAL APPLICABLE CHOICES)

☒ Owner SUBAGENTS REPRESENTING ONLY THE OWNER (only sub-agents of Cliffs Real Estate, Inc.).

☒ Owner BUYER AGENTS REPRESENTING ONLY THE BUYER.

☐ NONE OF THE ABOVE.

4. TERMS. Broker agrees to employ Broker's best efforts to sell or secure a contract for the sale of the Property for a price of One million Three hundred Ninety-Nine thousand and NO/100 Dollars (\$ 1,399,000) or for such other price or upon such other terms (including exchange) to which Owner may subsequently agree during the Authorization Period. Owner agrees to pay Broker a commission fee of TEN PERCENT (10%) of the gross sales price. Such compensation shall be earned, due and payable in any one of the following events: (1) the sale of the Property during the Authorization Period; (2) the signing by the Owner of a valid contract to sell the Property, but Owner fails or refuses to complete the sale as agreed; (3) the presentation to the Owner of a valid and bona fide written offer to purchase the Property which complies with the terms and conditions specified herein or with any terms and conditions acceptable to the Owner; or, (4) an option, exchange, lease or trade agreement is signed by the Owner during the Authorization Period.

☒ Owner ☒ Owner have read this page. Broker _____

These fees will be due to the Broker even if the Owner or a third party sells or obtains the contract to sell the Property during the Authorization Period, or if the Owner or a third party sells or obtains the contract to sell the Property within 90 days after the expiration of the Authorization Period to or from a purchaser introduced to the Owner or the Property during the Authorization Period, and made known to the Owner. This protection period for the Broker beyond the Authorization Period will be automatically terminated if the Owner enters into a listing agreement with another broker during the protection period.

These fees will be due to the Broker not later than the closing date called for in any contract to sell the Property or any extension thereof. Owner agrees to pay all costs, including reasonable attorney's fees, should legal counsel be employed by Broker to enforce payment of the fee, whether suit be brought or not.

Broker agrees to defer these fees until the closing date or extension thereof stated in the contract of sale or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral will in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay the brokers' fees from the closing proceeds. Owner understands Broker makes no representation or guarantee as to the sale of the Property.

5. EARNEST MONEY: Owner authorizes and designates Escrow Agent, as designated by the sales agreement, to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the Property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Escrow Agent any costs incurred by Escrow Agent including attorney's fees as a result of the release of payment to Owner of any of the earnest money deposited, and such reimbursement may be made by Escrow Agent from the earnest money deposit. All earnest money will be deposited in Escrow Agent's escrow account. Owner understands that, under all circumstances, including default, escrow agent will not disburse earnest money to either party until both parties have executed an agreement authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement.

6. SIGNS: Owner grants to Broker the exclusive right to display "For Sale", "Under Contract", "Sale Pending", "Sold" (or other similar) signs on the Property as may be permitted by the applicable Cliffs Community's restrictive covenants and the POA.

7. BROKER'S DUTY: Broker agrees to employ the best effort of Broker and Broker's agents and staff to secure a contract of sale for the described Property upon such terms as may be agreeable to Owner. Broker's efforts will include:

- (a) Directing the efforts of Broker's organization to bring about the sale.
- (b) Advertising the described Property as Broker deems advisable.
- (c) Furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of Property.
- (d) Keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described Property.

8. OWNER'S DUTY: Owner agrees as follows:

- (a) To furnish Broker with complete and reliable information concerning ownership and the operation of the Property, and any encumbrances or liens affecting the Property.
- (b) To inform Broker of any inquiries (including inquiries from other brokers) or negotiations concerning the sale of the Property.
- (c) To permit inspection and showing of the Property by Broker, Broker's Agents, Subagents, Buyer's Agents, and by prospective buyers as deemed reasonably necessary by Broker, and to cooperate in the scheduling, showings and inspections as is necessary.
- (d) To permit the offering for sale of the Property to prospective buyers without regard to sex, race, creed, color, religion, national origin, handicap or familial status.
- (f) To authorize Owner's attorneys and the settlement agent to furnish Brokers copies of the final HUD-1 Settlement statement for the transaction prior to the closing date.
- (g) Not to deal directly with prospective buyers of this Property during the period of the agency and to refer any inquiries received directly and immediately to the Broker.
- (h) Owner agrees to maintain the Property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first.

X LM Owner X MM Owner have read this page

Broker _____

Page 2 of 4

(i) All home-sites must be satisfactorily under-brushed for access with corner-boundaries and building-envelope sites reasonably well marked (marking is \$200). Property must be maintained (no debris/underbrush) to ensure a show-able condition at least once each year.

(j) Home-site must be vehicle-accessible, either by drive or entry path.

(k) Trees *limbed-up*, if needed (in the opinion of the listing team) to improve views, access and overall value.

9. PROPERTY INFORMATION: Owner warrants that, to Owner's knowledge there are no material defects, hidden or obvious, in or on the Property, which have not been disclosed to Broker in writing. Owner acknowledges that if Owner knowingly violates this article he may be liable for actual damages proximately caused to the Buyer. Owner agrees to defend, indemnify and hold harmless the Broker, Broker's agents/subagents for all damages, including indemnification for attorney's fees and court costs, from any and all claims arising out of any information or omission of information presented to Broker by Owner.

10. DISCLOSURE: Owner authorizes Broker to disclose information about the Property to Broker's agents, subagents, buyer's agents, prospective buyers, and all inquiring parties. Such disclosure will be in accordance with Broker's company policy. Owner hereby authorizes anyone having a lien against the Property including any mortgage holder, to disclose complete information about the lien to Broker and Closing Attorney or Agent.

11. TAXES: Owner covenants and agrees to comply with the provisions of Section 12-8-580 of the Code of Laws of South Carolina, 1976, as amended, regarding withholding requirements of owners who are not residents of South Carolina as defined in the said statute. The payment of rollback taxes, if applicable, and past personal property taxes, if applicable, will be negotiated between the Owner and any prospective buyer.

12. COASTAL TIDELANDS & WETLANDS ACT: In the event the Property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, *et seq.*, of the Code of Laws of South Carolina, 1976, as amended), an addendum will be attached to the sales agreement incorporating the required disclosures. The payment of any necessary surveys will be negotiated between the Owner and any prospective buyer.

13. NO MULTIPLE LISTING SERVICE/ INTERNET MARKETING: Owner acknowledges that Broker is not a member of any Multiple Listing Service (MLS). Therefore, the Property will not be entered in a MLS. However, Owner X _____ agrees _____ does not agree that the listing may be placed in electronic marketing mediums including, but not limited to, the internet for marketing and advertising purposes only.

14. LIMIT OF LIABILITY FOR LOSS: Owner acknowledges and agrees that neither Broker, nor Broker's agents, subagents, nor anyone showing the Property, will be responsible for any damage to, or loss of personal property, or to the Property, except such damage or loss as may be caused by the negligence of such party. Owner further acknowledges that Broker is not an insurer against the loss of personal property and agrees to release Broker from any responsibility therefore.

15. MARKETING THE PROPERTY: The Broker will not continue marketing the Property after an offer has been accepted, unless requested in writing by the Owner to do so.

16. NO CONTROL OF COMMISSION RATES OR FEES: The Broker's compensation for services per this Agreement is solely negotiated between the Broker and Owner, and is not fixed, controlled, suggested, recommended, or maintained by any association of REALTORS®, or by any persons not a party to this Agreement. The compensation paid by the Listing Broker to a cooperating Broker or Buyer's Broker is established by the Listing Broker in his offer of compensation and is not fixed, controlled, suggested, recommended or maintained by any persons other than the Listing Broker.

17. ARBITRATION: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, will be submitted to mediation in accordance with The South Carolina Uniform Arbitration Act, 15-48-10 *et seq.* Disputes will include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference will be binding. This provision shall survive the Closing.

X  Owner X  Owner have read this page

Broker _____

Page 3 of 4

18. **SIGNATURES AND COPIES:** The parties to this Agreement agree to accept as valid and enforceable the signatures and initials of any one or more of the parties which are placed on this Agreement or any amendments and sent to the other party via facsimile machine or secure electronic means, including, but not limited to, electronic mail or the internet. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, provided all terms and conditions on each counterpart are identical. Following execution by the parties, this Agreement may be copied and each copy shall have the same force and effect as any original of this document.

19. **NON DISCRIMINATION POLICY:** The broker shall conduct all his brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party to the agreement.

20. **OTHER TERMS AND CONDITIONS:**

1. Section #3 is only available to sub-agents of Cliffs Real Estate, Inc.

2. **Membership Options:**

a. Seller has X does not have a membership.

b. Seller has Full Golf Membership.

3. _____

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF THE OWNER(S). THIS IS A LEGALLY BINDING AGREEMENT. OWNER WILL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. ANY CHANGES TO THIS LISTING AGREEMENT MUST BE IN WRITING.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

OWNER: X [Signature] Date 7-12-08 Time 4:00pm

OWNER: X [Signature] Date 7-12-08 Time 4:00pm

Owner Email(s): X crmcCarthy@bellsouth.net

Owner's Mailing Address: X 2518 Forest Drive, Charlotte NC 28211

Business Phone: X (704) 383-6381 Home Phone: X (704) 526-5353

Real Estate Company: Cliffs Communities Real Estate, Inc.

Office Mailing Address: 8 Plumley Summit Road, Landrum, SC 29356

Phone: 864-868-4700 or 800-745-2779

By: _____ Date _____ Time _____

Kate Castleman, Listing Agent
Cliffs Communities

X [Signature] Owner X [Signature] Owner have read this page Broker _____ Page 4 of 4

**SUBSURFACE EXPLORATION
JASMINE POINT CUL-DE-SAC
CLIFFS KEOWEE FALLS SOUTH
OCONEE COUNTY, SOUTH CAROLINA
S&ME Project No. 1261-10-058**

Prepared for:

The Cliffs Communities
3598 Highway 11
Travelers Rest, South Carolina 29690

Prepared by:



1 Marcus Drive
Suite 301
Greenville, South Carolina 29615

March 5, 2010





March 5, 2010

The Cliffs Communities
3598 Highway 11
Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickell, Jr., P.E.

Reference: **SUBSURFACE EXPLORATION**
Jasmine Point Cul-De-Sac
Cliffs Keowee Falls South
Oconee County, South Carolina
S&ME Project No. 1261-10-058

Ladies and Gentlemen:

This report presents the results of a subsurface exploration for the Jasmine Point cul-de-sac and its embankment. The exploration was made in accordance with our proposal number 10064 dated January 24, 2010. This report presents information regarding our understanding of a water line separation and the stability of an embankment for the cul-de-sac.

BACKGROUND INFORMATION

We understand the cul-de-sac at the end of Jasmine Point was constructed in about 2005/2006. Construction of the cul-de-sac appears to have required shallow excavation in the south and southwest parts and fill placement to as deep as about 15 feet in the east. Drives for residences have been extended to the north and northwest of the cul-de-sac and slope down to the north. A relatively steep embankment (estimated at about 1.5 horizontal to 1 vertical) slopes down to the east. It appears the original ground surface sloped gently down to the north and more steeply down to the northeast and east. Also, it appears old logging roads or roads used for the initial dam development were cut through this area.

A water line (6 inch diameter ductile iron) was installed across the cul-de-sac in about 2005 to supply the residence and future residences in the area. In December 2009, the water line crossing the road separated at a joint. The water line was repaired and it was estimated by the Salem Water Department that 100,000 gallons of water was lost in less than a 24 hour period. The ground along a section of the line was pushed up slightly and a small amount of water flowed out, but there was no indication where a large amount of

water exited the ground surface. To the south of the line and water line separation, the pavement dropped down about 4 inches. (This is shown on Photographs Nos. 1 and 2 in the Appendix.) This crack is primarily vertical. (There is a potential this separation was caused by the water pressure pushing the pavement upward, but if this were the case, water and soil would have been expected to flow out of the crack and there was no indication of this.) The distance from the water line separation to the crest of the slope is about 20 feet. With the exception of the crack, we have not observed any movement in the cul-de-sac embankment. 50.....

FIELD EXPLORATION

The field evaluation included a visual reconnaissance of the area by the Geotechnical Engineer and the performance of three soil test borings. The boring locations were established in the field by our personnel measuring distances and estimating right angles from the existing pavement. In addition to the disturbed split-spoon soil samples routinely obtained in the borings, two relatively undisturbed Shelby tube samples were obtained for laboratory testing. After completion of drilling, the boreholes were backfilled with soil cuttings and mechanical hole plugs were installed to help keep the bore holes from settling.

The split-spoon soil samples were transported to our laboratory where they were manually and visually classified by the Geotechnical Engineer. The soil classification was estimated in accordance with the Unified Soil Classification System (USCS). The Shelby tube samples were subjected to consolidated-undrained triaxial shear testing.

A Boring Location Plan (Figure 1) showing approximate boring locations, Boring Logs presenting subsurface information obtained, field testing procedures and laboratory test data are included in the Appendix. Ground surface elevations are not shown on the Boring Logs because this information was not available at this time.

SUBSURFACE CONDITIONS

Surface Materials

Boring B-2, made in the pavement near the existing crack, penetrated 6 inches of asphalt and crushed stone base.

Existing Fill

Below the pavement in boring B-2 and at the ground surface in boring B-1, existing fill soil was encountered to depths of about 6 and 15 feet, respectively. This fill is primarily comprised of a mixture of silty clay, sandy silt and silty sand with rock fragments. (The USCS symbol for the silt is ML, the sand is SM and the clay is CL.) Significant organic matter was not observed in the soil samples. While the fill was moist, it was not found to be extremely wet. Based on the boring data, the fill is erratically and generally poorly compacted.

Residual Soils

Directly below the fill and at the ground surface in boring B-3, residual soils of the type common to the Oconee County area were encountered. The residuum primarily consists of silty sand and some sandy silt with a varying amount of mica. However, a layer of clayey silt was encountered by boring B-3. The standard penetration resistance in the residual soils ranged from 7 to 17 blows per foot. These values generally indicate a loose to medium dense relative density for the sands and a firm consistency for the silts. Generally these soils have a somewhat lower consistency than residual soils found in the Oconee County area. The borings were terminated in residual soils at a depth of 30 feet below the existing ground surface.

Note: The split spoon samples and standard penetration tests results were obtained using an automatic hammer. This hammer has a lower energy than a standard hammer. To account for this lower energy, a standard factor of 1.3 was multiplied to the field values to provide corrected values. These values are shown on the boring logs and used in our analyses.

Subsurface Water

Subsurface water was not encountered by any borings. It should be noted subsurface water levels will fluctuate during the year, due to such things as seasonal variations, precipitation, the water level in Lake Keowee and construction activity in the area.

The above description of subsurface conditions is relatively brief and general. For more detailed information, the individual Borings Logs contained in the Appendix may be consulted.

CONCLUSIONS AND RECOMMENDATIONS

From our visual observations, we did not observe indications that the cul-de-sac embankment has moved laterally. Also, we performed a slope stability analysis using triaxial shear testing from undisturbed samples of the fill and residual soils. (This test provides shear strength parameters of the soils.) The results of this analysis indicate a safety factor on the order of 1.3 to 1.4. While the slope inclination of 1.5H:1V is considered relatively steep, if instability occurs, it is typically in the form of surface sloughing, rather than a deep seated failure. As mentioned above, indications of this were not observed. While the fill is not well compacted, our experience indicates it would not be expected to settle enough to cause the water line to break or separate.

Based on the information above, it is our opinion the most likely time of events is that the water line separated first, rather than the slope moving and causing the water line to separate. The loss of water and soils it would have eroded could have caused the pavement cracking.

✓
why not
done
on Lot 31 2
basis 22

Also, we do not have a good explanation of how the 100,000 gallons of water moved. (100,000 gallons is roughly equivalent to the water contained in three Hampton Inn swimming pools.) Typically, water line separations flow water and eroded soils up to the ground surface and then surface flow down hill. While some small amount of water was noted to exit the ground near the separation by The Cliffs personnel and water line repair crew, significant flow was not noted. The residual soils directly below the fill are relatively porous and could have allowed subsurface water migration. The settlement crack in the road could have been caused by the water saturating the poorly compacted fill and causing it to settle or collapse. Further, there is a potential the rain the area has received over the last few months caused the soils to settle, and thus contributed to the water line separation.

We recommended the pavement be repaired and the cul-de-sac embankment be periodically observed. When development of the residential lots to the northeast and east of the cul-de-sac starts, the embankment should be flattened to at least 2H:1V. The new fill should be uniformly compacted to at least 95 percent of the soil's standard Proctor maximum dry density (ASTM D-698). In addition, the new fill should be tied (benched) into the existing slope.

Residence at 234 Jasmine Point

To the north of the cul-de-sac is a residence under construction at 234 Jasmine Point. At the time of the water line separation, the framing and ground floor slabs were in place. We were informed by the builder that the basement slab and slab under the rear deck had been poured in about September/October 2009. These slabs performed satisfactorily. About one week after the water line separation occurred, a rear section of the basement slab settled and cracked. Also, the slab under the deck separated from the rear building wall. The residence has a basement retaining wall which is performing satisfactorily. Also, neither water nor wet conditions have been observed near this wall.

The release of water at the cul-de-sac would not be expected to have affected the slabs. If it were not for the time coincidence, we would not have expected this to be a consideration. It appears the erratically compacted existing fill left below these slabs is the likely cause of their movement. Also, shrinkage of the concrete slabs could be causing some of the movement.

Existing Residence to the Northwest of Cul-De-Sac

An existing residence is to the northeast of the cul-de-sac. A laid cut rock drive extends from the cul-de-sac to this residence. The drive has experienced erosion of its east embankment and some of the rock pieces have moved. From our visual observation of this area, this condition is apparently due to rainwater runoff flowing across the drive. There was nothing observed that would indicate the erosion was caused by the pipe separation.

LIMITATIONS OF REPORT

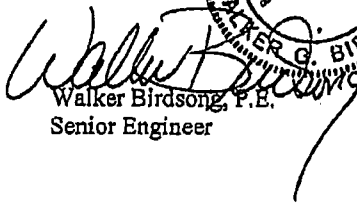
This report has been prepared in accordance with generally accepted geotechnical engineering practice for specific application to this project. The conclusions and recommendations in this report are based on the applicable standards of our practice in this geographic area at the time this report was prepared. No other warranty, express or implied, is made. The analyses and opinions submitted herein are based, in part, upon the data obtained from the subsurface exploration.

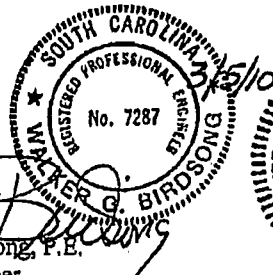
CLOSURE

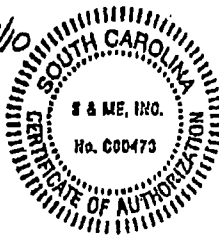
Should any questions arise regarding this report, please contact us.

Sincerely,

S&ME, Inc.


Walker Birdsong, P.E.
Senior Engineer






David Swoap, P.E.
Senior Engineer

wb/ds/s:\geotech\16110058\subex.doc

LEGEND TO SOIL CLASSIFICATION AND SYMBOLS

SOIL TYPES

(Shown In Graphic Log)

	Fill
	Asphalt
	Concrete
	Topsoil
	Gravel
	Sand
	Silt
	Clay
	Organic
	Silty Sand
	Clayey Sand
	Sandy Silt
	Clayey Silt
	Sandy Clay
	Silty Clay
	Partially Weathered Rock
	Cored Rock

WATER LEVELS

(Shown In Water Level Column)

-  = Water Level At Termination of Boring
 = Water Level Taken After 24 Hours
 = Loss of Drilling Water
 = Hole Cave

CONSISTENCY OF COHESIVE SOILS

CONSISTENCY

Very Soft
 Soft
 Firm
 Stiff
 Very Stiff
 Hard
 Very Hard

STD. PENETRATION RESISTANCE BLOWS/FOOT

0 to 2
 3 to 4
 5 to 8
 9 to 15
 16 to 30
 31 to 50
 Over 50

RELATIVE DENSITY OF COHESIONLESS SOILS

RELATIVE DENSITY

Very Loose
 Loose
 Medium Dense
 Dense
 Very Dense

STD. PENETRATION RESISTANCE BLOWS/FOOT

0 to 4
 5 to 10
 11 to 30
 31 to 50
 Over 50

SAMPLER TYPES

(Shown In Samples Column)

-  Shelby Tube
 Split Spoon
 Rock Core
 No Recovery

TERMS

Standard - The Number of Blows of 140 lb. Hammer Falling
Penetration 30 in. Required to Drive 1.4 in. I.D. Split Spoon
Resistance Sampler 1 Foot. As Specified In ASTM D-1586.

REC - Total Length of Rock Recovered in the Core
 Barrel Divided by the Total Length of the Core
 Run Times 100%.

RQD - Total Length of Sound Rock Segments
 Recovered that are Longer Than or Equal to 4"
 (mechanical breaks excluded) Divided by the
 Total Length of the Core Run Times 100%.



PROJECT: Jasmine Point Cul-De-Sac Oconee County, South Carolina S&ME Project No. 1281-10-058				BORING LOG J-1			
DATE DRILLED: 2/9/10		ELEVATION: Feet		NOTES: Hole caved at 21.8 feet			
DRILLING METHOD: 3 1/4" H.S.A.		BORING DEPTH: 30.0 Feet					
LOGGED BY: W. Birdsong		WATER LEVEL: Not Encountered @ TOB					
DRILLER: SAEDACCO		DRILL RIG: Diedrich D-50					
HAMMER TYPE: ☐ Gravity ☒ Automatic ☐ Other				NORTHING: EASTING:			

DEPTH (feet)	GRAPHIC LOG	MATERIAL DESCRIPTION	WATER LEVEL	ELEVATION (feet)	SAMPLE NO.	SAMPLE TYPE	BLOW COUNT / CORE DATA			STANDARD PENETRATION TEST DATA (blows/ft)				N VALUE
							1st 6in / RUN #	2nd 6in / REC	3rd 6in / ROD	10	20	30	60/80	
0		Fill - Firm brown and red-brown fine to medium sandy clayey SILT with rock fragments			1	3	4	4						8
5		Fill - Firm multi-colored silty fine to coarse SAND with rock fragments			2	7	3	3						6
10		Fill - Very soft to firm red-brown fine to medium sandy clayey SILT with rock fragments			3									
15					4	1	1	1						2
20		Residuum - Loose to medium dense white, black and brown micaceous silty fine to medium SAND			5	1	3	4						7
25					6	5	7	4						11
30					7	3	3	4						7
30					8	4	7	8						16
BORING TERMINATED AT 30 FEET														

NOTES:

1. THIS LOG IS ONLY A PORTION OF A REPORT PREPARED FOR THE NAMED PROJECT AND MUST ONLY BE USED TOGETHER WITH THAT REPORT.
2. BORING, SAMPLING AND PENETRATION TEST DATA IN GENERAL ACCORDANCE WITH ASTM D-1586.
3. STRATIFICATION AND GROUNDWATER DEPTHS ARE NOT EXACT.
4. WATER LEVEL IS AT TIME OF EXPLORATION AND WILL VARY.

REFERENCE:

Page 1 of 1



PROJECT: Jasmine Point Cul-De-Sac Oconee County, South Carolina S&ME Project No. 1261-10-058				BORING LOG J-2			
DATE DRILLED: 2/9/10		ELEVATION: Feet		NOTES: Hole caved at 9.8 feet			
DRILLING METHOD:		BORING DEPTH: 30.0 Feet					
LOGGED BY: W. Birdsong		WATER LEVEL: Not Encountered @ TOB					
DRILLER: SAEDACCO		DRILL RIG: Diedrich D-50					
HAMMER TYPE: ☐ Gravity ☒ Automatic ☐ Other				NORTHING:		EASTING:	

DEPTH (feet)	GRAPHIC LOG	MATERIAL DESCRIPTION	WATER LEVEL ELEVATION (feet)	SAMPLE NO.	BLOW COUNT / CORE DATA			STANDARD PENETRATION TEST DATA (blows/ft)					N VALUE
					1st 6in / RUN #	2nd 6in / REC	3rd 6in / RCD	10	20	30	60	80	
0		Asphalt and crushed stone pavement											
5		Fill - Firm to soft brown and red-brown fine to medium sandy silty CLAY with trace of roots		1	4	4	4						8
				2	3	1	3						4
10		Residuum - Firm brown-orange clayey slightly micaceous fine to medium sandy SILT	HC	3	4	3	4						7
				4	3	4	4						8
15		Loose multi-colored micaceous silty to very silty fine to medium SAND		5	3	3	4						7
20				6	5	6	4						8
25				7	3	3	6						8
30				8	4	4	5						9
		BORING TERMINATED AT 30 FEET											

BORING LOG 6110058 - JASMINE POINT CUL-DE-SAC, S&ME, 2/2/10

NOTES:

1. THIS LOG IS ONLY A PORTION OF A REPORT PREPARED FOR THE NAMED PROJECT AND MUST ONLY BE USED TOGETHER WITH THAT REPORT.
2. BORING, SAMPLING AND PENETRATION TEST DATA IN GENERAL ACCORDANCE WITH ASTM D-1586.
3. STRATIFICATION AND GROUNDWATER DEPTHS ARE NOT EXACT.
4. WATER LEVEL IS AT TIME OF EXPLORATION AND WILL VARY.

REFERENCE:

Page 1 of 1



PROJECT: Jasmine Point Cul-De-Sac Oconee County, South Carolina S&ME Project No. 1261-10-058				BORING LOG J-3			
DATE DRILLED: 2/9/10		ELEVATION: Feet		NOTES: Hole cave at 12 feet			
DRILLING METHOD:		BORING DEPTH: 30.0 Feet					
LOGGED BY: W. Birdsong		WATER LEVEL: Not Encountered @ TOB					
DRILLER: SAEDACCO		DRILL RIG: Dledrich D-50					
HAMMER TYPE: ☐ Gravity ☒ Automatic ☐ Other				NORTHING:		EASTING:	

DEPTH (feet)	GRAPHIC LOG	MATERIAL DESCRIPTION	WATER LEVEL ELEVATION (feet)	SAMPLE NO.	SAMPLE TYPE	BLOW COUNT / CORE DATA			STANDARD PENETRATION TEST DATA (blows/ft)				N VALUE
						1st 6in / RUN #	2nd 6in / REC	3rd 6in / ROD	10	20	30	60/80	
0		Residuum - Firm brown-orange fine to medium sandy very clayey SILT		1	5	3	4						7
5		Loose light brown slightly micaceous very silty, fine to medium SAND		2	3	4	4						8
10		Loose to medium dense multi-colored micaceous silty fine to coarse SAND		3	3	3	4						7
15				4	3	4	4						8
20				6	4	4	4						8
25				8	3	3	5						8
30				7	7	8	9						17
30				8	5	5	7						12
		BORING TERMINATED AT 30 FEET											

NOTES:

1. THIS LOG IS ONLY A PORTION OF A REPORT PREPARED FOR THE NAMED PROJECT AND MUST ONLY BE USED TOGETHER WITH THAT REPORT.
2. BORING, SAMPLING AND PENETRATION TEST DATA IN GENERAL ACCORDANCE WITH ASTM D-1586.
3. STRATIFICATION AND GROUNDWATER DEPTHS ARE NOT EXACT.
4. WATER LEVEL IS AT TIME OF EXPLORATION AND WILL VARY.

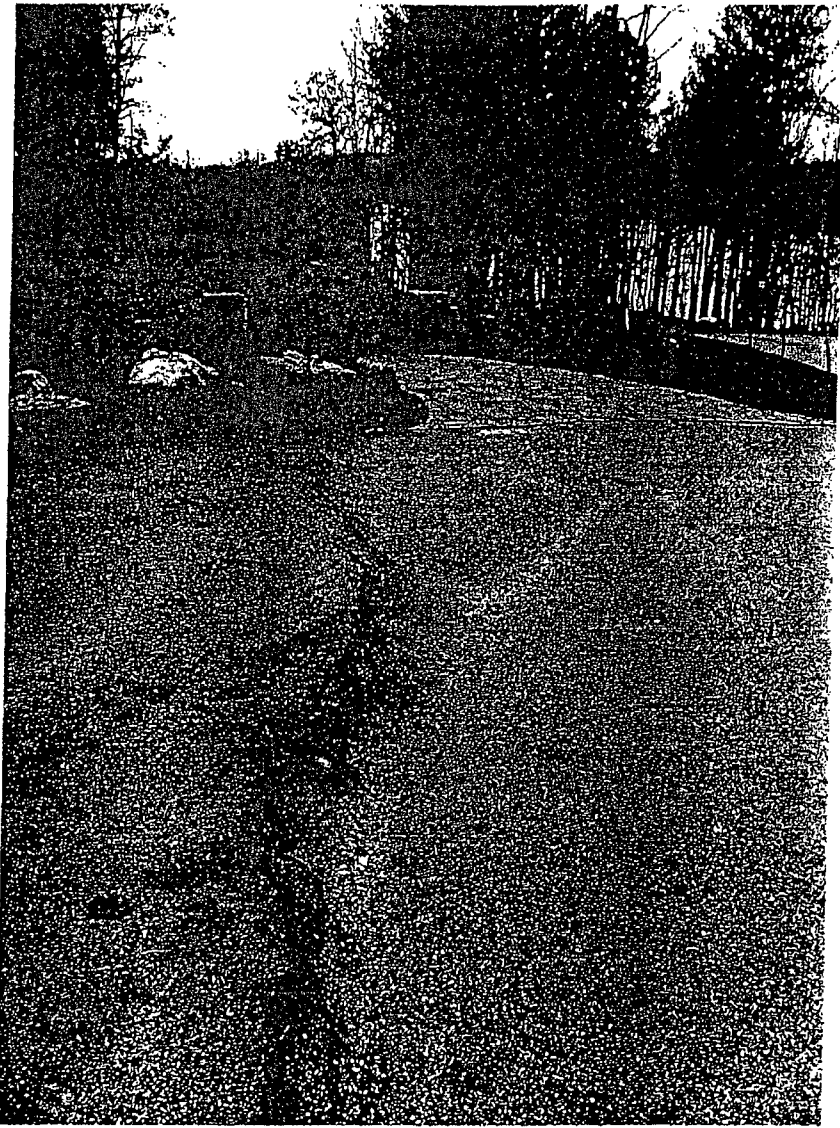
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Page 1 of 1



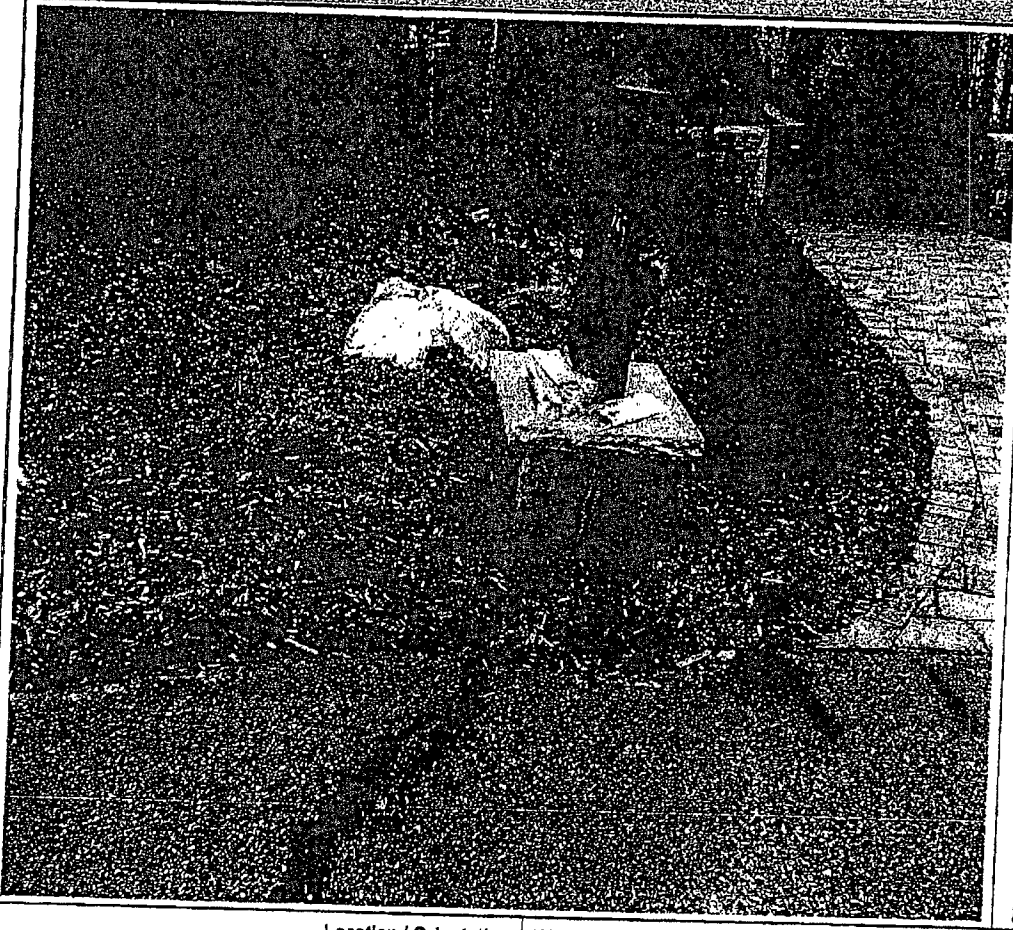
Jasmine Point Cul-de-sac
 Oconee County, South Carolina
 Project #: 1261-10-058
 Sheet 1 of 2

S&ME
 301 Zima Park Drive
 Spartanburg, SC 29301

Photo 1	
	
Date: 2/16/10	
Photographer: Walker Birdsong	
Location / Orientation	Center and west side of cul-de-sac
Remarks	Pavement crack

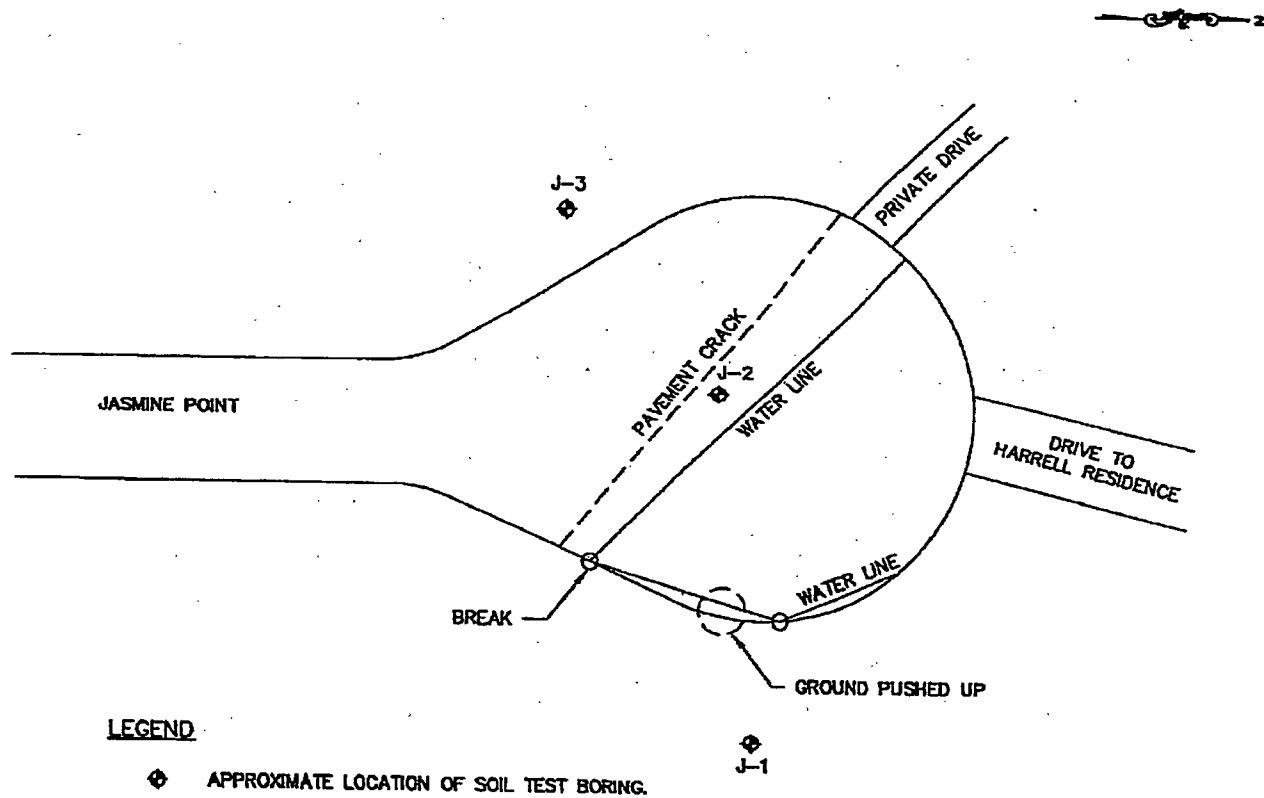
Jasmine Point Cul-de-sac
 Oconee County, South Carolina
 Project #: 1261-10-058
 Sheet 2 of 2

S&ME
 301 Zima Park Drive
 Spartanburg, SC 29301

Photo 2		Date: 2/16/10
		
Location / Orientation	West side of cul-de-sac	
Remarks	Cracked pavement on the west side of cul-de-sac	

Photographer: Walker Birdsong

CAD FILE: Q:\DWG\1261\1261-10\10058\10058 CLIFFS SITE.DWG



SCALE: NOT TO SCALE		SOIL BORING PLAN	FIGURE NO:
CHECKED BY: <i>WB</i>		JASMINE POINT CUL-DE-SAC	1
DRAWN BY: SB		CLIFFS KEOWEE FALLS SOUTH	
DATE: 02-16-2010		OCONEE COUNTY, SOUTH CAROLINA	
		JOB NO: 1261-10-058	

TRIAXIAL SHEAR TEST REPORT (ASTM D 4767)

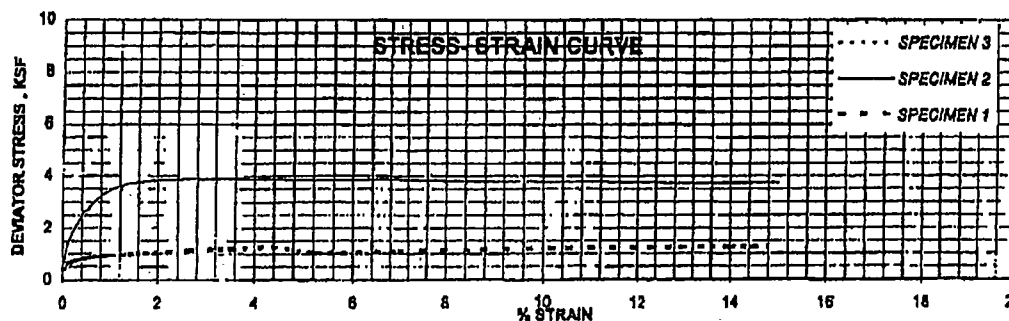
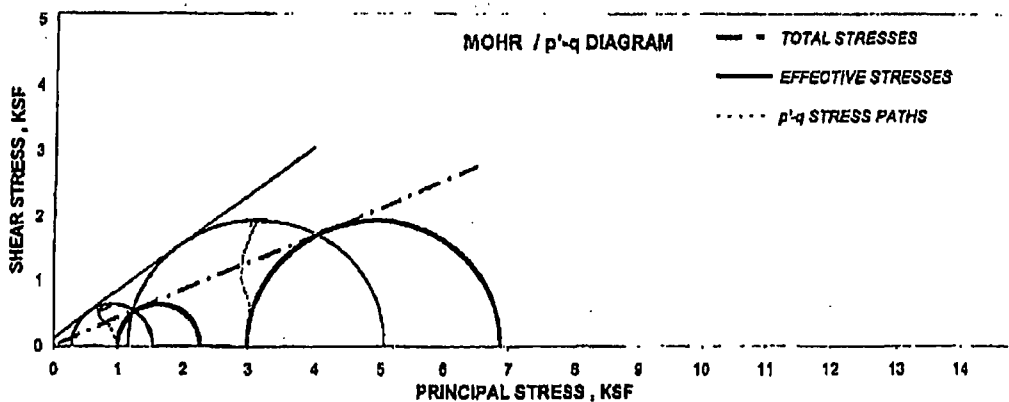


REV 4/1/2004

JOB NAME: S&ME - Laboratory General Use
 JOB NO.: 8121 REPORT NO.: 139707 REVIEWED BY: GMT DATE: 2/26/10
 BORING / PIT NO.: B-1 DEPTH / ELEV.: 8' - 10' SAMPLE NO.: - TYPE: UD
 S&ME JOB NO.: 1281-10-058
 SOIL DESCRIPTION: Reddish Brown Silty Fine to Medium Sand
 LL, %: - PI, %: - FINES, %: 48.2 G_s: 2.77

SPECIMEN PROPERTIES								TEST PARAMETERS, TEST TYPE : CU/PP				
	INITIAL			AFTER CONSOLIDATION			SPECIMEN NO.		1	2	3	
SPECIMEN NO.		1	2	3		1	2	3	B Value			
DIAMETER, INCHES	D _o	2.83	2.85		D _c	2.92	2.83		BACK PRESSURE, ksf	U _o	8.8	8.8
HEIGHT, INCHES	H _o	5.74	5.84		H _c	5.71	5.81		CONFINING PRESSURE, ksf	σ ₃	1.0	3.0
WATER CONTENT, %	W _o	25.0	28.0		W _c	36.3	35.5		MAX. DEVIATOR STRESS, ksf	σ ₁ -σ ₃	1.3	3.8
DRY DENSITY, PCF	Y _{dno}	85.1	85.8		Y _{dc}	88.2	87.1		ULT. DEVIATOR STRESS, ksf	σ ₁ -σ ₃	1.3	3.7
SATURATION, %	S _o	87.2	88.3		S _c	87.1	77.3		Specimen Shape @	Sheared   		
VOID RATIO	e _o	1.030	1.015		e _c	1.008	0.983		Failure			
CONTROLLED : Strain @ 0.1 % per minute												
T ₅₀ , Minutes = 3.84												

SHEAR STRENGTH PARAMETERS	TOTAL				EFFECTIVE			
	COHESION, C (ksf):				APPARENT COHESION, (ksf):			
	0				0.7			
PARAMETERS	ANGLE OF INTER. FRICTION, Φ (DEGREES):				ANGLE OF INTER. FRICTION, Φ (DEGREES):			
	23				37			





TRIAXIAL SHEAR TEST REPORT (ASTM D 4767)



REV. 1/13/04

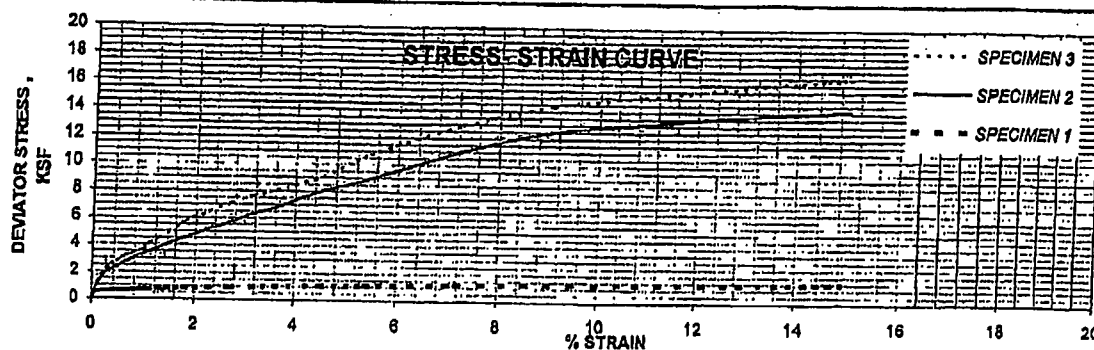
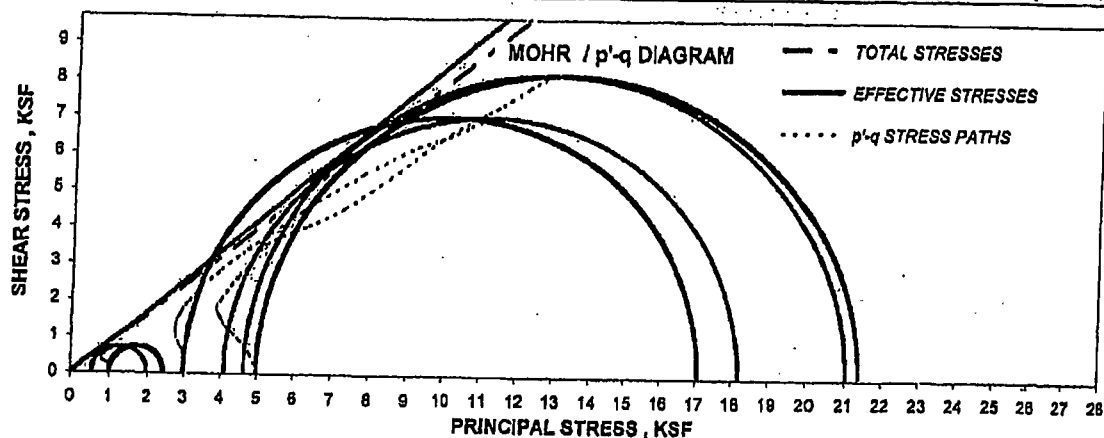
JOB NAME: S&ME - Laboratory General Use
JOB NO.: 8121 REPORT NO.: 139707 REVIEWED BY: DATE: 2/26/10
BORING / PIT NO.: B-1 DEPTH / ELEV.: 16' - 17' SAMPLE NO.: TYPE: UD
S&ME JOB NO.: 1261-10-058
SOIL DESCRIPTION: Light Yellowish Brown and White Fine to Coarse Sand with Silt
LL, %: PI, %: FINES, %: 8.8 G_s: 2.65

SPECIMEN PROPERTIES									TEST PARAMETERS , TEST TYPE : CU/PP				
SPECIMEN NO.	INITIAL			AFTER CONSOLIDATION			SPECIMEN NO.						
		1	2	3		1	2	3	B Value	1	2	3	
DIAMETER , INCHES	D ₀	2.83	2.87	2.87	D ₀	2.81	2.84	2.80	BACK PRESSURE, ksf	U ₀	9.4	9.4	9.4
HEIGHT , INCHES	H ₀	5.63	5.60	5.63	H _c	5.67	5.55	5.60	CONFINING PRESSURE , ksf	σ ₃	1.0	3.0	6.0
WATER CONTENT, %	W ₀	25.0	8.9	8.9	W ₀	32.5	21.0	21.2	MAX. DEVIATOR STRESS , ksf	σ ₁ -σ ₃	1.4	14.1	18.4
DRY DENSITY, PCF	γ _{dry}	86.4	103.3	98.5	γ _{dry}	88.9	108.2	105.8	ULT. DEVIATOR STRESS , ksf	σ ₁ -σ ₃	1.4	14.1	18.4
SATURATION , %	S ₀	72.5	39.3	34.7	S ₀	99.8	82.2	80.0	Specimen Shape @	Sheared			
VOID RATIO	e ₀	0.914	0.600	0.679	e _c	0.861	0.657	0.563					
CONTROLLED : Strain @ 0.22 % per minute									T60, Minutes = 1.82				

N/A

N/A

SHEAR STRENGTH PARAMETERS	TOTAL		EFFECTIVE	
	COHESION, c (ksf)	0	APPARENT COHESION, c' (ksf)	0
	ANGLE OF INTER. FRICTION, φ (DEGREES)	39	ANGLE OF INTER. FRICTION, φ' (DEGREES)	40



FIELD TESTING PROCEDURES

SOIL TEST BORINGS

All borings and sampling were conducted in accordance with ASTM D-1586-99 test method. Initially, the borings were advanced by either mechanically augering or wash boring through the overburden soils. When necessary, a heavy drilling fluid is used below the water table to stabilize the sides and bottom of the borehole. At regular intervals, soil samples were obtained with a standard 1.4-inch I.D., 2-inch O.D., split-barrel or split-spoon sampler. The sampler was first seated 6 inches to penetrate any loose cuttings and then driven an additional foot with blows of a 140-pound hammer falling 30 inches. The number of hammer blows required to drive the sampler the final foot is designated as the "Standard Penetration Resistance" or N-value. The penetration resistance, when properly evaluated, can be correlated to consistency, relative density, strength and compressibility of the sampled soils.

WATER LEVEL READINGS

Water level readings are normally taken in conjunction with borings and are recorded on the Boring Logs following termination of drilling (designated by ∇) and at a period of 24 hours following termination of drilling (designated by ∇). These readings indicate the approximate location of the hydrostatic water table at the time of our field exploration. The groundwater table may be dependent upon the amount of precipitation at the site during a particular period of time. Fluctuations in the water table should also be expected with variations in surface run-off, evaporation, construction activity and other factors.

Occasionally the boreholes sides will cave, preventing the water level readings from being obtained or trapping drilling water above the cave-in zone. In these instances, the hole cave-in depth (designated by HC) is measured and recorded on the Boring Logs. Water level readings taken during the field operations do not provide information on the long-term fluctuations of the water table. When this information is required, piezometers are installed to prevent the boreholes from caving.

IBLE
INC.
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

March 1, 2010

Mr. Lance Yuda
Zone 7 Nursery
lance@zone7nursery.com

Subject: Report of Site Observations
235 Jasmine Point
The Cliffs @ Keowee Falls South
Oconee County, South Carolina
BLE Project No. J10-6933-01

Gentlemen:

As requested, our Mr. Bill Mathews met with Mr. Yuda at the above referenced site to observe distress to the driveway and offer an opinion as to the likely cause based on limited site observations. The driveway is constructed from masonry pavers and has exhibited differential settlement along a section of the driveway. We understand that repairs were made to the driveway but the differential settlement returned a short time later. Mr. Yuda indicated that a water main in the road had recently failed and was repaired.

At the time of our site visit on February 26, 2010, we observed the distress in the driveway of 235 Jasmine Point (Lot 29). However, it appears that the problem is much more widespread. The distress observed in the driveway was part of a line of differential movement that extended in a semi-circular manner across the cul-de-sac and into Lot 32 on the other side of the street. The differential settlement was relatively abrupt and was estimated to be up to approximately two feet (vertically) on Lot 32. Based on our limited site observations, it is our opinion that the differential movement is associated with an active slope failure. The semi-circular shape and abrupt movement is a classic indication of a failure scarp that develops at the upper limits of a slope failure. The observed scarp appears to encompass all or parts of Lots 29, 30, 31 and 32. Please refer to the attached aerial photograph which identifies the approximate location of the observed scarp.

It is our opinion that repairs to the driveway of Lot 29 would be a temporary measure and that damage would soon return unless measures are undertaken to stabilize the apparent slope failure. A detailed geotechnical exploration, laboratory testing and engineering analysis would be required to determine the extent and depth of the soil involved in the failure and to develop a stabilization plan. At the time of our site visit, we observed what appeared to be evidence of recent soil test borings that may have been

8004 PONDERS COURT
GREENVILLE, SOUTH CAROLINA 29615



PHONE (864) 288-1265
FAX (864) 288-4430

BLE

performed in the cul-de-sac near the failure scarp. It is possible that the developer may have already retained an engineering firm to evaluate the movement.

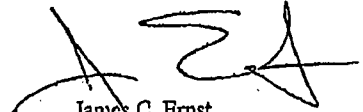
We suggest that you contact the developer to determine whether there is an existing engineering evaluation being performed. If requested, BLE could prepare a proposal to evaluate the apparent slope failure. However, since access to all of the affected lots would be required, such a proposal would likely have to be requested by and coordinated through the developer. We appreciate the opportunity to provide our professional services on this project. If you have any questions or require additional assistance, please call.

Sincerely;

BUNNELL-LAMMONS ENGINEERING, INC.

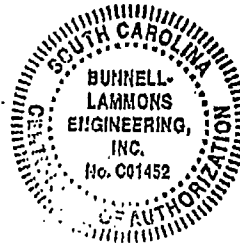

William A. Mathews, P.E.
Chief Engineer
Registered, SC #14039




James C. Ernst
Construction Services Manager

Attachment

c:\public pc033\projects\235 Jasmine point the cliffs at keowee falls south.doc



IBLE INC.
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

ACCEPTANCE COPY
PLEASE RETURN TO:
BUNNELL-LAMMONS
ENGINEERING, INC.

May 4, 2010

Mr. Matthew Vogt
Resort Custom Homes
P.O. Box 16479
Greenville, SC 29606

7057-01

Subject: Proposal for Inclinometer Installation and Monitoring
Harrell Residence at Jasmine Point
Cliffs Keowee Falls South
Oconee County, Lake Keowee, South Carolina
BLE Proposal No. P10-0338

Gentlemen:

We are pleased to present this proposal to install and monitor two slope inclinometers at the referenced project. This proposal is in response to our site meeting of April 27, 2010.

PROJECT INFORMATION

The Harrell Residence located at 234 Jasmine Point is currently under construction by Resort Custom Homes. The residence is located on Lot 31 of the Cliffs Keowee Falls South development. Mr. Vogt reported that there appears to have been some lateral deflection of the existing ground surface near the residence. A representative of BLE previously conducted site observations for the existing residence located at 235 Jasmine Point (Lot 29) and opined that there may be a slope failure developing (reference BLE Project No. J10-6933-01 letter dated March 1, 2010). At the time, it was our opinion that the failure may be encompassing all or parts of Lots 29, 30, 31 and 32. Mr. Vogt requested that we prepare a proposal to install and monitor two slope inclinometers on Lot 31.

PROPOSED SCOPE OF SERVICES

We propose to drill two soil test borings and install inclinometers in the boreholes at the approximate locations identified during our site meeting of April 27, 2010. The soil test borings are proposed to be drilled to a depth of 50 feet each, although the actual depth will depend on the subsurface conditions encountered in the borings. The soil test borings will be drilled in general accordance with ASTM D 1586. Borings will be advanced to the assigned depths or until refusal, whichever occurs first. Roller cone drilling procedures will be incorporated if necessary to advance the borings into more resistant partially

8004 PONDERA COURT
GREENVILLE, SOUTH CAROLINA 29615



PHONE (864) 288-1285
FAX (864) 288-4430
BLE-00136



*Proposal for Inclinometer Installation and Monitoring
Harrell Residence at Jasmine Point*

May 4, 2010
BLE Proposal No. P10-0338

weathered rock. At the completion of drilling, we will transport the samples to our laboratory where they will be examined by a geotechnical engineer and visually classified.

We propose to install an inclinometer in each borehole. The inclinometer consists of a precision grooved casing that is put into a borehole and grouted in place. A portable inclinometer probe is used to survey the casing. The first survey establishes the initial profile of the casing. Subsequent surveys reveal changes in the profile of the casing if movement has occurred. This data can then be evaluated to estimate the amount of movement and the depth at which movement is taking place. This information is necessary to develop remedial recommendations, if required.

We propose to collect an initial baseline measurement within a few days after the inclinometer is installed. Subsequent measurements should be performed on a periodic basis. Initially, we recommend the periodic measurements be collected every month for a period of three months. Status reports will be issued after every measurement (except the baseline measurement) with a summary report at the end of the data collection period. Pending the results of the first three months of data collection, we will provide feedback as to whether the monitoring schedule should be continued and/or revised.

SCHEDULE

We will order the inclinometer casing once we receive your authorization to proceed. Although each project varies, it has been our experience that the inclinometer casing can generally be shipped within a few days after we place the order. We will schedule the drilling to occur once we know the delivery date of the inclinometer casing. However, based on past projects, we anticipate that the casing will be received and the drilling completed within approximately two weeks after we receive your authorization to proceed. We propose to collect four sets of inclinometer data (baseline data plus three subsequent monthly readings). A letter report presenting the boring logs will be submitted after the baseline inclinometer data is collected. After each subsequent inclinometer reading, a data report will be submitted presenting the results of the inclinometer readings.

FEE ESTIMATE

We will provide the scope of services detailed herein as indicated below.

Drilling and Inclinometer Installation (lump sum): \$4,325
Inclinometer Data Collection (per event): \$685

Please note that if we collect four sets of data (baseline reading plus three subsequent readings) as proposed, the total cost for the services would be \$7,065. If you elect to have us collect additional or fewer sets of data, the total cost will be adjusted accordingly.

BLE

*Proposal for Inclinometer Installation and Monitoring
Harrell Residence at Jasmine Point*

May 4, 2010
BLE Proposal No. P10-0338

AUTHORIZATION

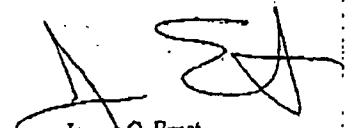
As our written authorization, please complete and return one copy of the enclosed Proposal Acceptance Sheet. Any exceptions to this proposal or special requirements not covered in the proposal should be listed on the Proposal Acceptance Sheet. Please note that the Terms and Conditions are a part of this proposal.

Bunnell-Lammons Engineering appreciates the opportunity to offer our professional geotechnical services on this project. If you have any questions concerning this proposal, please contact us.

Sincerely,

BUNNELL-LAMMONS ENGINEERING, INC.


William A. Mathews, P.E.
Chief Engineer


James C. Ernst
Construction Services Manager

Attachments: Proposal Acceptance Sheet
Terms and Conditions

c:\public\pe079\proposal\jasmine point inclinometer.docx

BLE INC.

BUNNELL-LAMMONS ENGINEERING, INC.
6004 Ponders Court
Greenville, South Carolina 29615

**ACCEPTANCE COPY
PLEASE RETURN TO:
BUNNELL-LAMMONS
ENGINEERING, INC.**

Phone (864) 288-1285
Fax (864) 288-4430

PROPOSAL ACCEPTANCE SHEET

The purpose of this sheet is to obtain your written authorization for our services and confirm the terms and conditions under which these services are provided as shown below.

Compensation for services rendered will be based on the attached schedule of fees (or as otherwise indicated below) which are part of this work authorization. If we are requested to modify the scope of work at your request or determine during the execution of the work that a modification of scope is required, we will promptly seek and confirm in writing a mutually agreeable revision of the scope of work and associated charges. All testing will be performed in accordance with the applicable specifications unless otherwise noted and test results apply only to the materials actually tested.

Project Name and Proposal Number: Proposal for Inclinator Installation and Monitoring
BLE Proposal No. P10-0338

Project Location: Harrell Residence at Jasmine Point
Lot 31 Cliffs Keowee Falls South - Oconee County, SC

FOR PAYMENT OF CHARGES: (to the account of)

Firm: Robert Curson Hamer Attention: DAIS

Address: PO Box 16479

City, State: Greenville SC Zip Code: 29606 Phone Number: 864 233 6451

Fax Number: 864 233 5131

WORK AUTHORIZED BY:

[Signature]
Signature

5/5/00
Date

Print Name and Title - Signatory warrants his/her authority to bind the entity represented here.

Robert Curson Hamer
Company Name

PO Box 16479
Address

Greenville
City

SC
State

29606
Zip Code

SPECIAL INSTRUCTIONS:

ACCEPTANCE COPY
PLEASE RETURN TO:
BUNNELL-LAMMONS
ENGINEERING, INC.

May 18, 2010

Mr. Don Nichol
Cliffs Communities

Subject: **Proposal for Inclinator Installation and Monitoring**
Jasmine Point
Cliffs Keowee Falls South
Oconee County, Lake Keowee, South Carolina
BLE Proposal No. P10-0389

Gentlemen:

We are pleased to present this proposal to install and monitor four slope inclinometers at the referenced project. This proposal is in response to our telephone conversation of May 14, 2010.

PROJECT INFORMATION

Bunnell-Lammons Engineering, Inc. (BLE) previously submitted a proposal to Mr. Matt Vogt of Resort Custom Homes for installation of two inclinometers for the Harrell Residence currently under construction at 234 Jasmine Point. The residence is located on Lot 31 of the Cliffs Keowee Falls South development. In response to subsequent conversations between Mr. Vogt and Mr. Nichol, we have been requested by Mr. Nichol to prepare this proposal for the installation and monitoring of four additional inclinometers on adjacent lots. Two of the inclinometers are proposed to be located on Lot 30 and two on Lot 32.

PROPOSED SCOPE OF SERVICES

We propose to drill four soil test borings and install inclinometers in the boreholes. The inclinometers will be installed in areas accessible to our drill rig without the need for site clearing. The soil test borings are proposed to be drilled to a depth of 50 feet each, although the actual depth will depend on the subsurface conditions encountered in the borings. The soil test borings will be drilled in general accordance with ASTM D 1586. Borings will be advanced to the assigned depths or until refusal, whichever occurs first. Roller cone drilling procedures will be incorporated if necessary to advance the borings into more resistant partially weathered rock. At the completion of drilling, we will transport the samples to our laboratory where they will be examined by a geotechnical engineer and visually classified.

PLAINTIFF'S
EXHIBIT

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DN E-00111



*Proposal for Inclinometer Installation and Monitoring
Lots 30 and 32 at Jasmine Point*

*May 18, 2010
BLE Proposal No. P10-0389*

We propose to install an inclinometer in each borehole. The inclinometer consists of a precision grooved casing that is put into a borehole and grouted in place. A portable inclinometer probe is used to survey the casing. The first survey establishes the initial profile of the casing. Subsequent surveys reveal changes in the profile of the casing if movement has occurred. This data can then be evaluated to estimate the amount of movement and the depth at which movement is taking place. This information is necessary to develop remedial recommendations, if required.

We propose to collect an initial baseline measurement within a few days after the inclinometers are installed. Subsequent measurements should be performed on a periodic basis. Initially, we recommend the periodic measurements be collected every month for a period of three months. Status reports will be issued after every measurement (except the baseline measurement) with a summary report at the end of the data collection period. Pending the results of the first three months of data collection, we will provide feedback as to whether the monitoring schedule should be continued and/or revised.

SCHEDULE

We will order the inclinometer casing once we receive your authorization to proceed. Although each project varies, it has been our experience that the inclinometer casing can generally be shipped within a few days after we place the order. We will schedule the drilling to occur once we know the delivery date of the inclinometer casing. However, based on past projects, we anticipate that the casing will be received and the drilling completed within approximately two weeks after we receive your authorization to proceed. We propose to collect four sets of inclinometer data (baseline data plus three subsequent monthly readings). A letter report presenting the boring logs will be submitted after the baseline inclinometer data is collected. After each subsequent inclinometer reading, a data report will be submitted presenting the results of the inclinometer readings.

FEE ESTIMATE

We will provide the scope of services detailed herein as indicated below.

Drilling and Inclinometer Installation (lump sum): \$8,300
Inclinometer Data Collection (per event): \$800

Please note that if we collect four sets of data (baseline reading plus three subsequent readings) as proposed, the total cost for the services would be \$11,500. If you elect to have us collect additional or fewer sets of data, the total cost will be adjusted accordingly. Please note that this fee estimate is for the four inclinometers that will be installed on Lots 30 and 32 but assumes that they will be installed concurrently with the inclinometers installed on Lot 31. As a result, this fee estimate does not include a



*Proposal for Inclinometer Installation and Monitoring
Lots 30 and 32 at Jasmine Point*

*May 18, 2010
BLE Proposal No. P10-0389*

mobilization charge for the drill rig. If we are required to install these inclinometers separately from the inclinometers on Lot 31, an additional fee of \$350 will be required for mobilization.

As an alternative, we understand that the installation and monitoring of the six total inclinometers for Lots 30, 31 and 32 may be combined into a single project if agreed upon by Mr. Vogt and Mr. Nichol. Under this scenario, the following fees would apply for the installation and monitoring of six total inclinometers.

Drilling and Inclinometer Installation (lump sum): \$12,000

Inclinometer Data Collection (per event): \$1000

Please note that if we collect four sets of data (baseline reading plus three subsequent readings) as proposed, the total cost for the services would be \$16,000. This represents a total potential cost savings of \$2,565 as compared to completing the installation, monitoring and reporting separately for Lot 31 as one project and Lots 30 and 32 as a separate project.

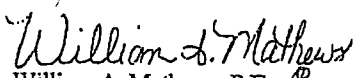
AUTHORIZATION

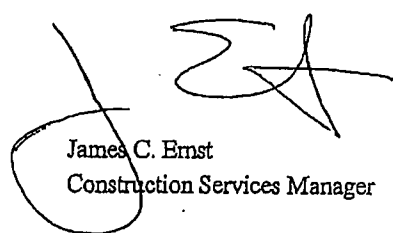
As our written authorization, please complete and return one copy of the enclosed Proposal Acceptance Sheet. Any exceptions to this proposal or special requirements not covered in the proposal should be listed on the Proposal Acceptance Sheet. Please note that the Terms and Conditions are a part of this proposal.

Bunnell-Lammons Engineering appreciates the opportunity to offer our professional geotechnical services on this project. If you have any questions concerning this proposal, please contact us.

Sincerely,

BUNNELL-LAMMONS ENGINEERING, INC.


William A. Mathews, P.E.
Chief Engineer


James C. Ernst
Construction Services Manager

Attachments: Proposal Acceptance Sheet
Terms and Conditions

c:\public pc079\proposals\jasmine point additional inclinometers for cliffs.doc



BUNNELL-LAMMONS ENGINEERING, INC.
6004 Ponders Court
Greenville, South Carolina 29615

ACCEPTANCE COPY
PLEASE RETURN TO:
BUNNELL-LAMMONS
ENGINEERING, INC.

Phone (864) 288-1285
Fax (864) 288-4430

PROPOSAL ACCEPTANCE SHEET

The purpose of this sheet is to obtain your written authorization for our services and confirm the terms and conditions under which these services are provided as shown below.

Compensation for services rendered will be based on the attached schedule of fees (or as otherwise indicated below) which are part of this work authorization. If we are requested to modify the scope of work at your request or determine during the execution of the work that a modification of scope is required, we will promptly seek and confirm in writing a mutually agreeable revision of the scope of work and associated charges. All testing will be performed in accordance with the applicable specifications unless otherwise noted and test results apply only to the materials actually tested.

Project Name and Proposal Number: Proposal for Inclinator Installation and Monitoring
Jasmine Point
BLE Proposal No. P10-0389

Project Location: Cliffs Keowee Falls South
Oconee County, Lake Keowee, South Carolina

FOR PAYMENT OF CHARGES: (to the account of)

Firm: _____ Attention: _____

Address: _____

City, State: _____ Zip Code: _____ Phone Number: _____

Email Address: _____ Fax Number: _____

WORK AUTHORIZED BY:

Signature _____ Date _____

Print Name and Title - *Signatory warrants his/her authority to bind the entity represented here.*

Company Name _____

Address _____

City _____ State _____ Zip Code _____

SPECIAL INSTRUCTIONS: _____

DL 1 00444



TERMS AND CONDITIONS

SERVICES TO BE PROVIDED. Bunnell-Lammons Engineering, Inc., through and by its officers, employees and subcontractors, (hereinafter BLE) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.

2. **PAYMENT TERMS.** Client agrees to pay BLE's invoice upon receipt. If payment is not received within 30 days from the Client's receipt of invoice, Client agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if BLE's fee is collected through an attorney. No deduction shall be made from invoice on account of liquidated damages unless expressly included in the Agreement. After five days prior notice to Client, BLE may suspend services until paid on any project where payment of invoiced amounts not reasonably in dispute is not received by BLE within 60 days of Client's receipt of BLE's invoice. Invoices will be sent approximately monthly for the services performed.

3. **STANDARD OF CARE.** BLE will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of BLE's profession practicing in the same or similar locality at the time of service. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY OUR PROPOSAL OR BY OUR ORAL OR WRITTEN REPORTS.

4. **INSURANCE.** BLE maintains insurance coverage as follows:

- a. Worker's Compensation Insurance.
- b. Employers Liability Insurance.
- c. Commercial General Liability Insurance.
- d. Professional Errors and Omission.

Certificates of Insurance can be provided upon acceptance of this agreement and upon request.

5. **PROFESSIONAL LIABILITY.** For additional consideration from BLE of \$10.00, receipt of which is hereby acknowledged, Client agrees that BLE's liability, and that of its officers, directors, employees, agents and subcontractors, to Client or any third party due to any negligent professional acts, errors or omissions or breach of contract by BLE will be limited to an aggregate of \$50,000 or BLE's total charges, whichever is later. If Client prefers to have higher limits of professional liability, BLE agrees to increase the aggregate limit, up to a maximum of \$100,000, upon Client's written request at the time of accepting our proposal, provided Client agrees to pay an additional consideration of 5% of total charges, or \$500, whichever is greater. The additional charge for the higher liability limit is because of the greater risk assumed by BLE and is not a charge for additional professional liability insurance. This limitation shall not apply to the extent prohibited by law.

6. **SITE OPERATIONS.** Client will arrange for right-of-entry to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

BLE's field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated location. BLE's field personnel will avoid hazards or utilities which are visible to them at the site. If BLE is advised in writing of the presence or potential presence of underground or above ground obstructions, such as utilities, we will give special instructions to our field personnel. BLE is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by Client or third parties, except to the extent such damage or loss is a result of BLE's negligence. Otherwise, Client agrees for the additional consideration of \$1.00, to indemnify and hold BLE, its directors, officers, employees, agents and subcontractors harmless, from any such claims, suits or losses, including related reasonable attorney's fees.

BLE will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in BLE's proposal, BLE's charges do not include cost of restoration due to any related damage which may result. If Client requests BLE to repair such damage, BLE will do so at an appropriate additional cost.

Field tests or boring locations described in BLE's report or shown on sketches are based on specific information furnished by others or estimates made in the field by BLE personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in BLE's proposal or report.

7. **FIELD REPRESENTATIVE.** The presence of BLE or its subcontractor's field personnel, either full-time or part-time, may be for the purpose of providing project initiation, assessment, observation and/or field testing of specific aspects of the project as authorized by Client. Should a contractor(s) not retained by BLE be involved in the project, Client will advise such contractor(s) that BLE's services do not include supervision or direction of the means, methods or actual work of the contractor(s), its

employees or agents. Client will also inform contractor that the presence of BLE's field representative for project administration, assessment, observation or testing will not relieve the contractor of its responsibilities for performing the work in accordance with the plans and specifications.

If a contractor (not a subcontractor of BLE) is involved in the project, Client agrees, in accordance with generally accepted construction practices, that the contractor will be solely and completely responsible for working conditions on the job site, including security and safety of all persons and property during performance of the work, and compliance with all Client safety requirements and OSHA regulations. These requirements will apply continuously and will not be limited to normal working hours. It is agreed that BLE will not be responsible for job or site safety or security on the project, other than for BLE's employees and subcontractors, and that BLE does not have the duty or right to stop the work of the contractor.

8. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing BLE's services. If this occurs, BLE will promptly notify and consult with Client, but will act based on BLE's sole judgment where risk to BLE personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in BLE's proposal, if practicable in BLE's judgment;
- b. Agree with Client to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c. Terminate the services effective on the date specified by BLE in writing.

9. **SAMPLE DISPOSAL.** Test specimens or samples generally are consumed or substantially altered during testing and any remnants are disposed of immediately upon completion of tests. Remaining drilling samples and other specimens are disposed of 30 days after submission of BLE's report. In the event that test samples contain toxic or hazardous constituents as defined by applicable law, upon completion of any testing and temporary storage by BLE and per Client's stated preference, BLE will return such samples to Client for proper disposal.

10. **WASTE DISPOSAL.** If Client requests BLE to containerize drilling wastes and/or fluids produced by BLE's activity ("Wastes"), Client will provide a secure temporary storage location at or near the project site to prevent tampering with such containerized Wastes. Non-hazardous Wastes will be disposed of by BLE for an additional charge at an appropriately licensed facility. Any hazardous Wastes will be disposed of under manifest executed by Client at any properly licensed facility selected by Client with BLE's assistance. At no time will BLE take title to such hazardous Wastes.

11. ***CLIENT DISCLOSURE.** Client agrees to advise BLE upon execution of this Agreement of any hazardous substance or any condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents a potential danger to human health, the environment, or BLE's equipment. Client agrees to provide BLE continuing related information as it becomes available to the Client. By virtue of entering into this Agreement or providing services hereunder, BLE does not assume control of or responsibility as an operator or otherwise for the site or the person(s) in charge of the site, or undertake responsibility for reporting to any federal, state or local public agencies any conditions at the site that may present a potential danger to public health, safety or the environment. Client agrees under advice of its counsel to notify the appropriate federal, state or local public agencies as required by law; or otherwise to disclose, in a timely manner, any information that may be necessary to prevent damage to human health, safety, or the environment.

12. ***ENVIRONMENTAL INDEMNITY.** In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by law, for separate and valuable consideration of \$1.00, Client agrees to defend, hold harmless and indemnify BLE from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by BLE's negligence or willful misconduct, resulting from:

- a. Client's violation of any federal, state, or local statute, regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;
- b. Client's undertaking of or arrangement for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at the site;
- c. Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during or after the completion of BLE's services;



d. Allegations that BLE is a handler, generator, operator, tester, storer, transporter, or disposer unless expressly retained by Client for such services under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state or local regulation or law due to the BLE's services; or,

e. Any third party suit or claim for damages against BLE alleging strict liability, personal injury (including death) or property damage from exposure to or release of toxic or hazardous substances or constituents at or from the project site before, during or after completion of BLE's services under this Agreement.

13. ***EQUIPMENT CONTAMINATION.** BLE will endeavor to clean its laboratory and field equipment which may become contaminated in the conduct of our services. Occasionally, such equipment cannot be completely decontaminated because of the type of hazards encountered. If this occurs, it will be necessary to dispose of the equipment in a manner similar to that indicated for hazardous samples or waste and to charge Client for the loss. Client agrees to pay the fair market value of any such equipment and reasonable disposal costs.

14. **DOCUMENTS.** BLE will furnish Client the agreed upon number of written reports and supporting documents. These instruments of services are furnished for Client's exclusive internal use and reliance, use of Client's counsel, use of Client's qualified bidders (design services only) and for regulatory submittal in connection with the project or services provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

a. All documents generated by BLE under this Agreement shall remain the sole property of BLE. Any unauthorized use or distribution of BLE's work shall be at Client's and recipient's sole risk and without liability to BLE. BLE may retain a confidential file copy of its work product and related documents.

b. If Client desires to release, or for BLE to provide, our report(s) to a third party not described above for that party's reliance, BLE will agree to such release provided we receive written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement (e.g. Secondary Client Agreement). Reports provided for disclosure of information only will not require separate agreement. Client acknowledges and agrees to inform such third party that BLE's report(s) reflects conditions only at the time of the study and may not reflect conditions at a later time. Client further acknowledges that such request for release creates a potential conflict of interest for BLE and by this request Client waives any such claim if BLE complies with the request.

c. Client agrees that all documents furnished to Client or Client's agents or designees, if not paid for, will be returned upon demand and will not be used by Client or any other entity for any purpose whatsoever. Client further agrees that documents produced by BLE pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without BLE's prior written approval.

d. Client shall furnish documents or information reasonably within Client's control and deemed necessary by BLE for proper performance of our services. BLE may rely upon Client-provided documents in performing the services required under this Agreement; however, BLE assumes no responsibility or liability for their accuracy. Client-provided documents will remain the property of Client, but BLE may retain one confidential file copy as needed to support its report.

e. Upon Client's request, BLE's work product may be provided on magnetic media. By such request, Client agrees that the written copy retained by BLE in its files, with at least one written copy provided to Client, shall be the official base document. BLE makes no warranty or representation to Client that the magnetic copy is accurate or complete, but will correct in good faith any omissions or errors brought to BLE's attention by Client. Any modifications of such magnetic copy by Client shall be at Client's risk and without liability to BLE. Such magnetic copy is subject to all other conditions of this Agreement.

15. **CLAIMS.** The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.

16. **OPINIONS OF COST.** If requested, BLE will use its best efforts and experience on similar projects to provide realistic opinions or estimates of costs for remediation or construction as appropriate based on reasonably available data, BLE's designs or BLE's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended to be firm budgeting or negotiation unless specifically agreed otherwise, in writing. BLE Client understands actual costs of such work depend heavily on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond BLE's control.

17. **TESTIMONY.** Should BLE or any BLE employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing, or trial, in relation to services provided under this Agreement, and BLE is not a party in the dispute, then BLE shall be compensated by Client for the associated reasonable expenses and labor for BLE's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides BLE such compensation, Client will receive a credit or refund on any related double payments to BLE.

18. **CONFIDENTIALITY.** BLE will maintain as confidential any documents or information provided by Client and will not release, distribute or publish same to any third party without prior permission from Client, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Client.

19. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws of the State of South Carolina.

20. **PRIORITY OVER FORM AGREEMENT/PURCHASE ORDERS.** The Parties agree that the provisions of these terms and conditions shall control over and not be superseded by any provisions of any other documents or writings and may be amended only by written instrument signed by both Client and BLE. Client may issue purchase orders to BLE to satisfy Client's purchasing requirements. It is agreed that the terms and conditions included in such purchase orders shall be considered deleted in their entirety and such terms and conditions shall be void.

21. **SURVIVAL.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Client and BLE shall survive the completion of the services and the termination of this Agreement.

22. **SEVERABILITY.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.

23. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior permission of the other.

24. **CONSIDERATION.** The parties agree that the charges for BLE's services are sufficiently adjusted to include any specific consideration payable to Client under these terms and conditions.

25. **INTEGRATION.** This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

*Applies only if toxic or hazardous substances or constituents are anticipated or encountered.

END OF DOCUMENT

PAS revision 6.0 - 08/25/08

BLE INC.
BUNNELL-LAMMONS ENGINEERING, INC.
 GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

July 15, 2010

The Cliffs Communities
 Post Office Box 1549
 Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickell, Jr.
dnickell@cliffscommunities.com

Subject: Report of Auger Boring Exploration
 Jasmine Point Cliffs at Keowee Falls South
 Oconee County, South Carolina
 BLE Project Number J10-7112-01

Gentlemen:

During installation of slope inclinometers on Jasmine Point at Lake Keowee, we were requested by Mr. Nickell to expand the scope of our services to include four additional auger borings. The borings were located in the vicinity of Lots 30, 31 and 32 (see attached Figure 1). The following table provides a summary of the subsurface conditions identified in the auger borings. The degree of drilling difficulty (soft, medium, hard) was judged by the drillers based on the relative rate of penetration of the augers during drilling. The soil classification was based on a visual classification of the soil cuttings brought to the surface by the mechanical augers.

Depth (feet)	Boring Number				
	B-1	B-2	B-3	B-4	
0-5	Soft reddish brown silty SAND	Soft reddish brown silty SAND	Soft reddish brown sandy SILT	Soft brown silty SAND	
5-10			Soft reddish brown to tan silty SAND		
10-15					
15-20					
20-25					
25-30	Medium to soft brown silty SAND	Medium brown silty SAND	Medium to hard brown silty SAND	Medium brown silty SAND	
30-35		Medium to hard silty SAND			Medium to hard silty SAND
35-40				Medium to hard brown silty SAND	
40-45					
Notes	Auger refusal at 46-ft Caved and dry at 38-ft	Auger refusal at 40-ft Caved and dry at 32.5-ft	Auger refusal at 28.5-ft Caved and dry at 24-ft	Auger refusal at 35-ft Caved and dry at 32-ft	

**PLAINTIFF'S
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Each of the borings encountered auger refusal at the depths indicated in the table. Auger refusal may be due to the presence of cobbles, boulders, partially weathered rock or rock. Although groundwater

BLE 000004

BLE_{inc.}

*Jasmine Point Cliffs at Keowee Falls South
Oconee County, South Carolina*

*July 15, 2010
BLE Job. No. J10-7112-01*

was not observed in the borings, each of the boreholes caved-in upon removal of the augers. Cave-in depth is sometimes indicative of the approximate groundwater level.

We appreciate the opportunity to provide our services on this project. If you have any questions or require additional assistance, please call.

Sincerely,

BUNNELL-LAMMONS ENGINEERING, INC.

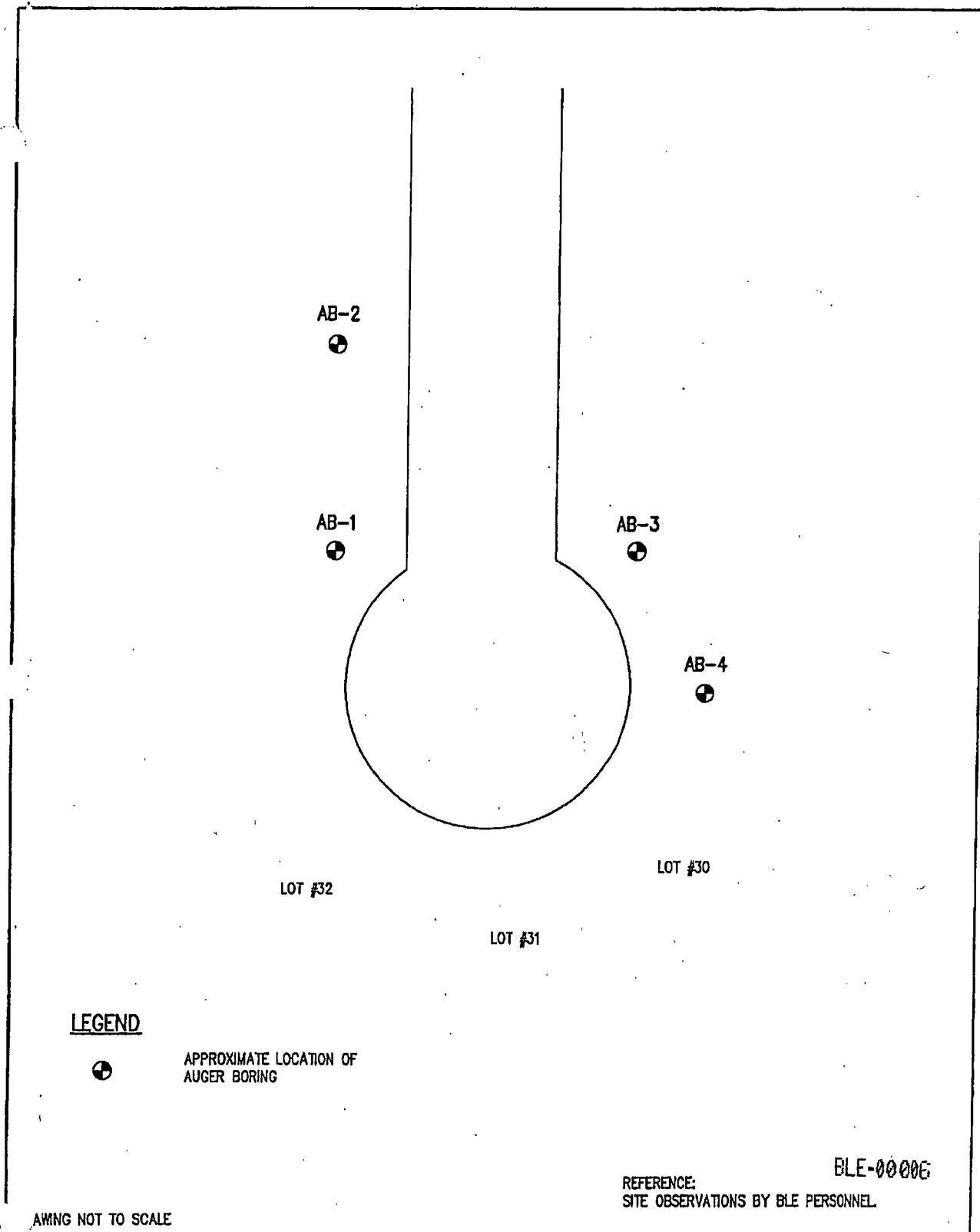


William A. Mathews, P.E.

Chief Engineer

Registered SC#14039

attachment



DRAWN: ACE	DATE: 07-15-10	IRI.E	BORING LOCATION PLAN	FIGURE

BLE
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

October 25, 2010

The Cliffs Communities
Post Office Box 1519
Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickell, Jr.
dnickell@cliffscommunities.com

Subject: Data Report of Slope Inclinometer Surveys
October 1, 2010 Readings
Jasmine Point - Cliffs at Keowee Falls South
Oconee County, South Carolina
BLE Project No. J10-7112-01

Gentlemen:

We are pleased to submit this data report of the surveys obtained from the slope inclinometers installed at Jasmine Point in the Cliffs at Keowee Falls South development. The data presented herein includes the latest round of readings obtained on October 1, 2010. The data included in this report is referenced to baseline data obtained on June 25, 2010. There are six inclinometers installed on Lots 30, 31 and 32 as indicated in the following table.

Inclinometer Number	Location
SI-1	Lot 30 upper
SI-2	Lot 30 lower
SI-3	Lot 31 upper
SI-4	31 Lot 32 lower > JH
SI-5	Lot 32 upper
SI-6	Lot 32 lower

Note: Locations identified as upper represent inclinometers installed on the upper side of the lots near the road, lower represents inclinometers installed on the lower side of the lots near the lake.

The inclinometers were installed into soil test borings (ASTM D 1586) that were drilled between May 27, 2010 and June 8, 2010. Subsurface conditions that were encountered at each boring location are identified on the attached boring logs. The borings are identified as B-1 through B-6 and the boring numbers correspond with the inclinometer numbers (i.e. inclinometer SI-1 was

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BLE

*Data Report of Slope Inclinator Surveys
Jasmine Point - Cliffs at Keowee Falls South*

*October 25, 2010
BLE Project No. J10-7112-01*

installed in boring B-1 and so on). The attached aerial photograph identifies the locations of the inclinometers that was produced by tagging the inclinometer locations with a handheld GPS and inputting the coordinates into Google Earth.

The attached graphs present information on each of the inclinometers. Where the attached graphs identify two axes (A-axis and B-axis), the A-axis is oriented in a generally uphill-downhill direction and the B-axis is oriented in a generally cross slope direction. Movement in the negative direction on the A-axis represents downslope (direction of potential failure) movement. There are three graphs for each inclinometer as follows:

1. Cumulative Displacement vs. Depth
2. Incremental Displacement vs. Depth
3. Cumulative Displacement vs. Time (A-axis)

Cumulative displacement vs. depth is a plot of movement. Displacements on these plots may appear abrupt because the horizontal scale is not proportional to the vertical scale, which makes it easier to identify displacements. Incremental displacement vs. depth is a plot of movement at each reading interval. A spike in these graphs indicates significant movement. Growth in the spike over time indicates continued movement. Cumulative displacement vs. time provides an indication as to the rate of movement.

EVALUATION

A review of the Cumulative Displacement vs. Depth plots indicate that movement is occurring in five of the six inclinometers. Inclinometers SI-1, SI-2, SI-4 and SI-6 indicate an apparent failure plane developing at depths ranging from approximately 35-ft to 53-ft below the ground surface. A review of the accompanying boring logs indicates that the failure plane appears to be developing at or near the interface between residual soils and partially weathered rock (or dense residual soils). Inclinometers SI-4 and SI-6 are the only two inclinometers that have indicated significant movement since the August 30, 2010 readings were collected. However, it should be noted there has been little precipitation during this period and it should be expected that additional movement may occur in the remaining inclinometers during wet weather cycles.

The plots from inclinometer SI-5 indicate that the movement appears to be occurring at or below the bottom of the inclinometer casing at this location. A review of boring B-5 indicates partially weathered rock was encountered at a depth of approximately 64 feet. Therefore, it is our opinion that there may be a failure plane developing near the interface with the partially weathered rock similar to that observed in the inclinometers discussed above. Inclinometer SI-3 has not indicated movement based on the inclinometer readings taken thus far.



*Data Report of Slope Inclinometer Surveys
Jasmine Point - Cliffs at Keowee Falls South*

*October 25, 2010
BLE Project No. J10-7112-01*

RECOMMENDATIONS

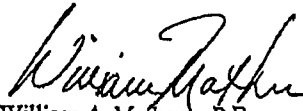
Based on our site observations and the inclinometer data obtained to date, it is our opinion that there is an active, deep-seated slope failure occurring at the site. The rate at which movement occurs can be expected to vary over time and with environmental factors. However, it should be expected that movement will continue unless provisions to stabilize the slope are performed. Additional exploration, testing and analysis will be required to evaluate suitable methods for stabilizing the slope, which are beyond the scope of services for which we are currently authorized. If requested, we can prepare a proposal to provide additional engineering services required to develop conceptual stabilization methods.

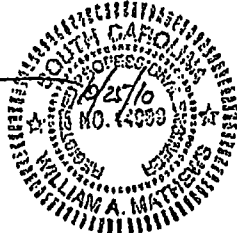
As of this data submittal, we have completed the scope of services authorized for this project. We recommend that you retain a surveyor to develop a detailed topographic survey of the area. The topographic survey would be used in conjunction with the borings and inclinometer data to evaluate methods that could be used to stabilize the slope.

We appreciate the opportunity to provide our professional services on this project. If you have any questions or require additional information, please call.

Sincerely;

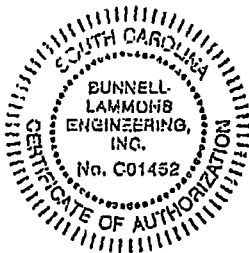
BUNNELL-LAMMONS ENGINEERING, INC.

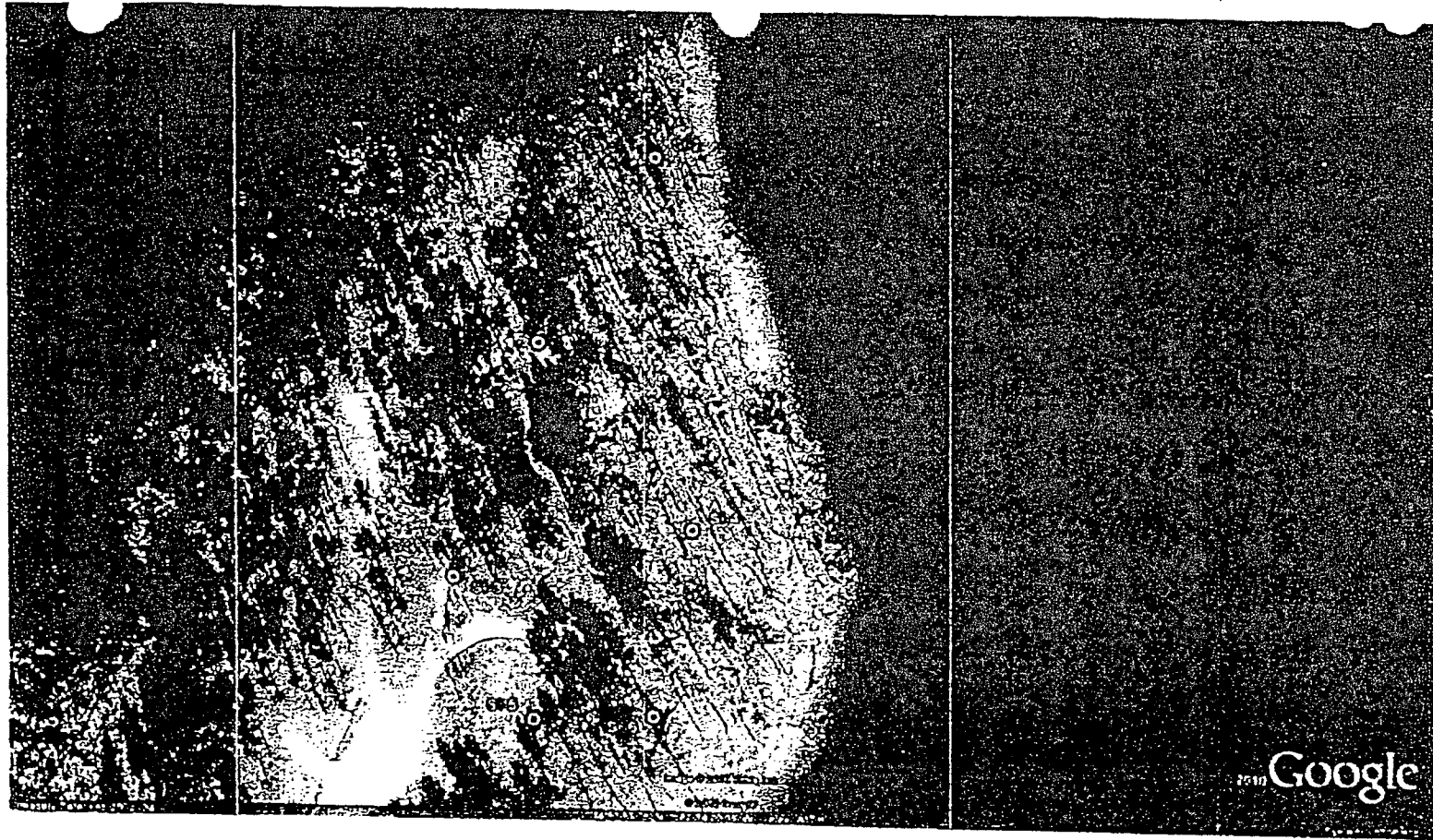

William A. Mathews, P.E.
Chief Engineer
Registered, SC #14039




James C. Ernst
Construction Services Manager

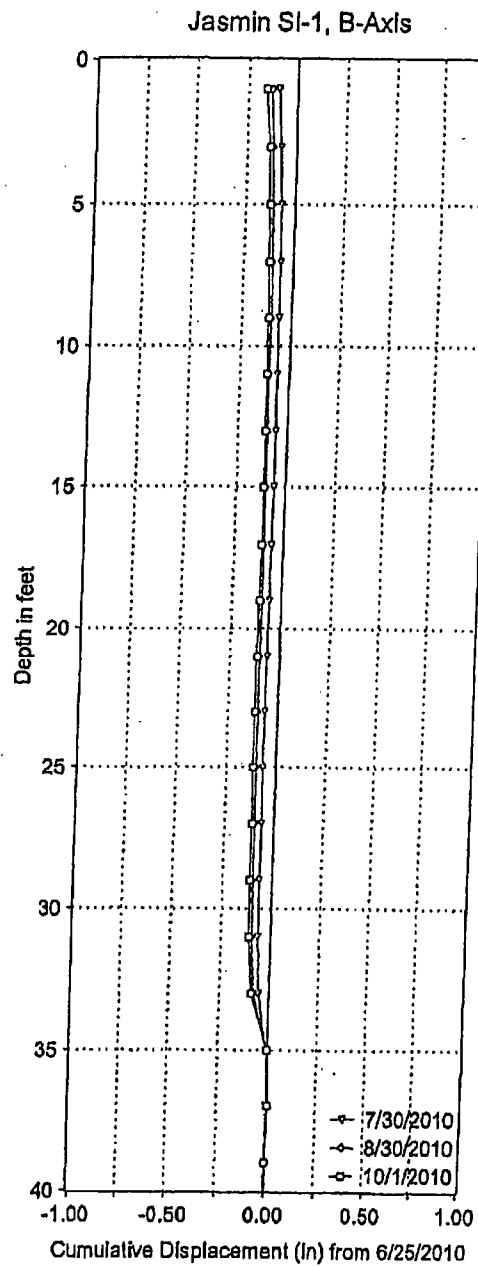
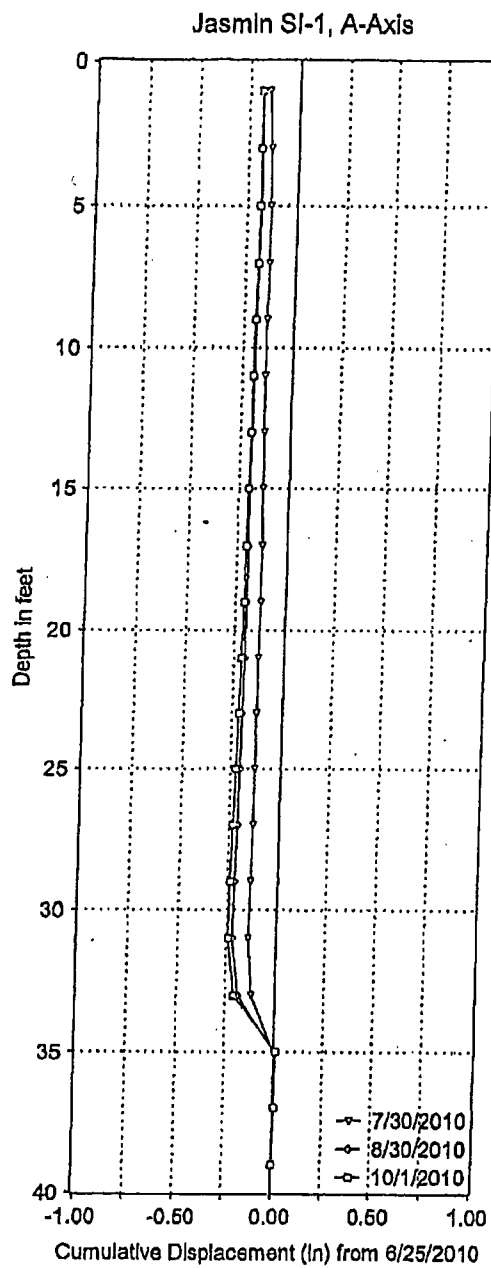
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Jasmine Point
Cliffs @ Keowee Falls South

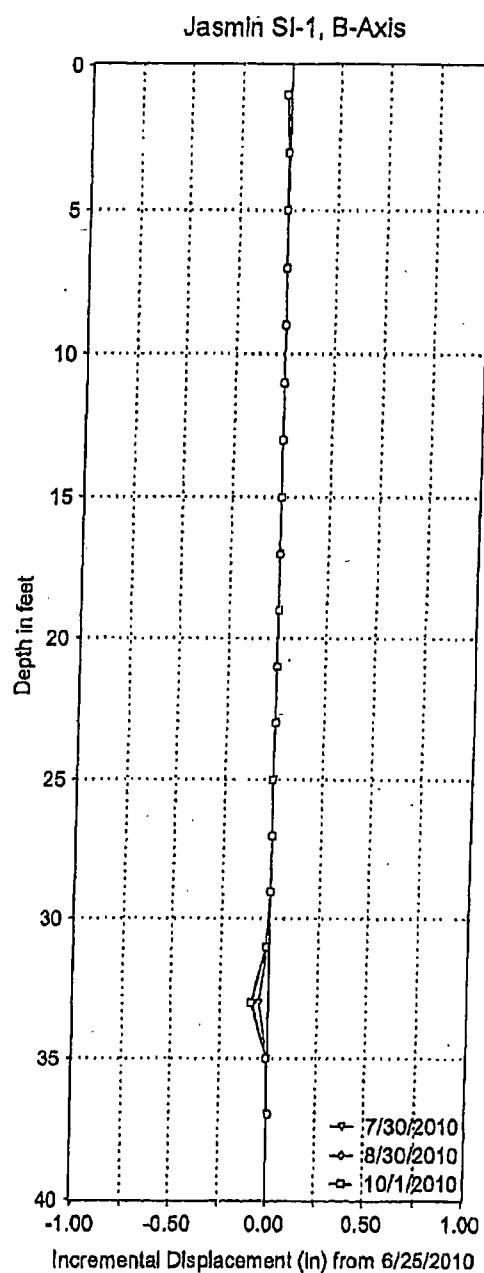
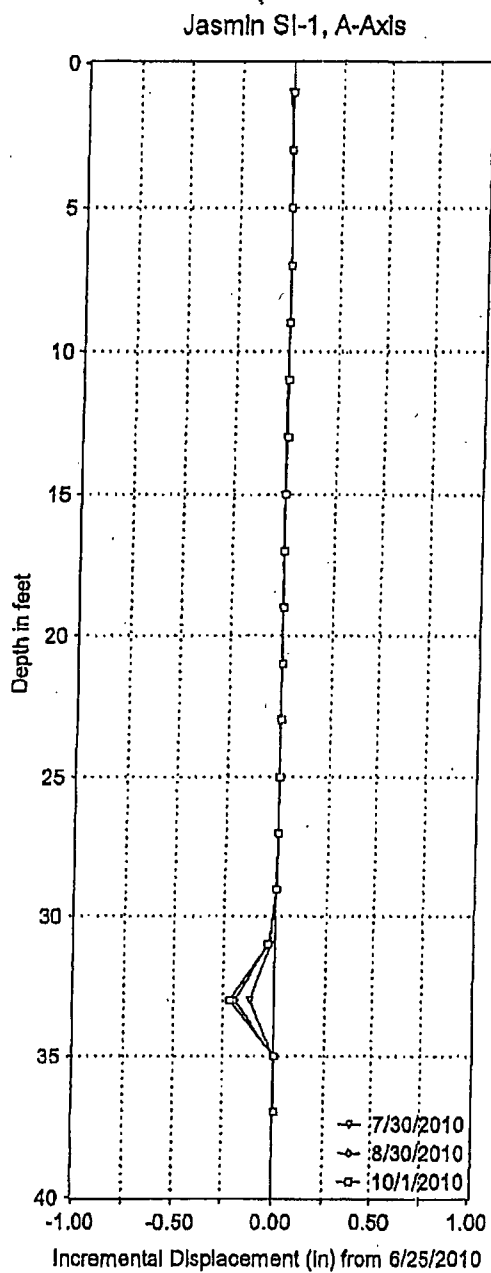
Inclinometer Locations
BLE Project No. J10-7112-01



Jasmine Point

BLE Project No. J10-7112-01

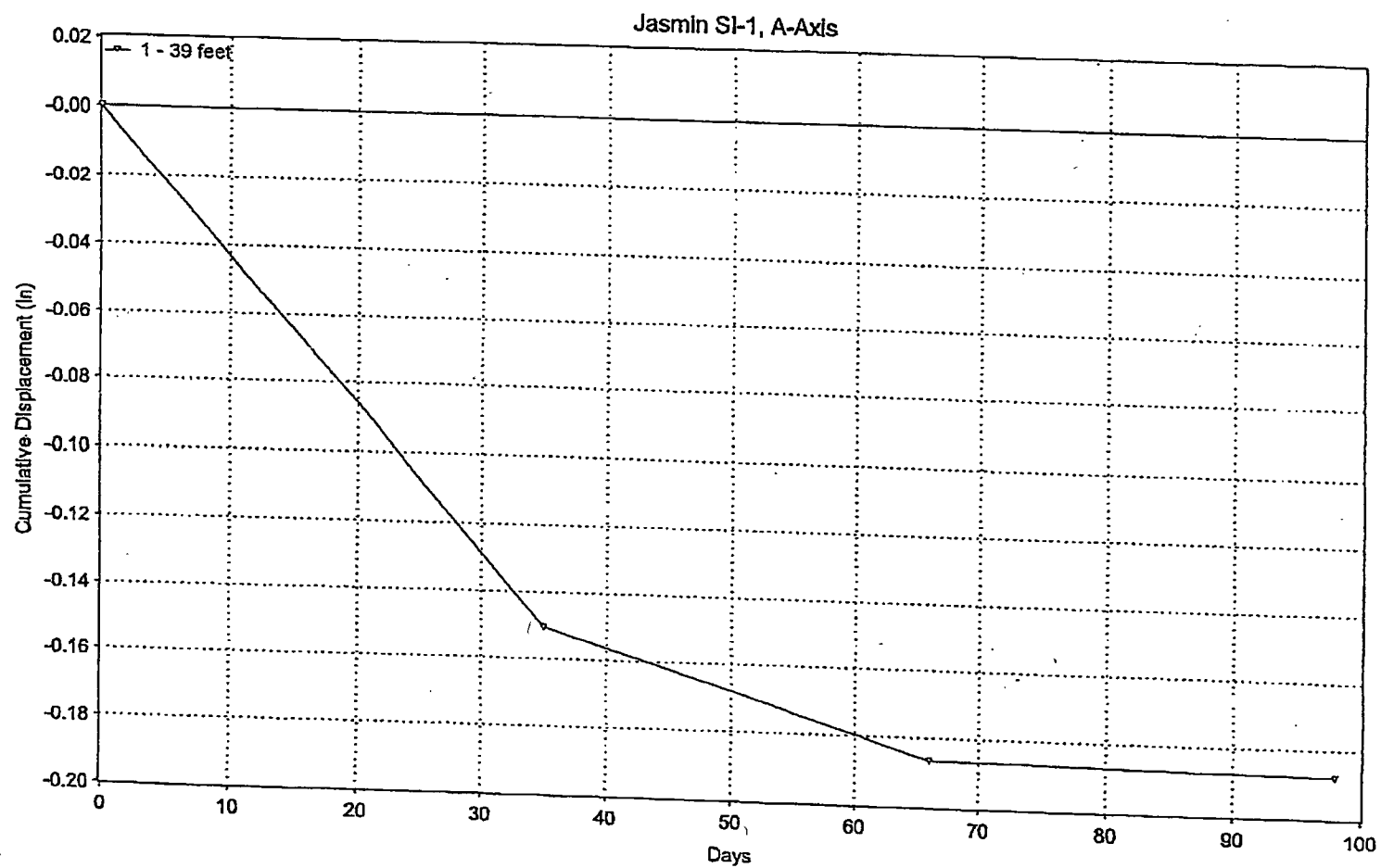
Cliffs at Keowee Falls South



Jasmine Point

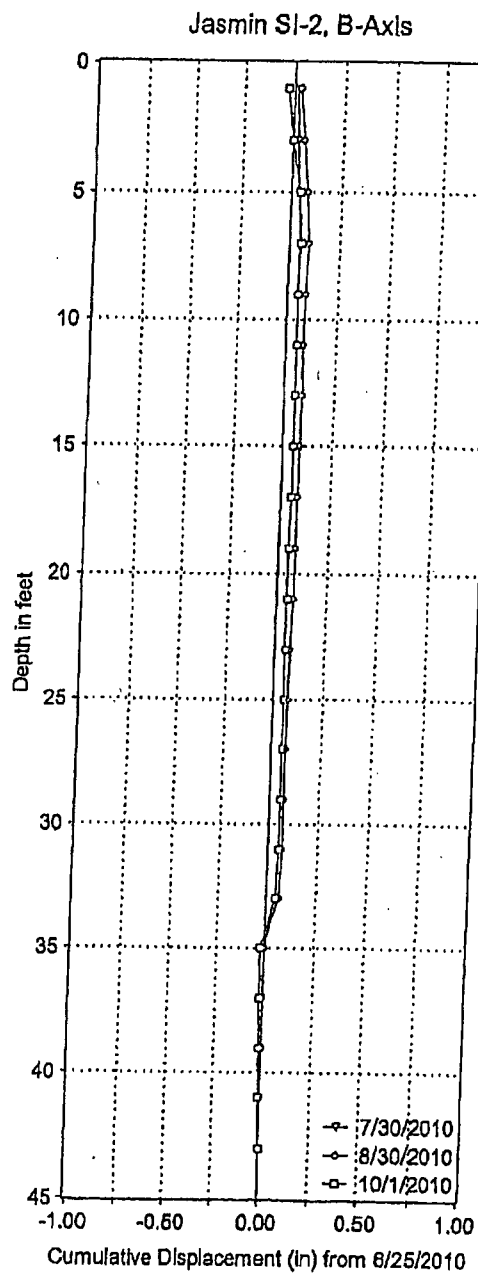
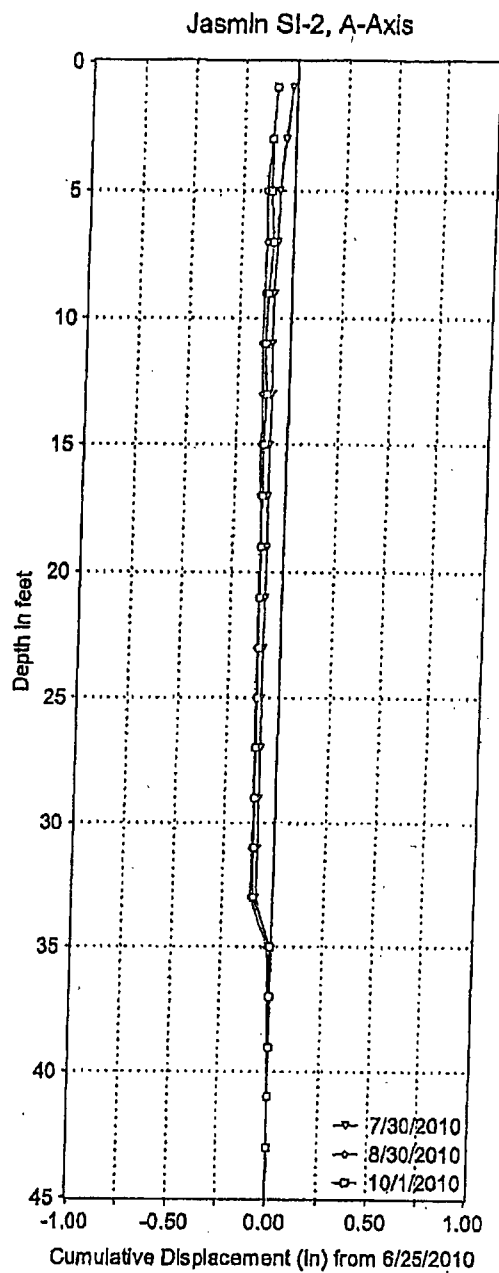
BLE Project No. J10-7112-01

Cliffs at Keowee Falls South



Jasmine Point
Cliffs at Keowee Falls South

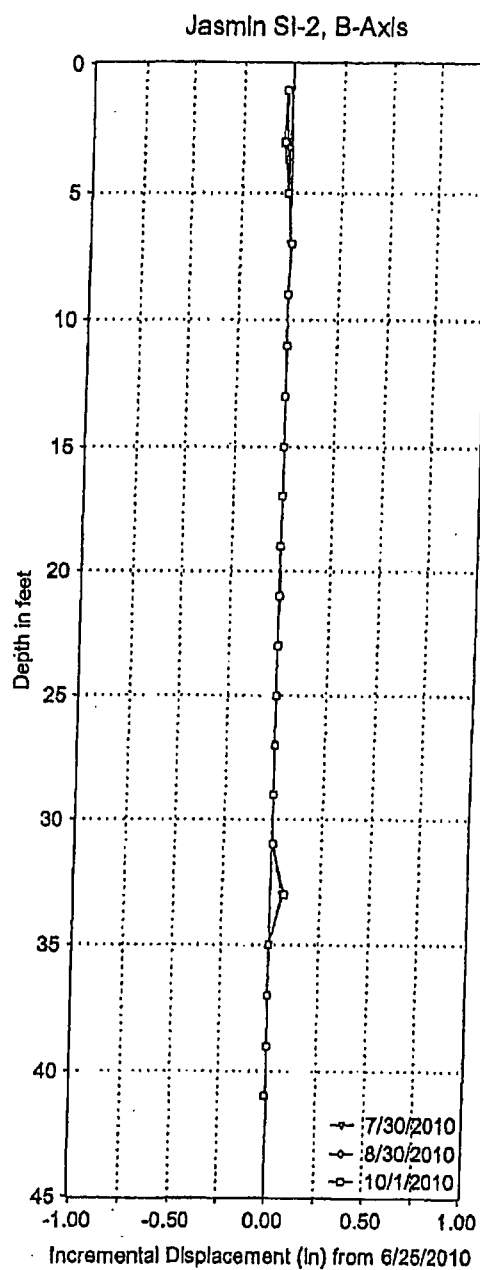
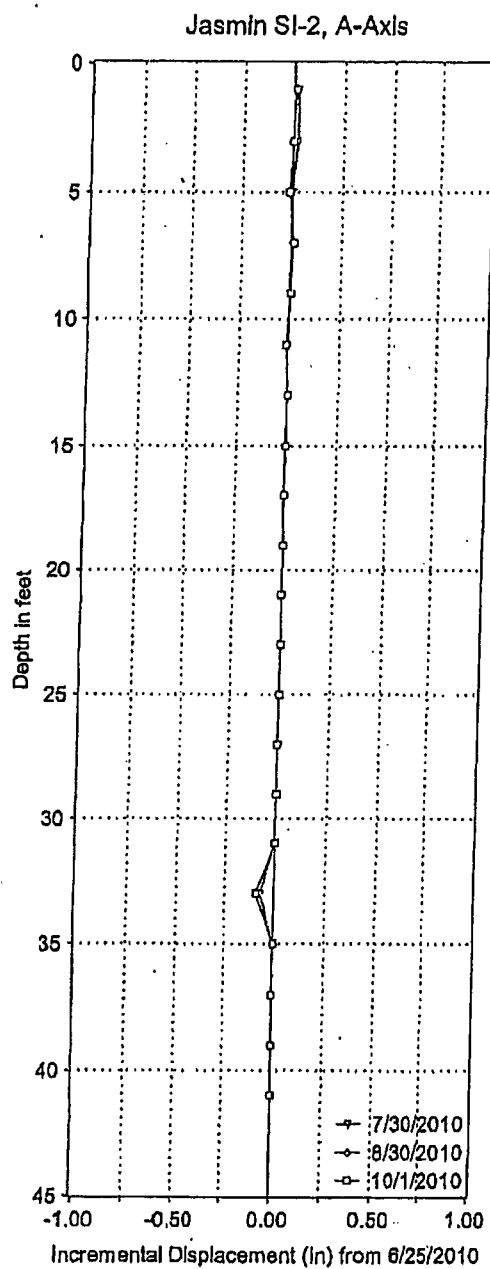
BLE Project No. J10-7112-01



Jasmin Point

BLE Project No. J10-7112-01

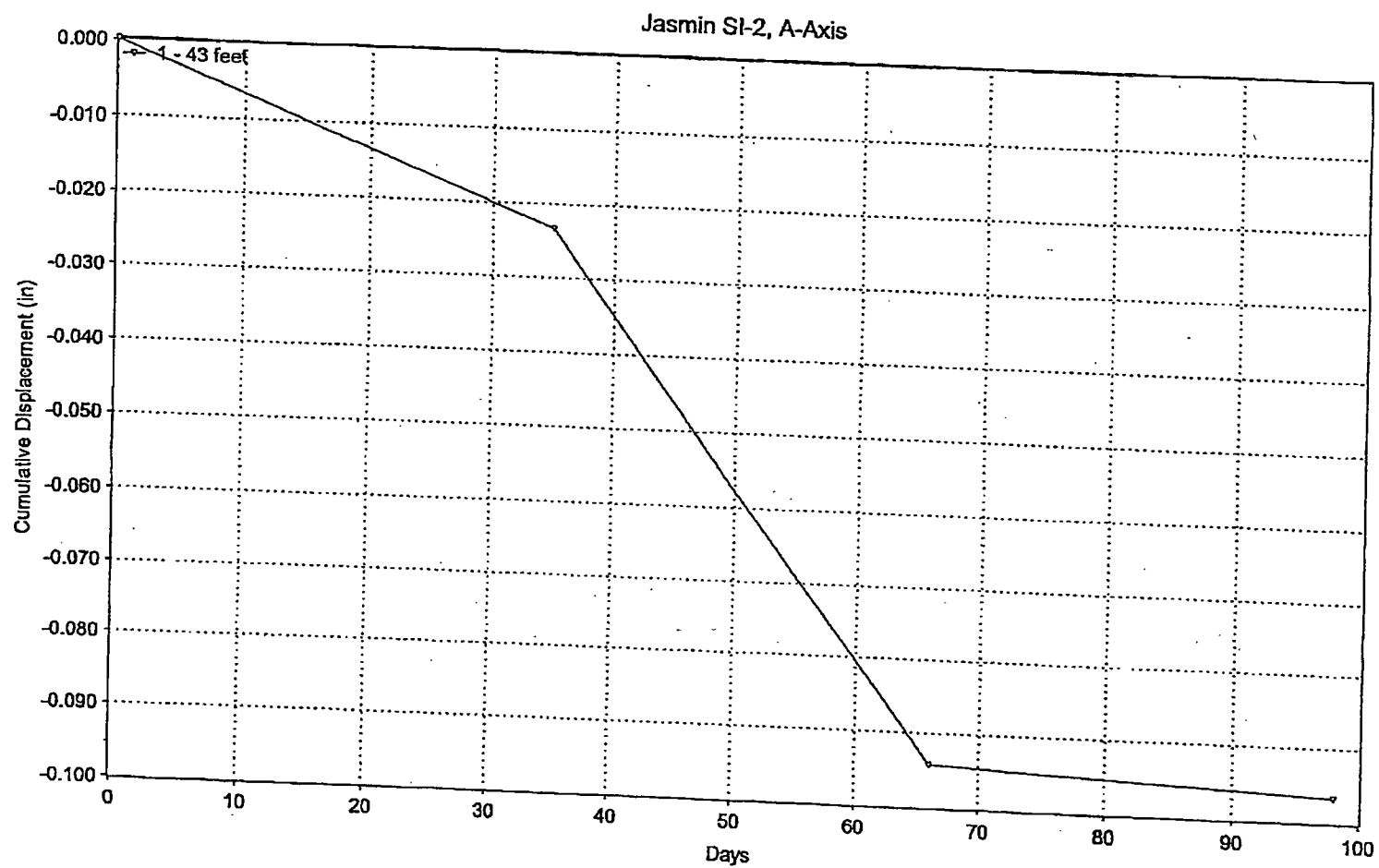
Cliffs at Keowee Falls South



Jasmine Point

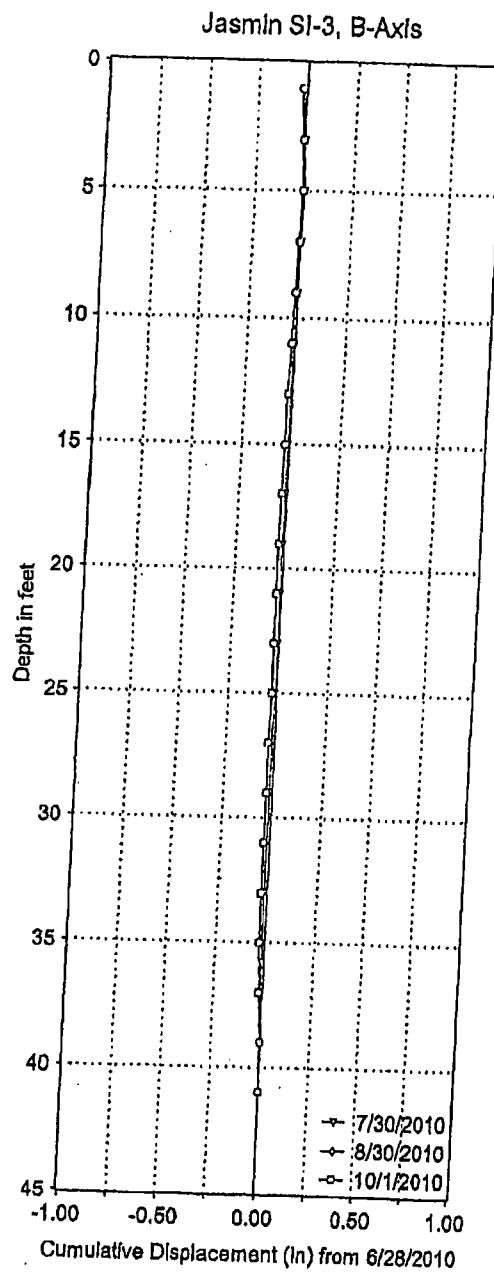
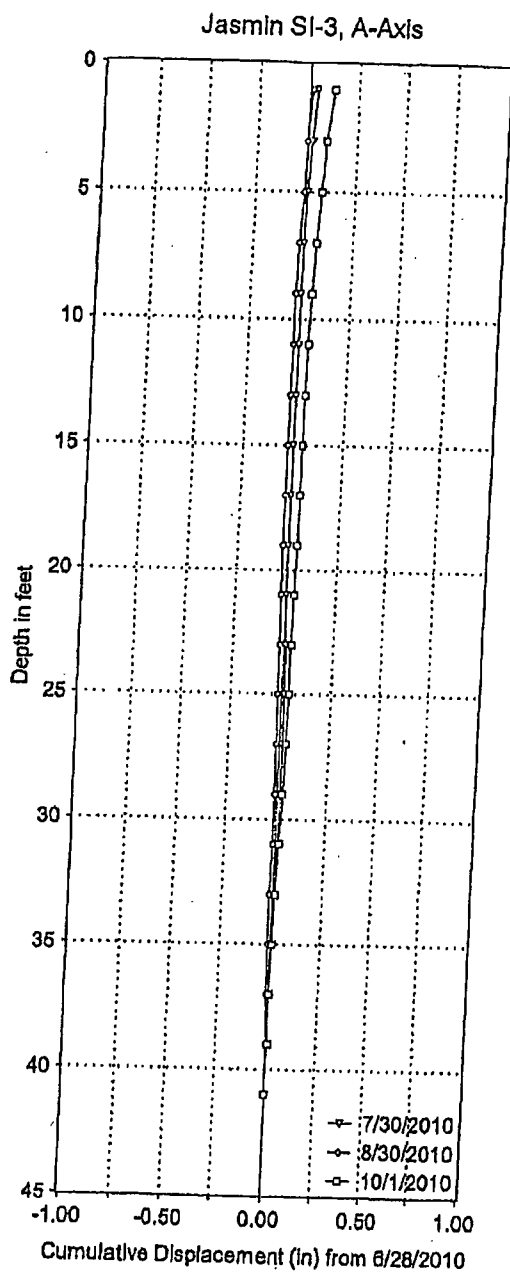
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Cliffs at Keowee Falls South



Jasmine Point
Cliffs at Keowee Falls South

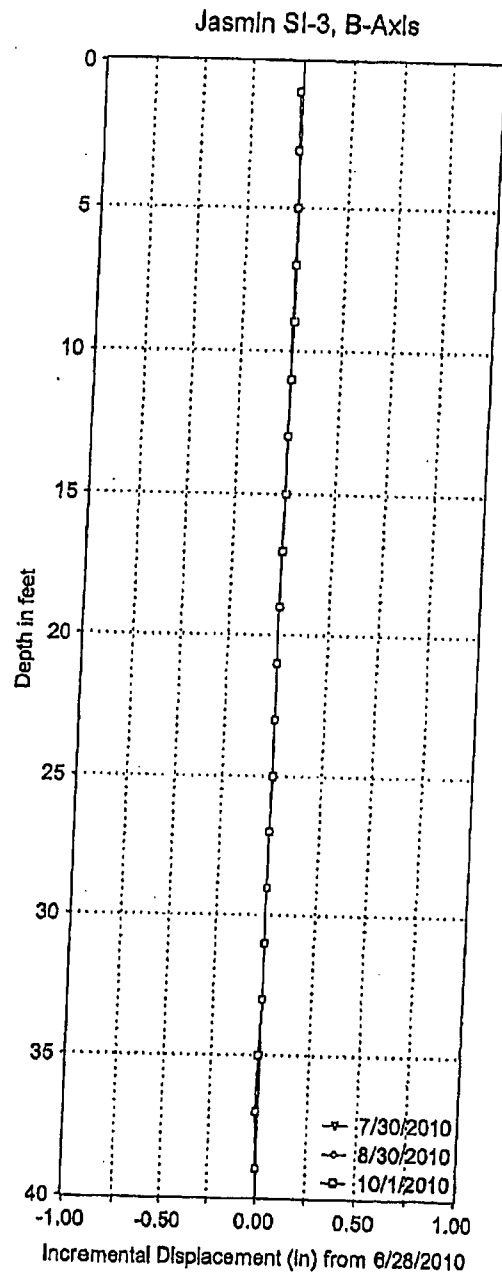
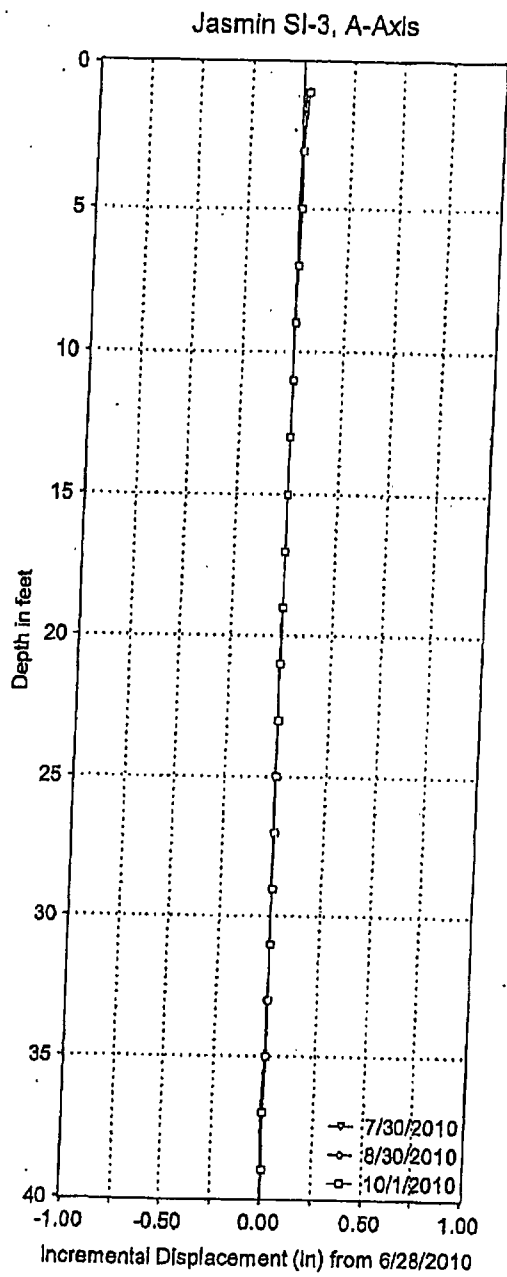
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Jasmine Point

Cliffs at Keowee Falls South

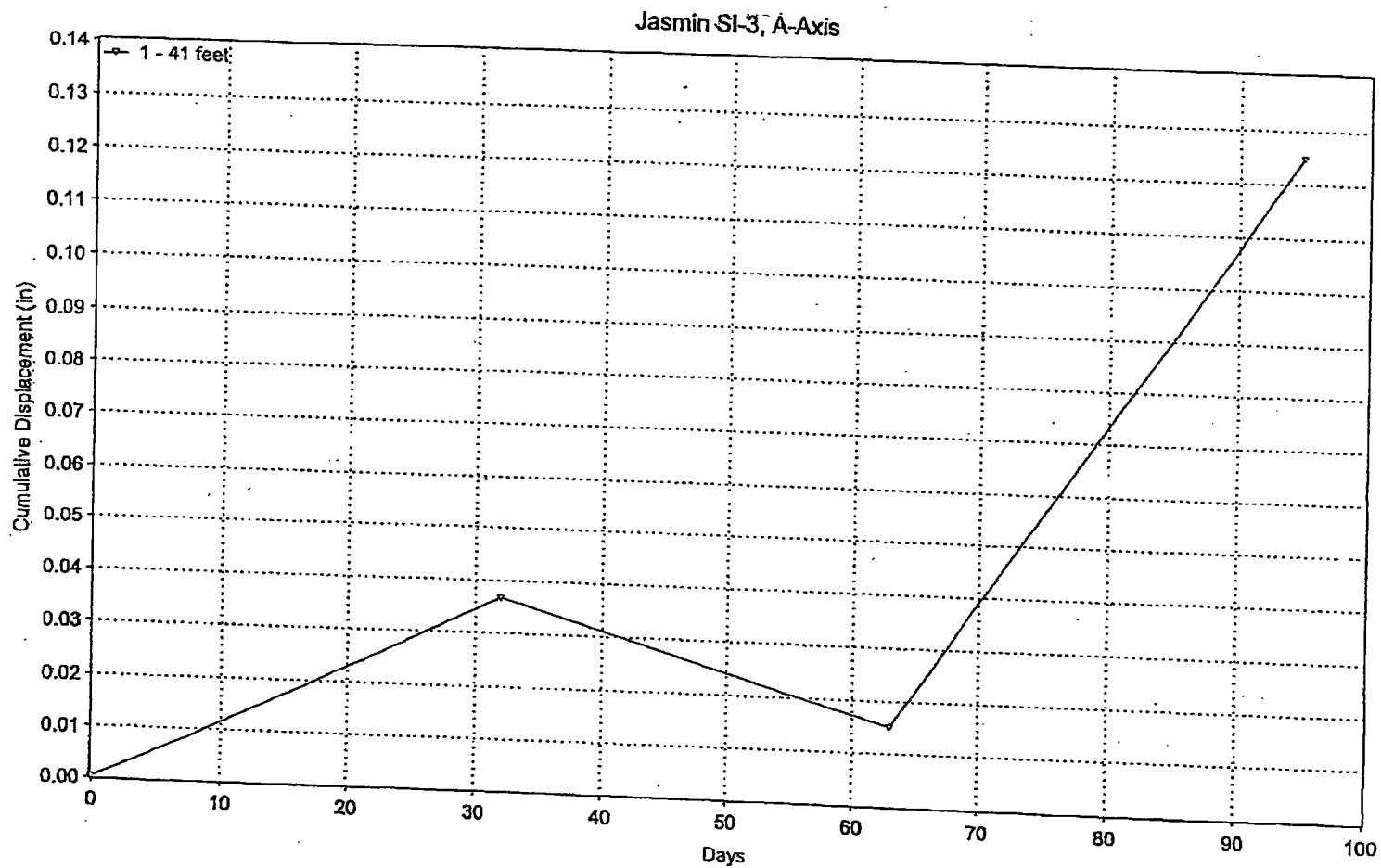
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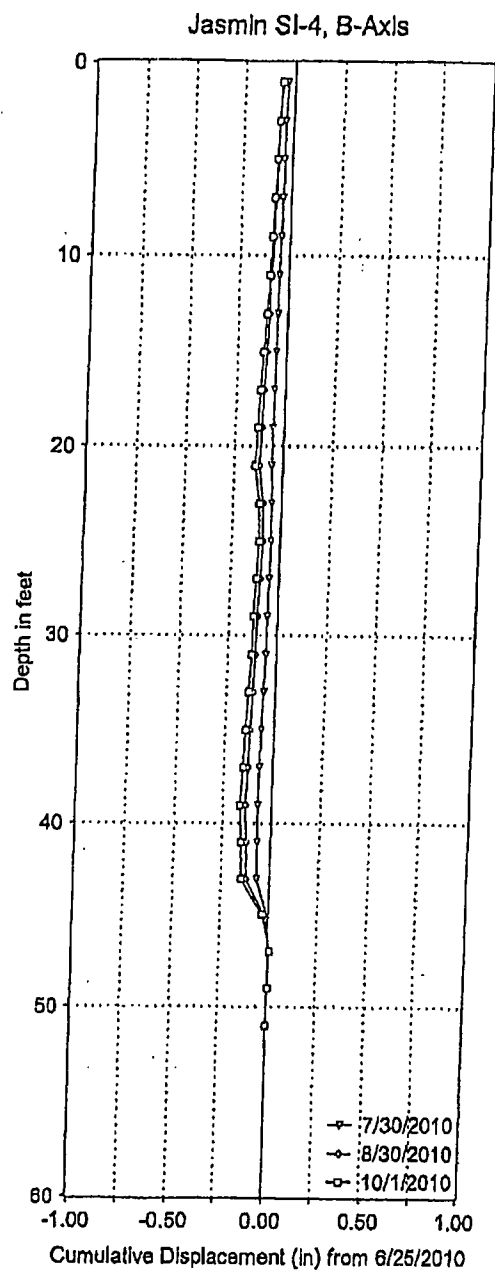
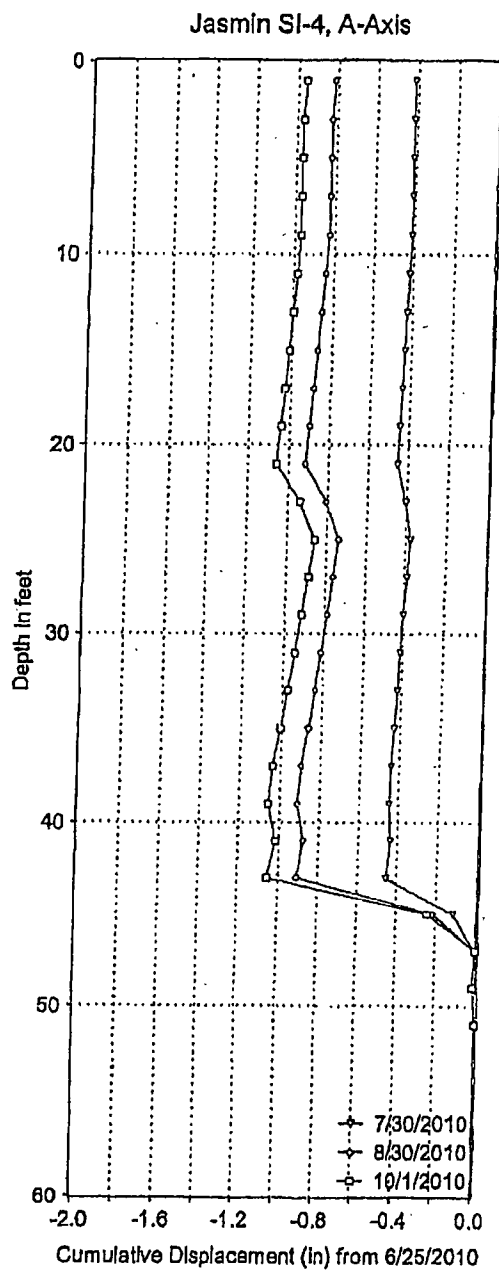
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Cliffs at Keowee Falls South



Jasmine Point
Cliffs at Keowee Falls South

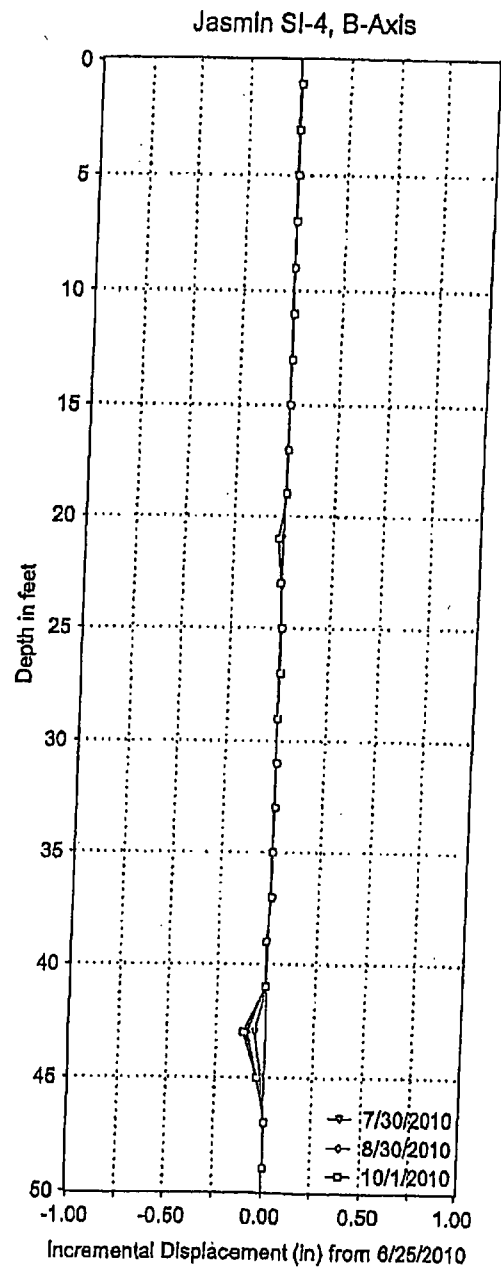
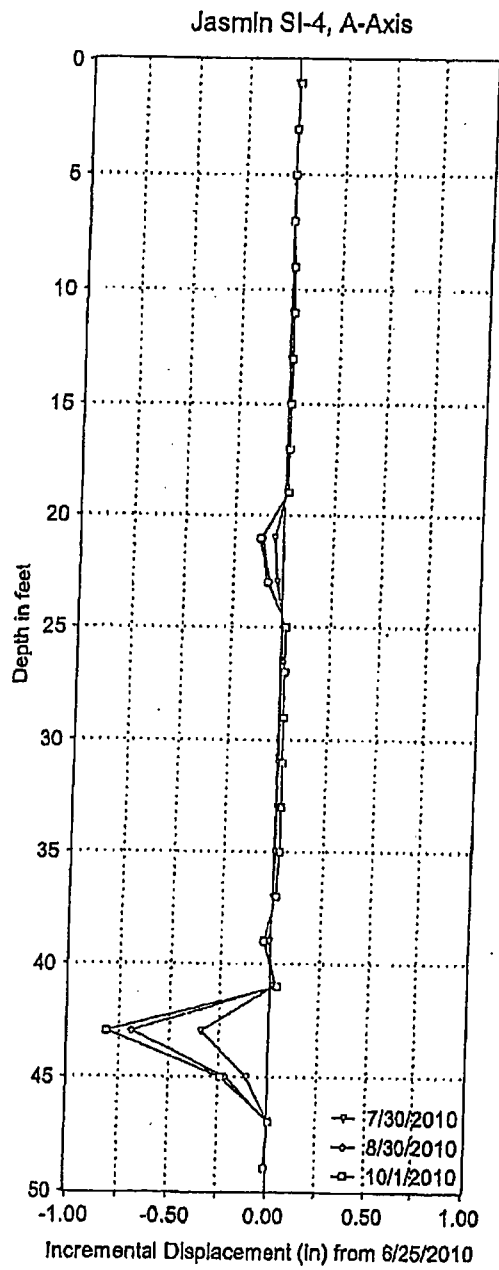
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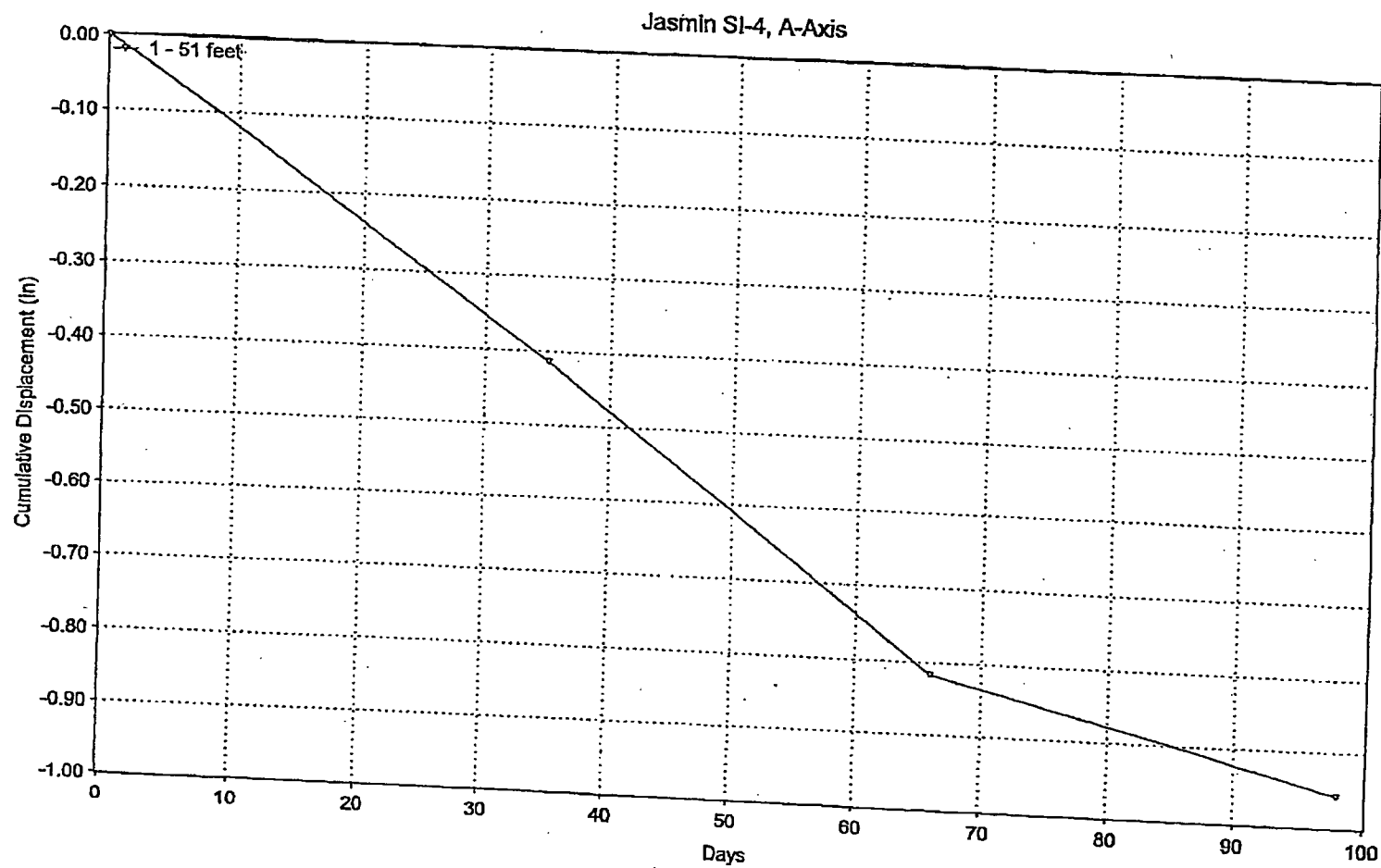
Cliffs at Keowee Falls South



Jasmine Point

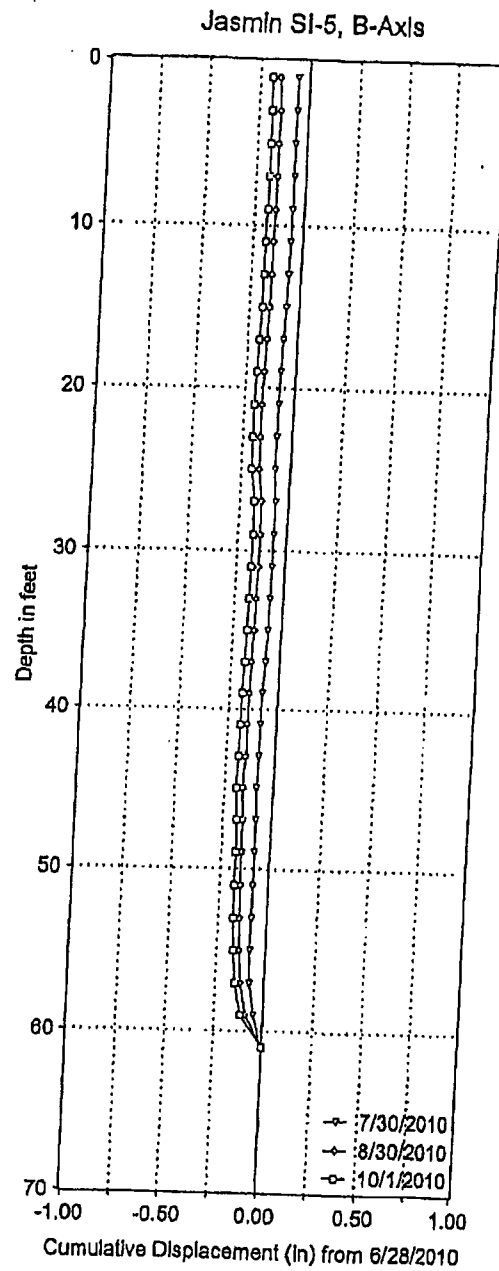
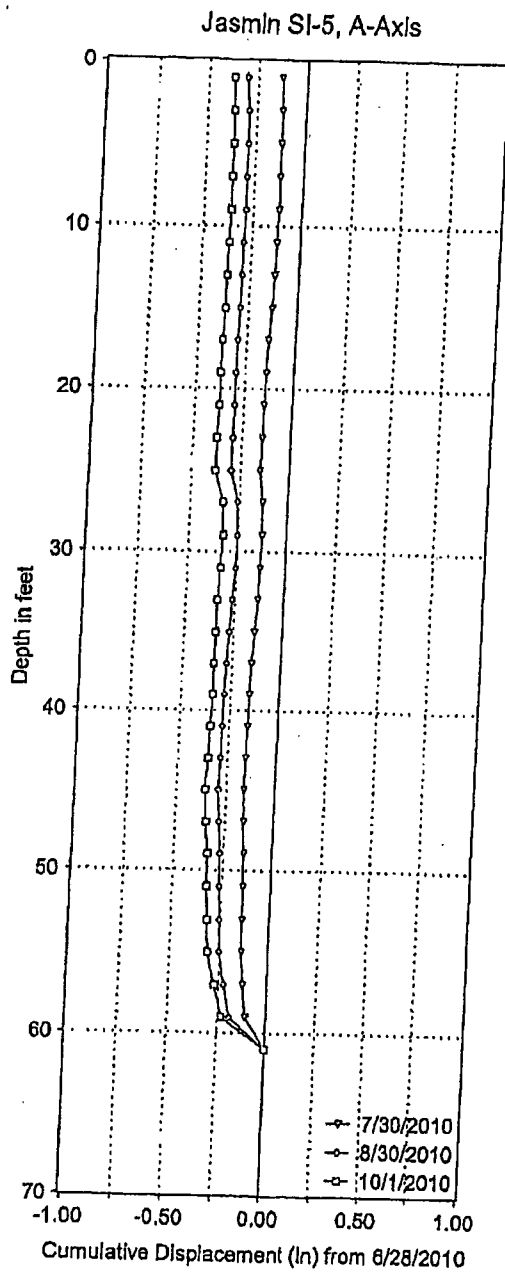
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Cliffs at Keowee Falls South



Jasmine Point
Cliffs at Keowee Falls South

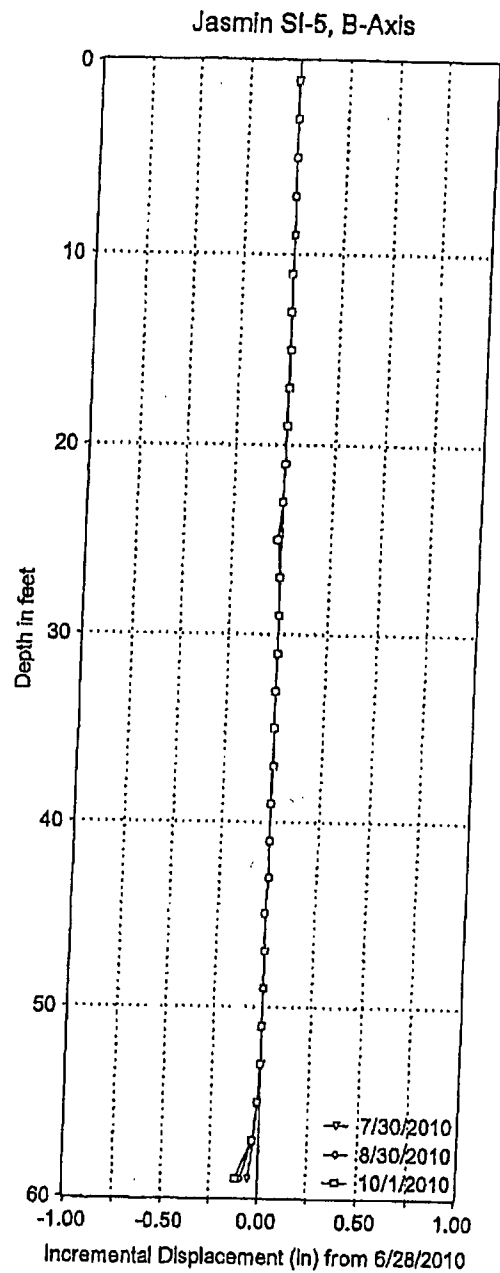
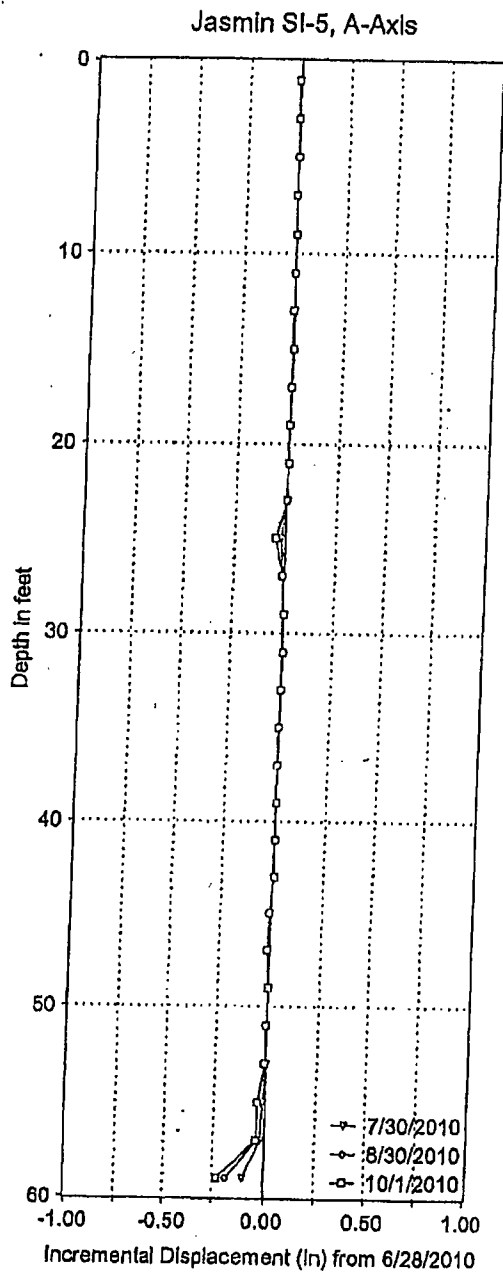
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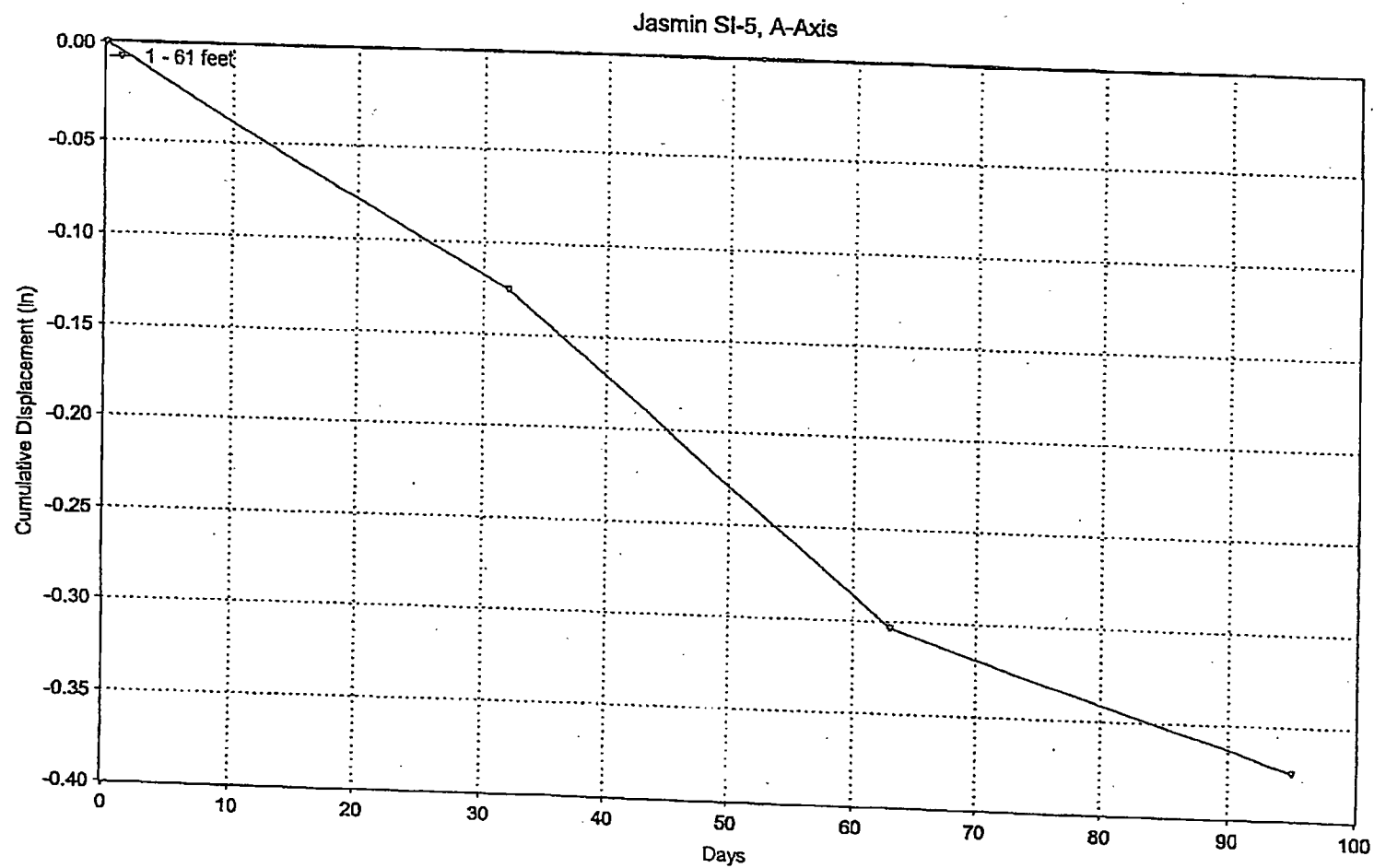
Cliffs at Keowee Falls South



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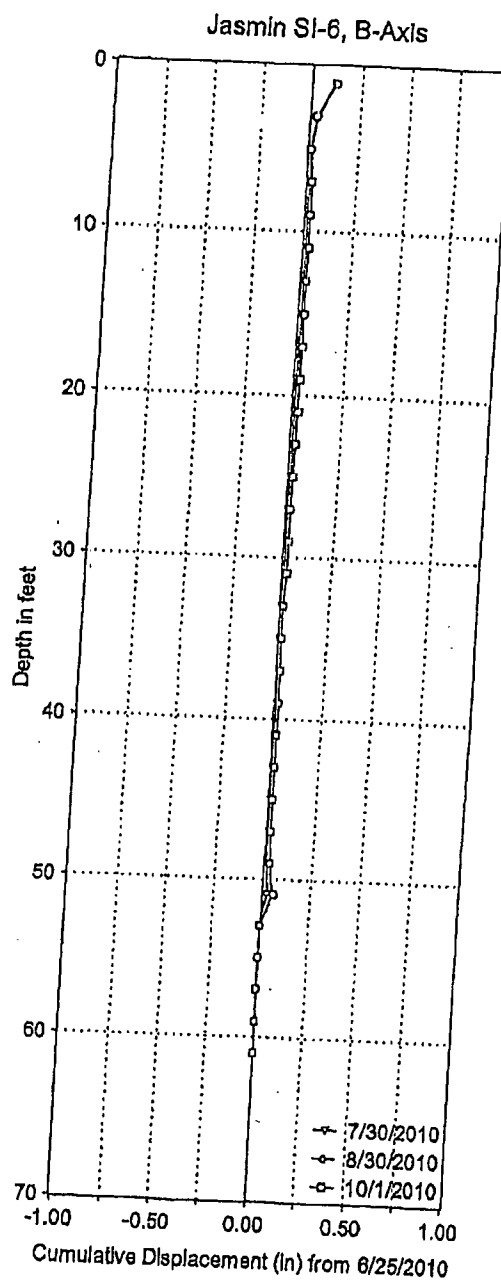
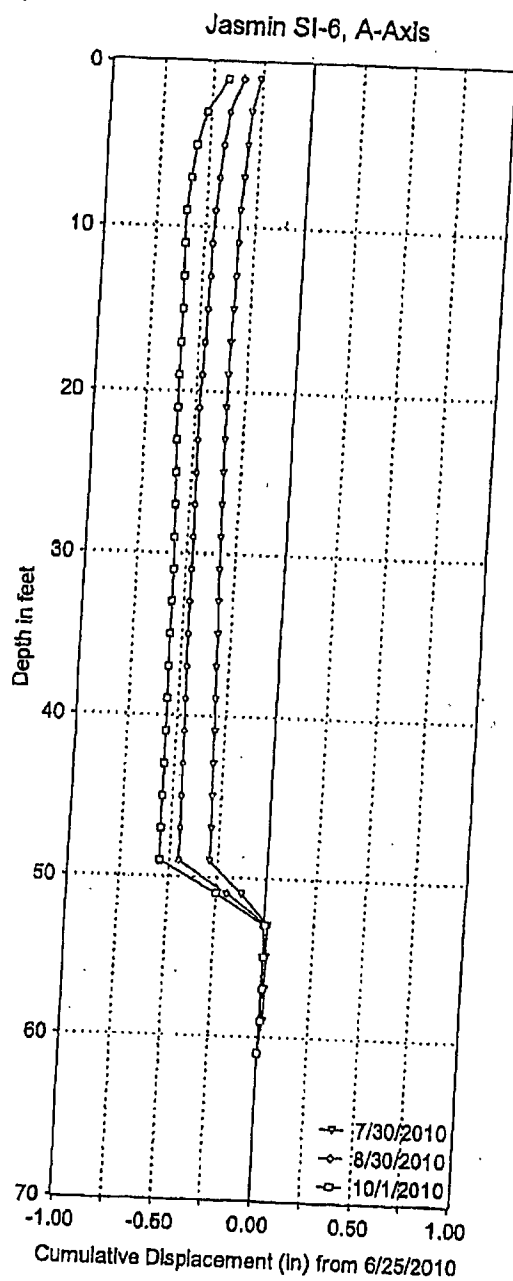
BLE Project No. J10-7112-01

Cliffs at Keowee Falls South



Jasmine Point
Cliffs at Keowee Falls South

BLE Project No. J10-7112-01



Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

Don Nickell

From: doug.chappell [doug.chappell@wursterinc.com]
Sent: Monday, November 08, 2010 10:17 AM
To: Don Nickell
Subject: Jasmine Point Options
Attachments: Repair Options WEC.pdf; Micropile Installation.pdf; Patterned Anchors.pdf

Don,

Thanks for taking the time to meet us last week at the site. As discussed, we have looked at the information provided to us as well as the site features in order to establish a rough estimate for repairs needed to remediate potential future slope movement.

Preliminarily, we think that the following 2 options (or a combination of both) would be the way to go:

- 1.) Patterned Ground Anchors: Starting near the shoreline, we would install anchors by drilling back into rock and installing cable anchors grouted into the drilled holes. The anchors would then be pulled against large concrete pads on the ground surface to apply force along the theoretical failure plane, preventing movement. The anchors would likely be installed on 8-12' centers. The anchor heads and bearing pads would then be buried to disguise them from view.
- 2.) Reticulated/battered Micropiles and Grade Beam: This would involve the installation of micropiles (small diameter heavily reinforced piles) along the shoreline. The piles would be drilled into rock and would be installed at various angles to horizontal. The tops of the piles would be tied together in a grade beam at the ground surface. Potential movements would be resisted by these angled piles reacting against the grade beam. Similar to option 1, the grade beam would be buried to hide it from view.

Over this week, I will be looking at various scenarios to determine which approach would be most cost effective for the purposes of this project. I have attached some documents including pictures and drawings of each possible solution. As discussed, the inclinometers should tell the story going forward. If something is happening, you might expect to see more movement in wet months vs. dry months. Anyhow, I will be working on approximate numbers for various fixes this week and I will try to have you something next Monday morning in the way of pricing for a fix if in fact there is an issue.

Thanks, and feel free to call with any questions.

Doug Chappell, PE
Project Engineer
Wurster Engineering
34 Carrie Dr.
Greenville, SC 29615
OFFICE: 864.627.7751
FAX 864.627.7754
MOBILE: 864-404-8238

1/24/2011



Don Nickell

From: doug chappell [doug.chappell@wursterinc.com]
Sent: Monday, November 22, 2010 10:22 AM
To: Don Nickell
Subject: preliminary pricing
Attachments: Conceptual Area.pdf

Don,
Having looked everything over and run some calculations, this will get you in the ballpark.

In my calculations, I have assumed that the area is moving as a block (I have included a section along the lakeshore about 700 feet long, encompassing all 3 lots). While this may or may not be the case, I have used it so as to present a worst-case for planning purposes. In reality, if we were to move forward with this, we would all sit down a look long and hard on what we think is going on and what you think we need to accomplish to tie down the slope and the area we would need to repair. The attached drawing outlines what could be the potential slide area based on the inclinometers and surface features. Additionally, I have used the GIS topo of the area to determine rough site grades for the purposes of our calculations.

Basically, both options involve drilling through the sliding soil mass and anchoring it back into rock. For my calculations, I have assumed soil to be fairly deep (per the borings). However, the shallower the soil, the shorter our anchors would be and the lower the cost would be. This could be the case particularly on the outer edges of the repair.

Option 1: Patterned ground anchors: This would involve drilling along the shoreline to install tensioned anchors. We would drill through the soil into rock and grout a large cable anchor into the hole. We would then place precast concrete pads at the ground surface and tension the cables using the pads to apply force to the soil mass. The pads would then be buried to return to natural grades. For my assumptions, I have assumed we would need 2 rows of anchors along the lake shore. However, if we were to dig further into design, we may find that we only need 1 row, and the cost may go down. At any rate, based on the assumptions described herein, the cost for this repair over the outlined area would be around \$1,600,000.

Option 2: Micropiles for slope stabilization: This would involve installing 2 rows of angled piles along the lakeshore. The piles would then be tied together in a long grade beam along the ground surface. The piles and grade beam would resist any further movement, and would also be buried to hide them from view. Based on repairing the same area as the patterned ground anchors and assuming the same soil conditions, the price for this type of repair would be about \$1,400,000.

This should give you some idea about what we are looking at. If you like, we would be more than happy to meet again at the site or your offices to discuss these options and the implications of each one. Generally, were we to start moving forward to determine a more refined number, this would involve some pretty heavy analysis on our part. Basically, lots of time in front of a computer trying to exactly match up what may be going on to a computer model. The final repair is very dependant on the actual forces involved. From this model, we would establish a more accurate preliminary design, from which we would estimate pricing from quantities and production rates. I have done this for the above estimates, but only to a "ballpark" level, per your request. The tied down number could be unit rate or lump sum, based on your preference. And, again, it could be more or less than described above. However, in my experience, I expect it may go down as we look closer and closer with our analysis.

At any rate, I hope this helps. Please consider our potential approach to the project as confidential during these preliminary phases. Feel free to call me with any questions, and again, we feel that it may be advantageous to meet again going forward. Should you decide to further progress with this, the best way to accomplish a cost-effective solution in matters of this sort is generally by close teaming between the owner and contractor through all phases of the project to make sure the fix is neither over-built nor insufficient.

Thanks,

Doug Chappell, PE

1/24/2011

MGC-00593



December 14, 2012

Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302
sburton@gibbesburton.com

Subject: Proposal for Slope Stabilization
Lot 32, Keowee Falls South
Oconee County, South Carolina
Wurster Engineering & Construction, Inc. Proposal No. 12-1702

Wurster Engineering & Construction, Inc. (WEC) is pleased to submit this proposal for the referenced project. This proposal includes a review of the project information provided to us, site conditions observed, the proposed scope of services, exclusions, access and supply provisions, price and payment provisions, and terms and conditions.

PROJECT INFORMATION AND SITE CONDITIONS

Our understanding of this project is based on our review of the following documents:

- Soil Test Boring Logs prepared by Bunnell Lammons Engineering
- Soil Test Boring Logs prepared by S&ME
- Laboratory Data prepared by S&ME
- A site survey prepared by Freeland and Associates
- Inclinator data prepared by Bunnell Lammons Engineering

It is our understanding that a geotechnical design-build solution is desired to protect the stability of a theoretical house pad at the project site in the event of potential ground movement. For the purposes of this estimate, we have assumed that the lot owner will construct a home at the same approximate distance from the lake as the existing home on Lot 31. WEC performed a stability analysis based on the data provided using back analysis techniques and an assumed factor of safety of 1 for the existing slope. Using the resulting parameters, slope stabilization measures were introduced into the model to bring the safety factor to between approximately 1.35 and 1.5. WEC then estimated a design-build construction cost for the project. The solution and construction costs are based on our past experience with similar projects in the vicinity of the project site on Lake Keowee.

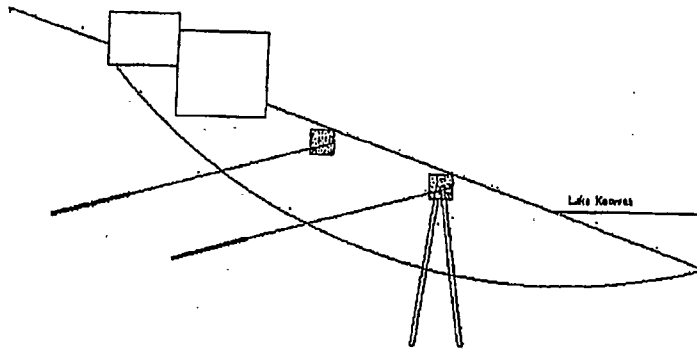
PROPOSED SCOPE OF SERVICES

We propose to install a composite system of micropiles and tieback anchors for slope stability. The repair will be placed between the house pad and the lake. The repair measures are intended to prevent significant future distress to the structure in the event of ground movement. The landscaped area between the installed measures and the lake may be subject to small, likely imperceptible movements. A registered professional engineer specializing in geotechnical engineering and construction will design the slope stabilization. The repair shall consist of the following:

- Two rows of battered, closely spaced, micropiles will be installed in a line between the home and the lake, over a distance of about 170 ft. We estimate that the micropiles will be about 60 ft long.
- The micropiles will be joined together just below the ground surface with a reinforced concrete grade beam.
- A row of prestressed, tieback anchors will be installed through the concrete grade beam to pretension the micropiles and provide additional lateral ground support. We estimate that the anchors will be between 80 and 90 feet in length.

December 14, 2012

- An upper row of prestressed, tieback anchors will be installed. The tieback anchors will be connected to large precast concrete pads which transfers the resisting load tieback anchors to the ground, creating a "patterned ground anchor system".
- Excavation will be performed to install the concrete grade beam and to set the precast concrete pads. Grading will then be performed to nearly restore the original ground surface.
- Seed and straw will be placed over the disturbed soils to re-establish vegetation in the area.
- It is important to note that some trees may have to be cut to allow for installation of the concrete grade beam.



PROPOSED REPAIR

EXCLUSIONS

The following is not included in our proposed scope of services. We have assumed that others will perform this work.

- Relocation and costs associated with relocation of utilities that prohibit the installation of tieback anchors or micropiles.
- Contracting with and cost of materials testing firm for grout sampling and testing.

WEC has not included the following in our proposal.

- Performance and Payment Bond.
- Liquidated or consequential damages.
- Support of existing or proposed utilities.

ACCESS AND SUPPLY

Owner shall provide and assume responsibility for the following at no cost or delay to us unless specifically stated otherwise in this proposal:

1. Right of way enabling one continuous operation for the installation of the above described slope stabilization.
2. Power lines closer than legally or safely permissible are to be removed or de-energized; clear and accurate markings of all existing adjacent utilities with formal notification to our personnel, prior to the start of work. If deemed necessary by WEC, relocation of utilities interfering with slope stabilization. Removal and relocation of all overhead, land or underground utilities and obstructions interfering with our work.
3. On-site parking for all corporate vehicles.
4. Water supply: Furnish sufficient potable water for the conduct of our work at city pressure on the job site. A water spigot will be suitable.

December 14, 2012

PRICE AND PAYMENT PROVISIONS

WEC will provide the Proposed Scope of Services described above in accordance with the following breakdown:

Proposed Scope of Services	Fee
Mobilization, Lump Sum	\$10,000
Design, Lump Sum	\$15,000
Micropiles, each (34)	\$10,000
Tieback Anchors, each (34)	\$4,000
Tieback Anchor Pads, each (17)	\$3,500
Reinforced Concrete Grade Beam, Per CY (173)	\$400
Grading, Lump Sum	\$30,000
Landscaping Allowance, Lump Sum	\$20,000

Based on the quantities outlined above, our estimated fee to provide these services would be \$679,700.

WEC reserves the right to revise our pricing upon completion of final design documents. A contingency for variation in costs (10%) may be appropriate.

We request a pre-award meeting to clarify scope, schedule, payment items, and terms.

TERMS AND CONDITIONS

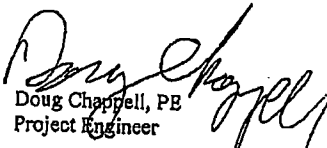
1. We require 1/3 payment prior to start of design.
2. Invoices will be provided each month for work completed and projected to be completed within a subject month.
3. Payment of our invoices will be required within 30 days after each invoice date.
4. Late payments will be subject to a charge of 1.5% per month.
5. This proposal may be withdrawn by WEC if not accepted within 90 days.

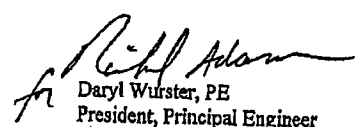
ACCEPTANCE

Owner may accept this Proposal either by signature, oral assent, authorizing Contractor to commence providing services, or making any payments to Contractor in consideration of services, and any of the above modes of acceptance shall be deemed to incorporate all of the terms of this Proposal into the contract between the parties thereby formed.

Respectfully submitted

Wurster Engineering & Construction, Inc.


Doug Chappell, PE
Project Engineer


Daryl Wurster, PE
President, Principal Engineer

Accepted:

Date:

Name:

1 performance and payment bond?

2 A. We typically don't provide performance and
3 payment bonds on residential work of this
4 nature.

5 Q. And I notice here on the third page, when you
6 get to the price and payment provisions, I
7 understand that your estimated fee be \$608,700.

8 A. Uh-huh.

9 Q. Do you think that's an over estimate or an under
10 estimate?

11 A. I think it's about where it probably needs to
12 be. The actual final fee, we wouldn't know
13 exactly until you do final design, but it's a
14 pretty accurate estimate. I didn't try to
15 undershoot it, I didn't try to overshoot it.

16 Q. And did you visit lot 31 when you prepared this
17 estimate in front of you?

18 A. You mean, have I been to lot 31?

19 Q. Yes.

20 A. Yes. I've been to lot 31.

21 Q. And when were you at lot 31?

22 A. That's probably been two years ago.

23 Q. But not since?

24 A. No.

25 Q. Would you have also visited lot 32 about two

1 Nickell.

2 A. Yes.

3 Q. I want to give you just a moment to review that
4 before I start my questions.

5 A. Okay.

6 Q. So how does what you propose in this email
7 differ from what you proposed on December 14th,
8 2012?

9 A. This was based on very cursory analysis and
10 limited data. It was only for order of
11 magnitude pricing. What you have in your hand
12 was based on much more involved analysis.

13 Q. Do you recall what you looked at when you
14 prepared this email to Mr. Nickell?

15 A. We only had available to us some aerial
16 photography of the site and borings prepared by
17 Bunnell-Lammons and inclinometer data prepared
18 by Bunnell-Lammons.

19 Q. Would that have been the same inclinometer and
20 boring data you looked at in preparing this?

21 A. Yes, ma'am.

22 Q. To refresh my memory, what did you have when you
23 prepared your proposal for the shear, that you
24 did not have when you prepared the email for Mr.
25 Nickell?

- 1 Q. And so if we add ten percent to the number, you
2 think that's probably going to be about the
3 number --
- 4 A. That's going to be your ceiling.
- 5 Q. All right. So let's -- I want to just walk you
6 through this proposal. And again, kind of where
7 I started off on this, is that this design for
8 lot 32 -- and it -- there's no house on it.
9 This poses the theoretical building pad where it
10 might be placed.
- 11 A. Yes.
- 12 Q. And the way you've designed the repair for lot
13 32 is for it to -- at the ends -- it would stand
14 alone. It's a stand-alone design.
- 15 A. Yes.
- 16 Q. And it's -- because a slope -- geological
17 conditions don't respect property lines, do
18 they?
- 19 A. Right.
- 20 Q. And as an engineer, you have to account for
21 that, that I need to -- if I'm going to make a
22 repair for this lot, I've got to account for
23 adjacent lots and what those conditions are.
- 24 A. Yes.
- 25 Q. Now, back in 2010, the proposal -- the cursory

1 two of them that the pictures look almost
2 exactly the same.

3 Q. And what -- just give me where -- where were
4 those?

5 A. It's probably up near Jefferson, in that area.

6 Q. I'll leave this alone here a second. All right.
7 So the ability -- you think you have the ability
8 to get a payment performance bond, but you don't
9 know the current status of what that is?

10 A. Right. Don't know.

11 Q. Other than -- what's the typical warranty that
12 Wurster provides on their work?

13 A. Typically, we don't provide a warranty like you
14 would get from a roofer, unless people
15 specifically ask for it. Typically, we as a
16 general contractor and as engineers, we're kind
17 of, you know, bound by laws that our work has to
18 hold up for a certain number of years. So we
19 typically don't provide a warranty, but our
20 stamps are on the line and our licenses are on
21 the line. So that's typically how we explain
22 these things.

23 Q. Now, with -- with regards to the micropiles and
24 the tieback anchors, is there specific supplier
25 that you were going to use for these -- this

- 1 material?
- 2 A. There could be --
- 3 Q. Let me finish. That supplies a warranty for the
- 4 material?
- 5 A. They would provide mill certifications.
- 6 Q. For both the micropiles and the tieback anchors?
- 7 A. Yes. They would be mill certifications that say
- 8 the micropiles are this grade steel and the
- 9 tieback anchors are this grade steel.
- 10 Q. But the manufacturers don't provide a warranty.
- 11 A. No. Not a warranty like you would have on
- 12 shingles or something like that.
- 13 Q. Or maybe, like, helical piers where you would
- 14 have to have a Ram Jack or something like that.
- 15 A. No. Right.
- 16 Q. No warranty on that?
- 17 A. Typically not. You might could get them to put
- 18 one in, but just based on the nature of the
- 19 work, it's typically -- you know, it's done for
- 20 applications like dams and things like that,
- 21 where they're not -- you know, you don't warrant
- 22 work you do for the dam for the Army Corps of
- 23 Engineers. So they just -- typically, if they
- 24 provide a mill certification that says that this
- 25 is -- we certify this steel is of this strength,

BLE
INC.
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

April 11, 2011

The Cliffs Communities
Post Office Box 1519
Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickell, Jr.
dnickell@cliffscommunities.com

Subject: Data Report of Slope Inclinometer Surveys
April 8, 2011 Readings
Jasmine Point - Cliffs at Keowee Falls South
Oconee County, South Carolina
BLE Project No. J10-7112-01

Gentlemen:

We are pleased to submit this data report of the surveys obtained from the slope inclinometers installed at Jasmine Point in the Cliffs at Keowee Falls South development. The data presented herein includes the latest round of readings obtained on April 8, 2011. The data included in this report is referenced to baseline data obtained on June 25, 2010. There are six inclinometers installed on Lots 30, 31 and 32 as indicated in the following table.

Inclinometer Number	Location
SI-1	Lot 30 upper
SI-2	Lot 30 lower
SI-3	Lot 31 upper
SI-4	~~Lot 31~~ Lot 32 lower
SI-5	Lot 32 upper
SI-6	Lot 32 lower

Note: Locations identified as upper represent inclinometers installed on the upper side of the lots near the road, lower represents inclinometers installed on the lower side of the lots near the lake.

The inclinometers were installed into soil test borings (ASTM D 1586) that were drilled between May 27, 2010 and June 8, 2010. Subsurface conditions that were encountered at each boring location are identified on the attached boring logs. The borings are identified as B-1 through B-6 and the boring numbers correspond with the inclinometer numbers (i.e. inclinometer SI-1 was





*Data Report of Slope Inclinometer Surveys
Jasmine Point – Cliffs at Keowee Falls South*

*April 11, 2011
BLE Project No. J10-7112-01*

installed in boring B-1 and so on). The attached aerial photograph identifies the locations of the inclinometers that was produced by tagging the inclinometer locations with a handheld GPS and inputting the coordinates into Google Earth.

The attached graphs present information on each of the inclinometers. Where the attached graphs identify two axes (A-axis and B-axis), the A-axis is oriented in a generally uphill-downhill direction and the B-axis is oriented in a generally cross slope direction. Movement in the negative direction on the A-axis represents downslope (direction of potential failure) movement. There are three graphs for each inclinometer as follows:

1. Cumulative Displacement vs. Depth
2. Incremental Displacement vs. Depth
3. Cumulative Displacement vs. Time (A-axis)

Cumulative displacement vs. depth is a plot of movement. Displacements on these plots may appear abrupt because the horizontal scale is not proportional to the vertical scale, which makes it easier to identify displacements. Incremental displacement vs. depth is a plot of movement at each reading interval. A spike in these graphs indicates significant movement. Growth in the spike over time indicates continued movement. Cumulative displacement vs. time provides an indication as to the rate of movement.

EVALUATION

A review of the Cumulative Displacement vs. Depth plots indicate that movement is occurring in five of the six inclinometers. Inclinometers SI-1, SI-2, SI-4 and SI-6 indicate an apparent failure plane developing at depths ranging from approximately 35-ft to 53-ft below the ground surface. A review of the accompanying boring logs indicates that the failure plane appears to be developing at or near the interface between residual soils and partially weathered rock (or dense residual soils). In our report dated October 25, 2010 we indicated that only two of the inclinometers (SI-4 and SI-6) had indicated significant movement since the August 30, 2010 readings were collected. We noted that there had been little precipitation during that period and that it should be expected that additional movement may occur in the remaining inclinometers during wet weather cycles. Since that time there has been considerable precipitation, particularly in the month preceding the current readings and, as expected, five of the six inclinometers have indicated movement since October. The only inclinometer that does not appear to have indicated movement is SI-3, which has not indicated any appreciable movement since installation.

The plots from inclinometer SI-5 indicate that the movement appears to be occurring at or below the bottom of the inclinometer casing at this location. A review of boring B-5 indicates partially

BLE

*Data Report of Slope Inclinometer Surveys
Jasmine Point - Cliffs at Keowee Falls South*

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weathered rock was encountered at a depth of approximately 64 feet. Therefore, it is our opinion that there may be a failure plane developing near the interface with the partially weathered rock similar to that observed in the inclinometers discussed above.

RECOMMENDATIONS

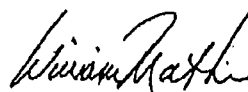
As previously reported, it is our opinion that there is an active, deep-seated slope failure occurring at the site. The rate at which movement occurs can be expected to vary over time and with environmental factors. However, it should be expected that movement will continue unless provisions to stabilize the slope are performed. Additional exploration, testing and analysis will be required to evaluate suitable methods for stabilizing the slope, which are beyond the scope of services for which we are currently authorized. If requested, we can prepare a proposal to provide additional engineering services required to develop conceptual stabilization methods.

This data submittal was the result of an extension of our scope of services as requested by Mr. Nickell in email correspondence with our Mr. Bill Mathews. Unless requested to collect additional inclinometer readings, we have completed the scope of services authorized for this project. We recommend that you retain a surveyor to develop a detailed topographic survey of the area. The topographic survey would be used in conjunction with the borings and inclinometer data to evaluate methods that could be used to stabilize the slope.

We appreciate the opportunity to provide our professional services on this project. If you have any questions or require additional information, please call.

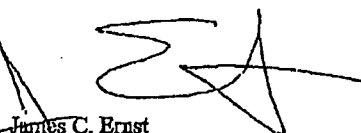
Sincerely,

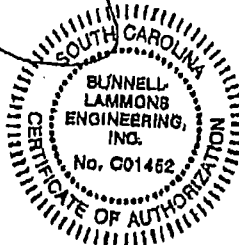
BUNNELL-LAMMONS ENGINEERING, INC.



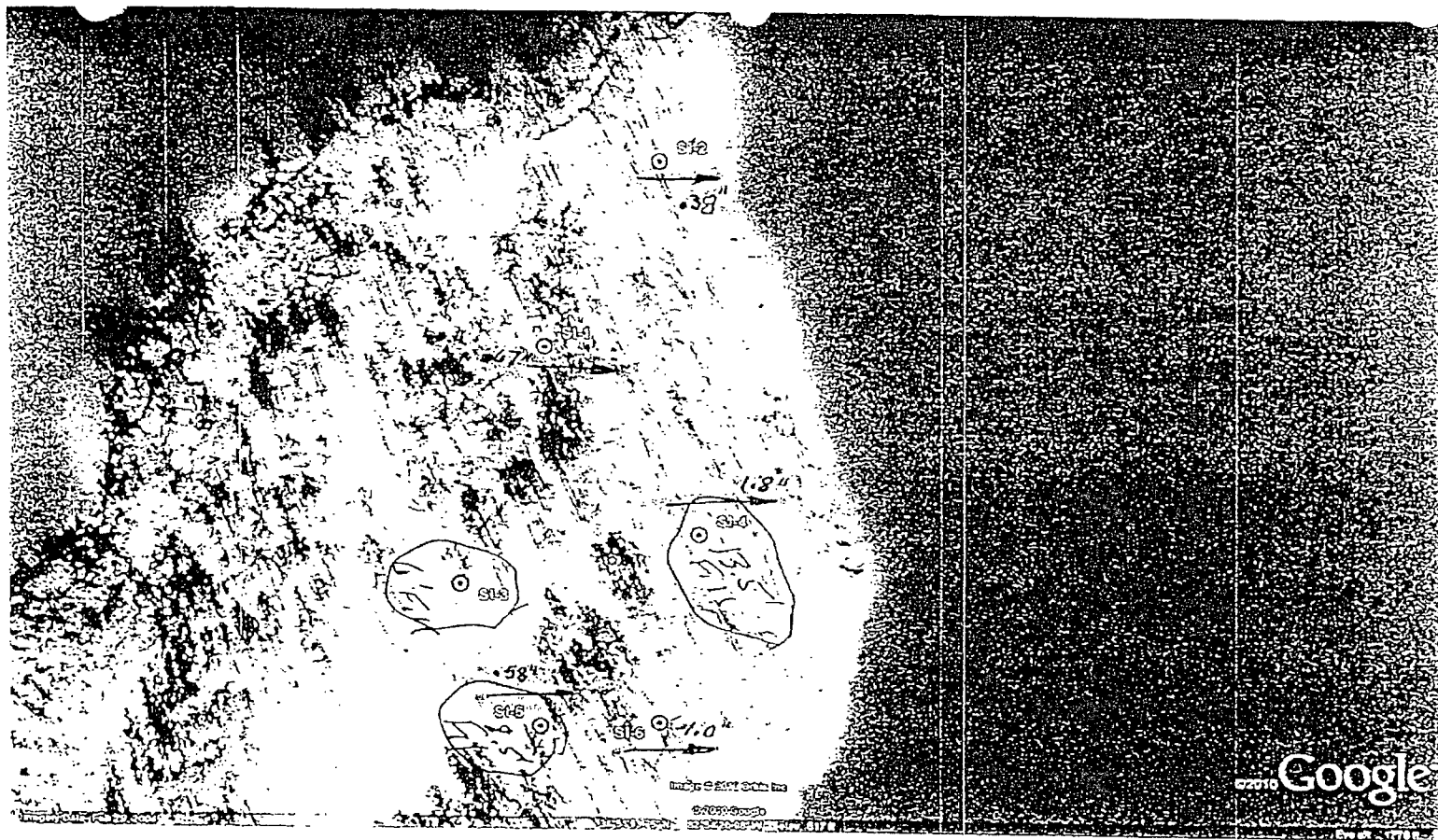
William A. Mathews, P.E.
Chief Engineer
Registered, SC #14039




James C. Ernst
Construction Services Manager



c:\public\p007\projects\jasmine point inclinometer summary for april 2011.doc

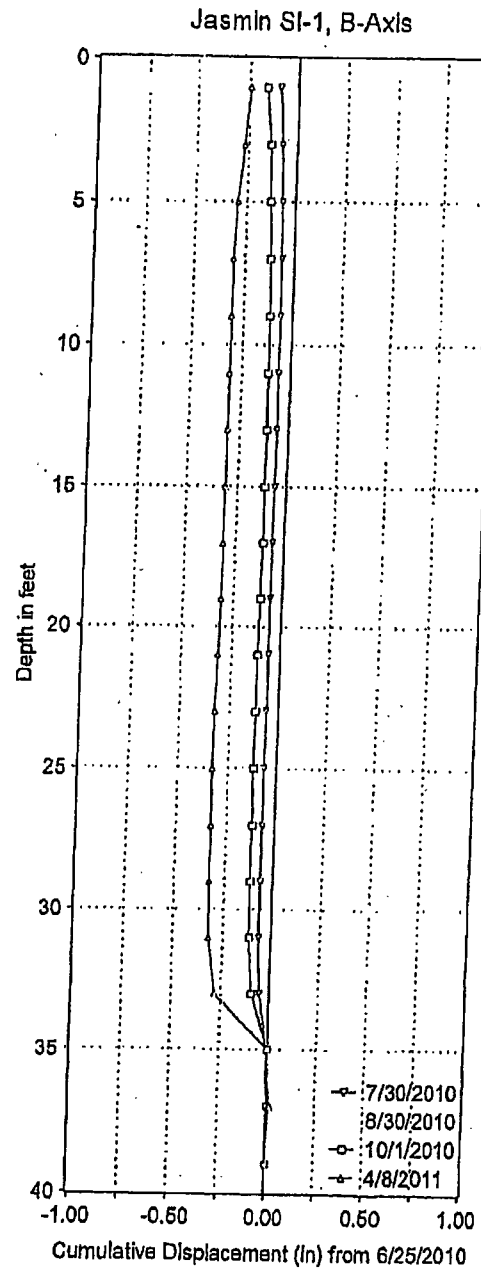
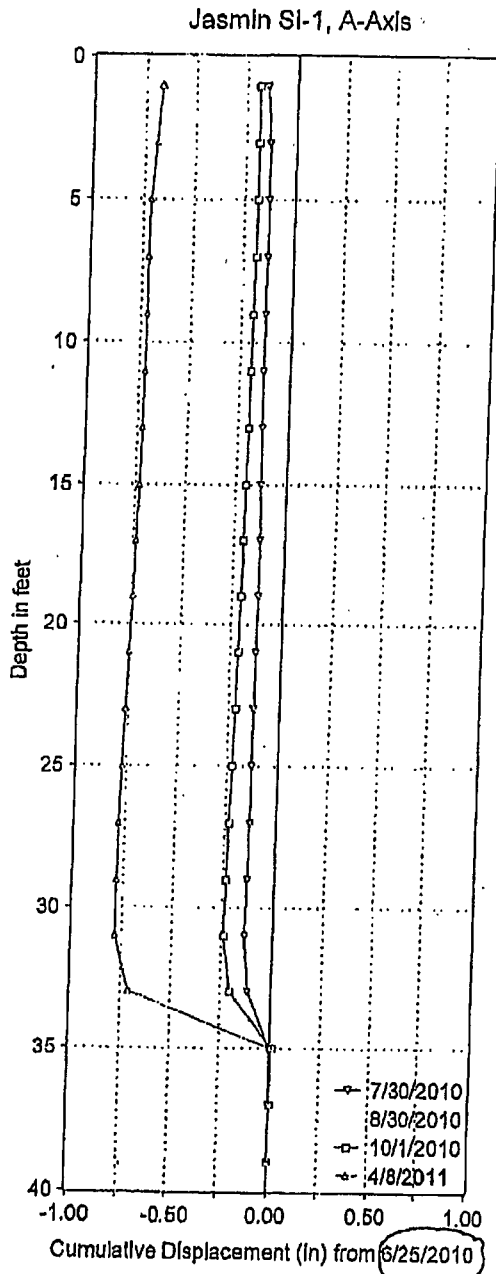


Jasmine Point
Cliffs @ Keowee Falls South

Inclinometer Locations
BLE Project No. J10-7112-01



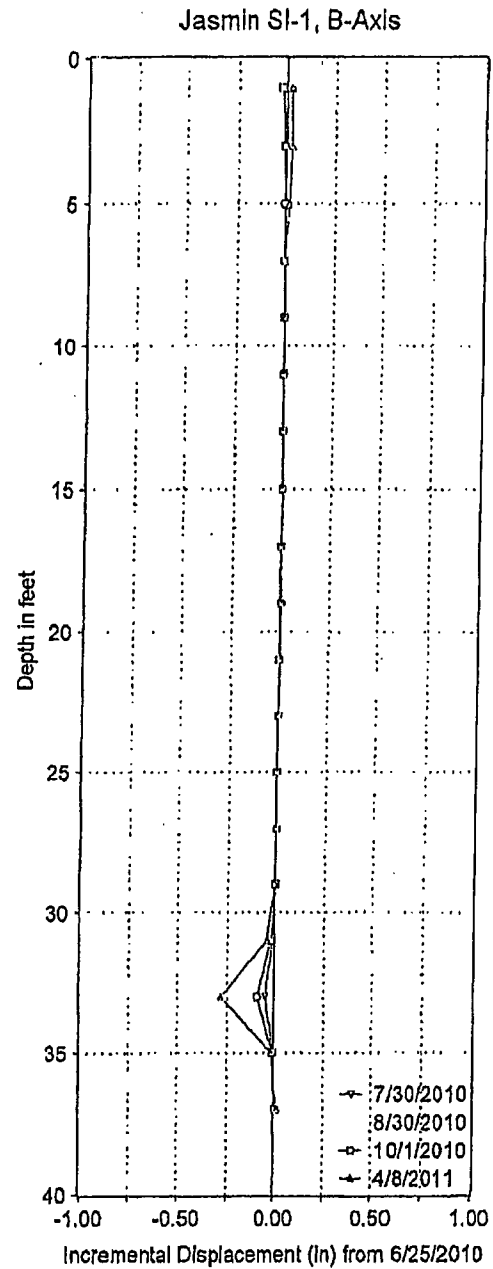
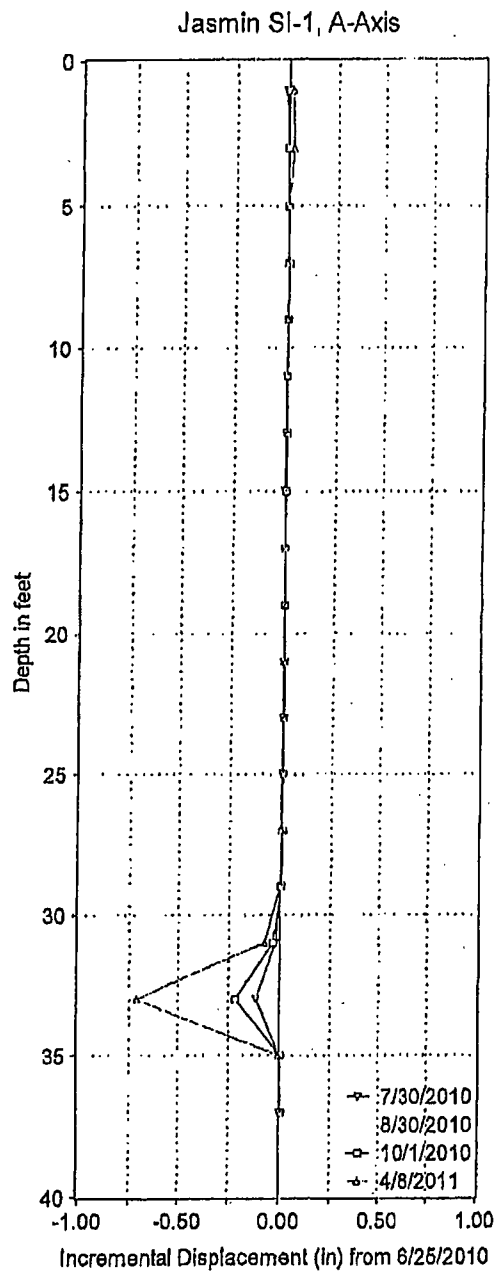
DOWN Slope
movement as of 8 Apr 2011



Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

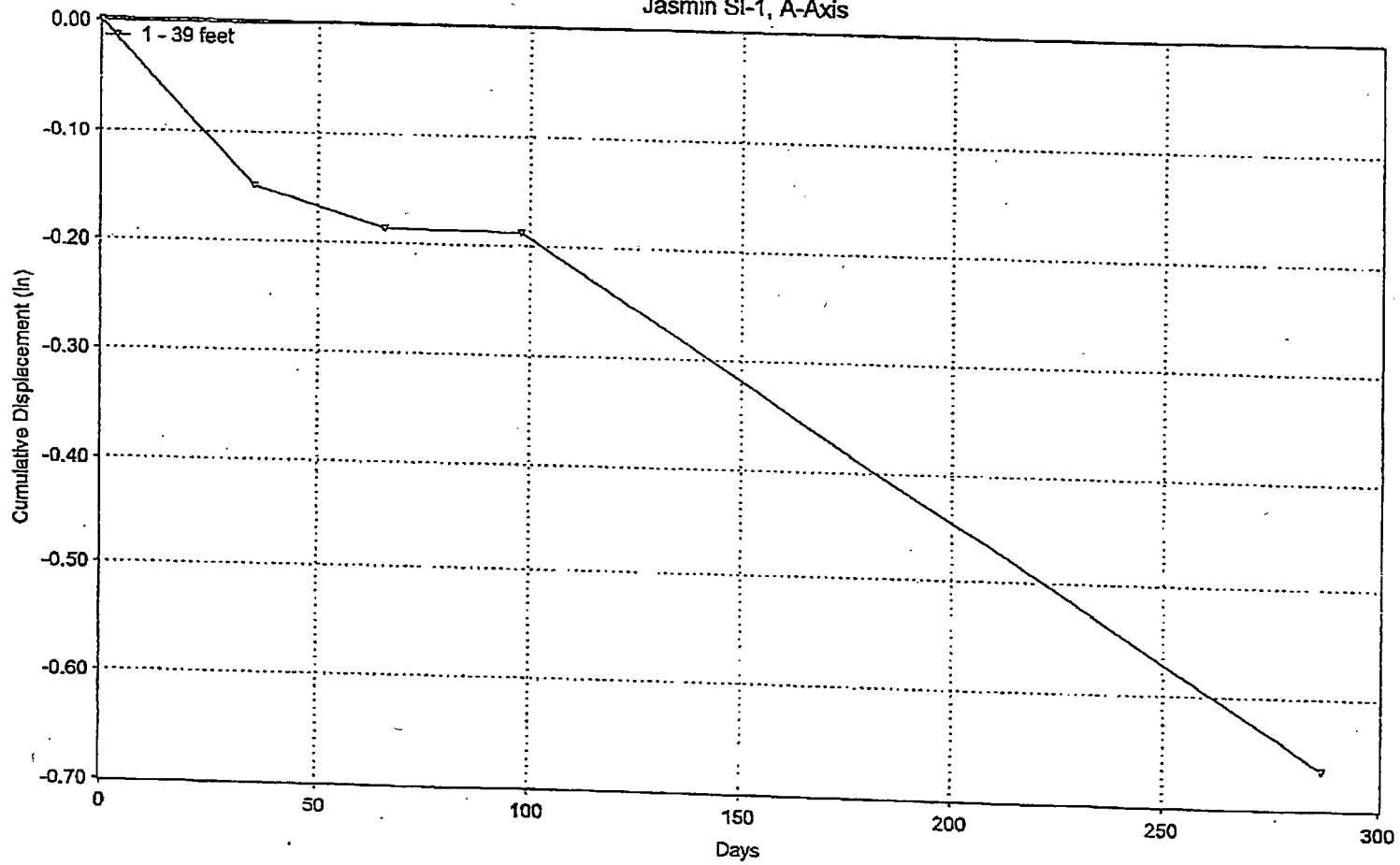


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

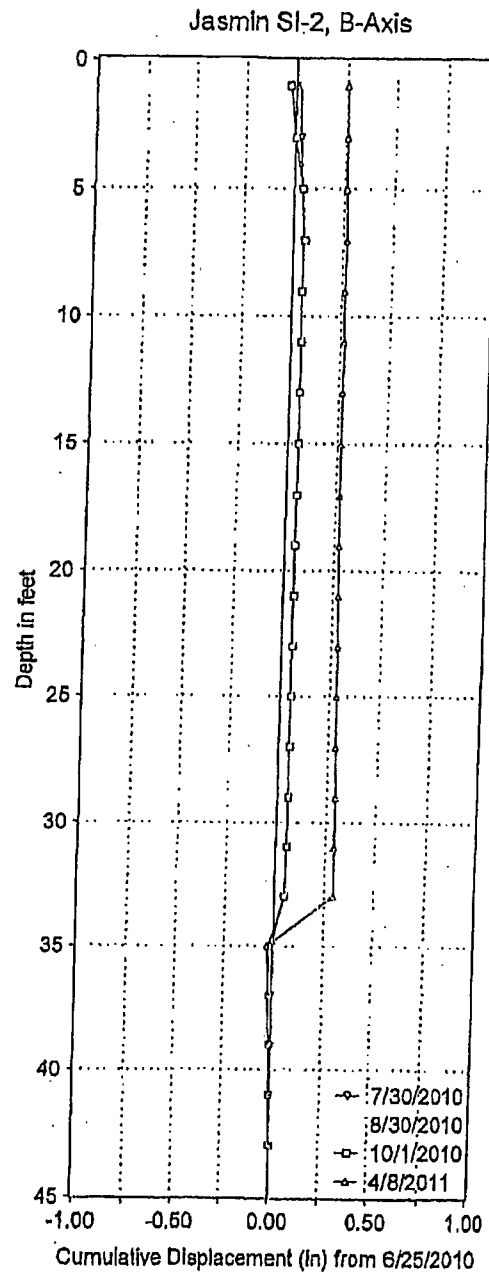
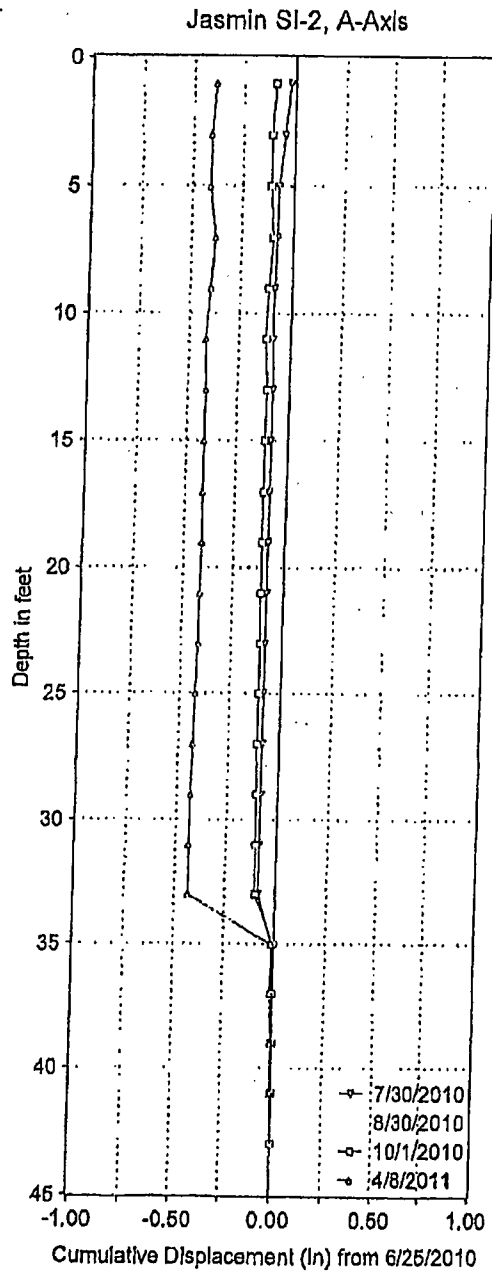
Jasmin SI-1, A-Axis



Jasmine Point

Cliffs at Keowee Falls South

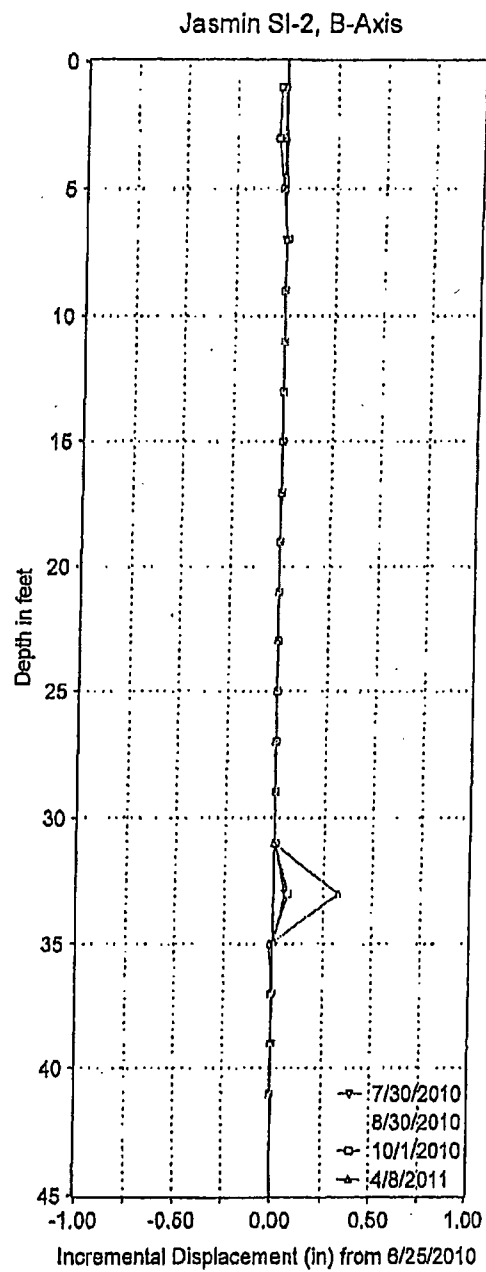
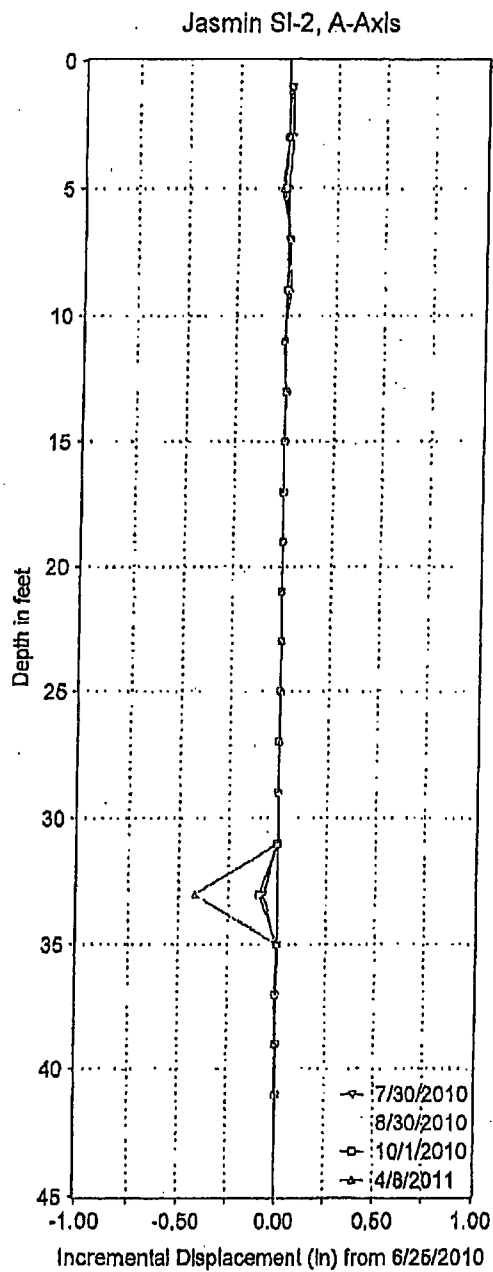
BLE Project No. J10-7112-01



Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

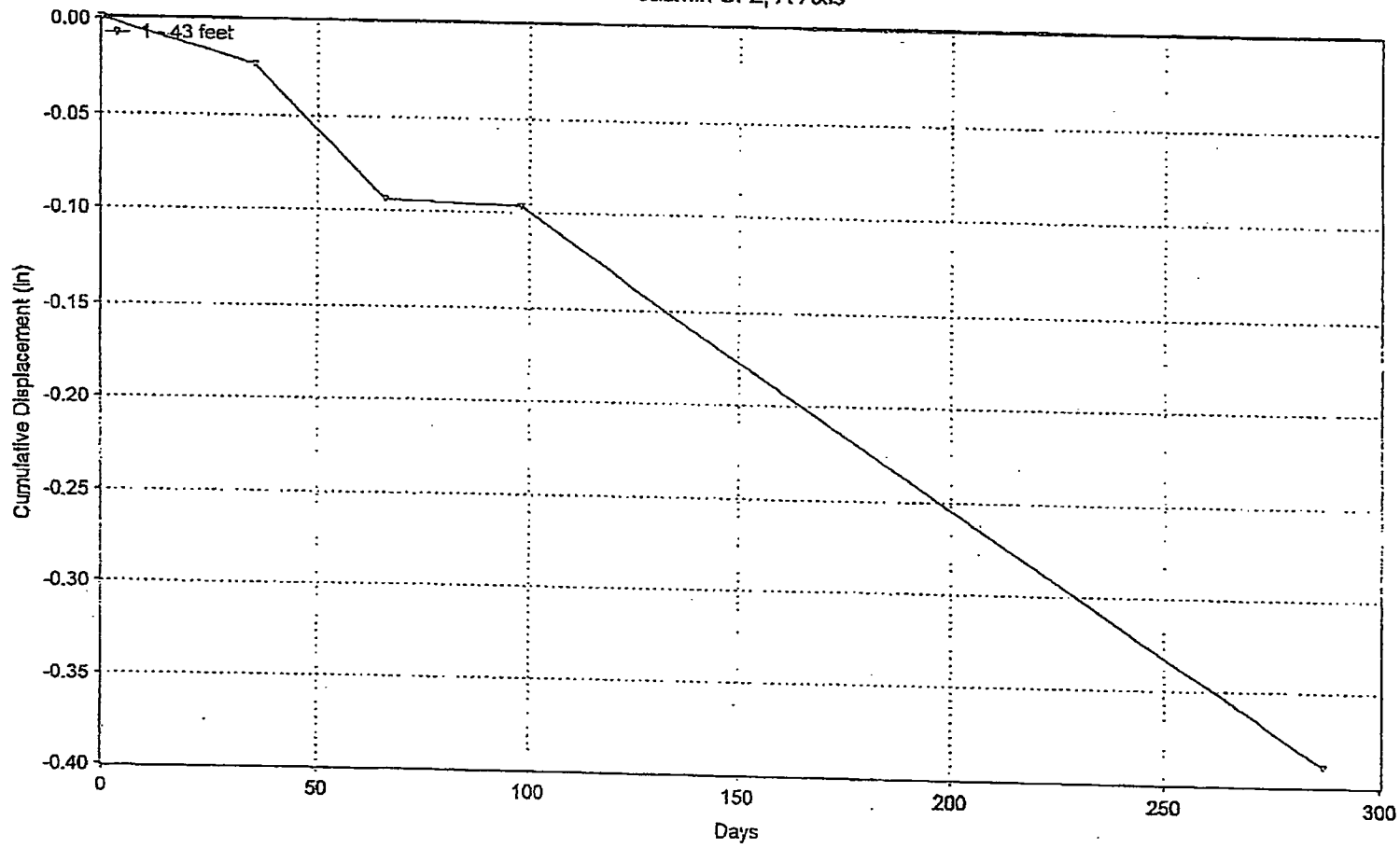


Jasmine Point

BLE Project No. J10-7112-01

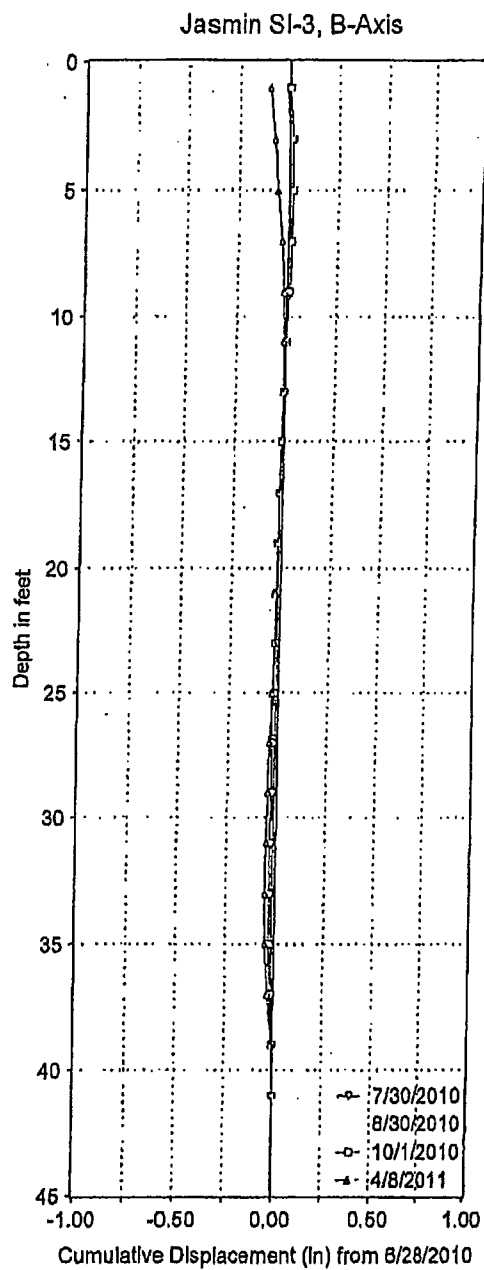
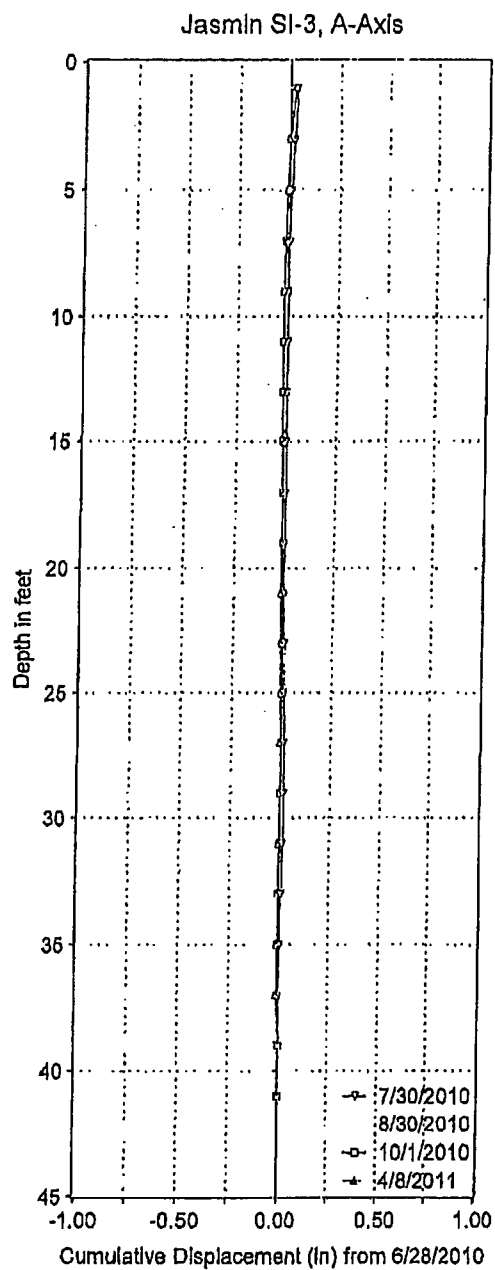
Cliffs at Keowee Falls South

Jasmin SI-2, A-Axis



Jasmine Point
Cliffs at Keowee Falls South

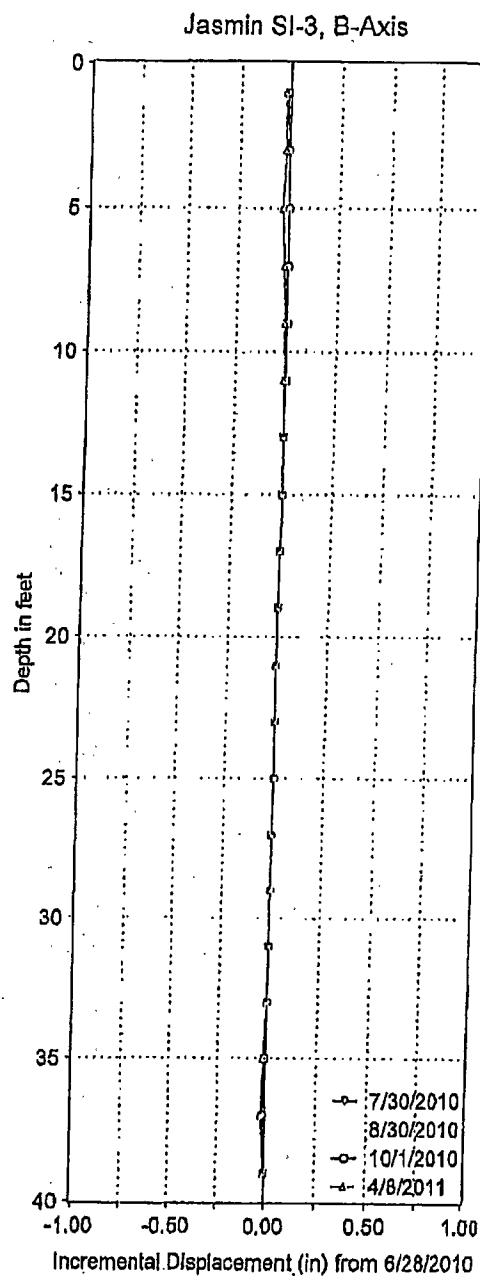
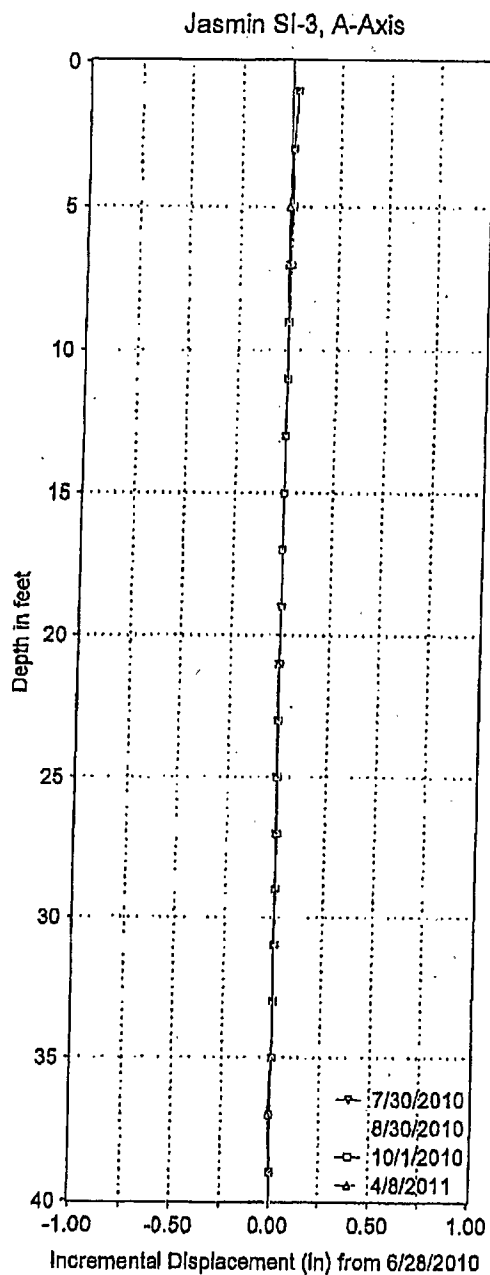
BLE Project No. J10-7112-01



Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

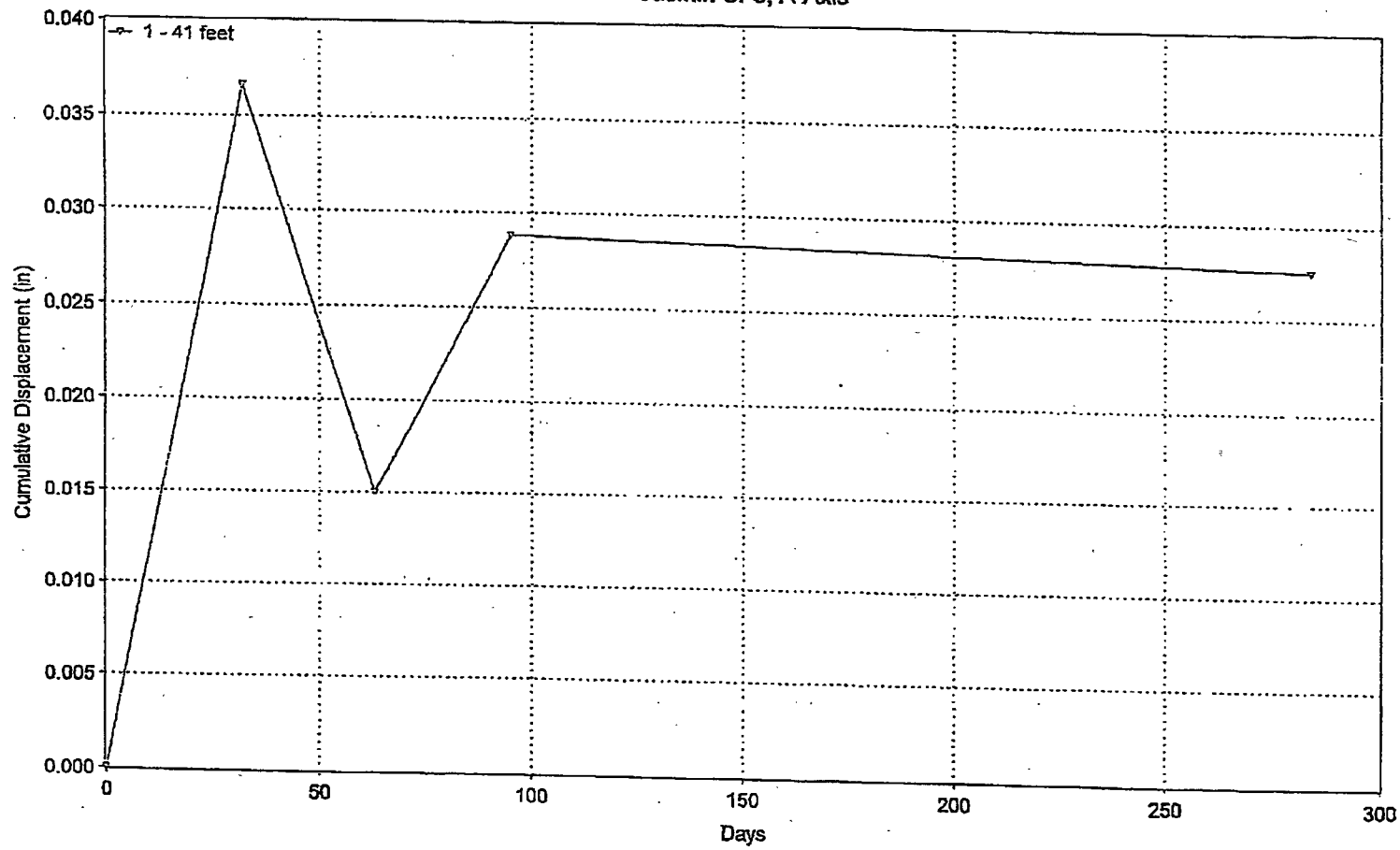


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

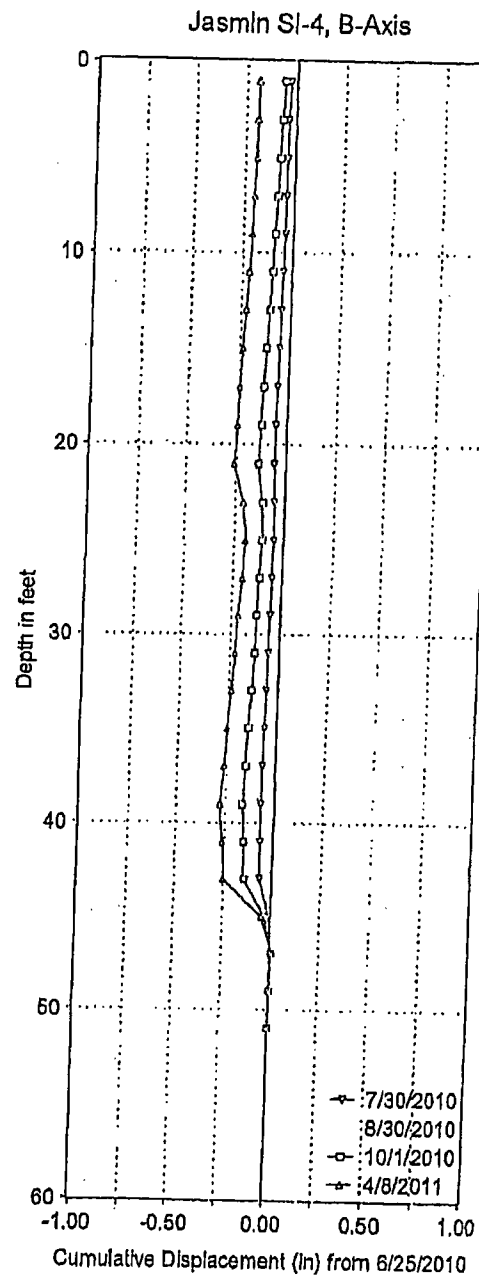
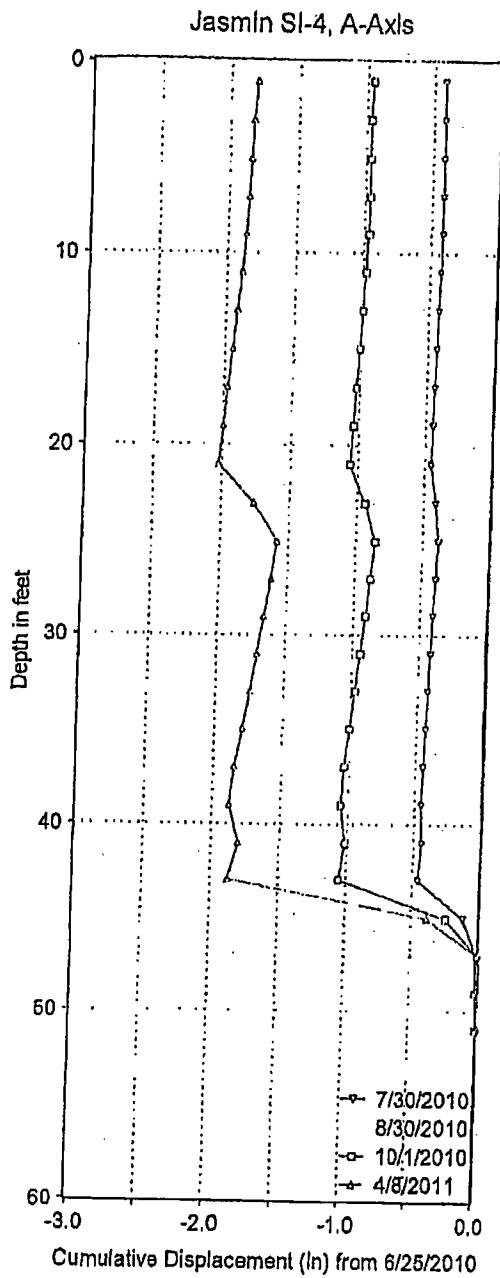
Jasmin SI-3, A-Axis



Jasmine Point

Cliffs at Keowee Falls South

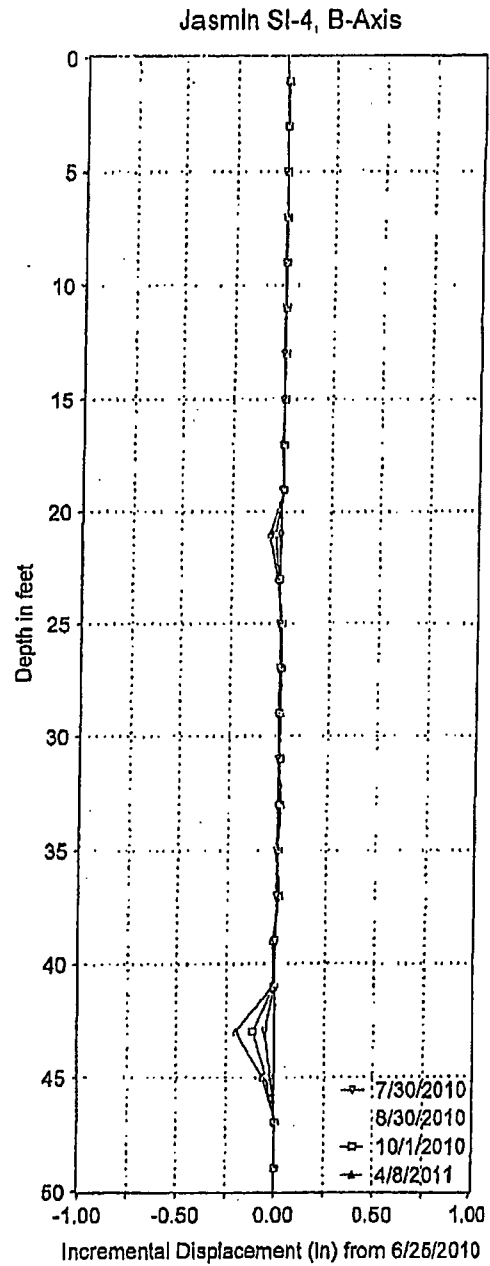
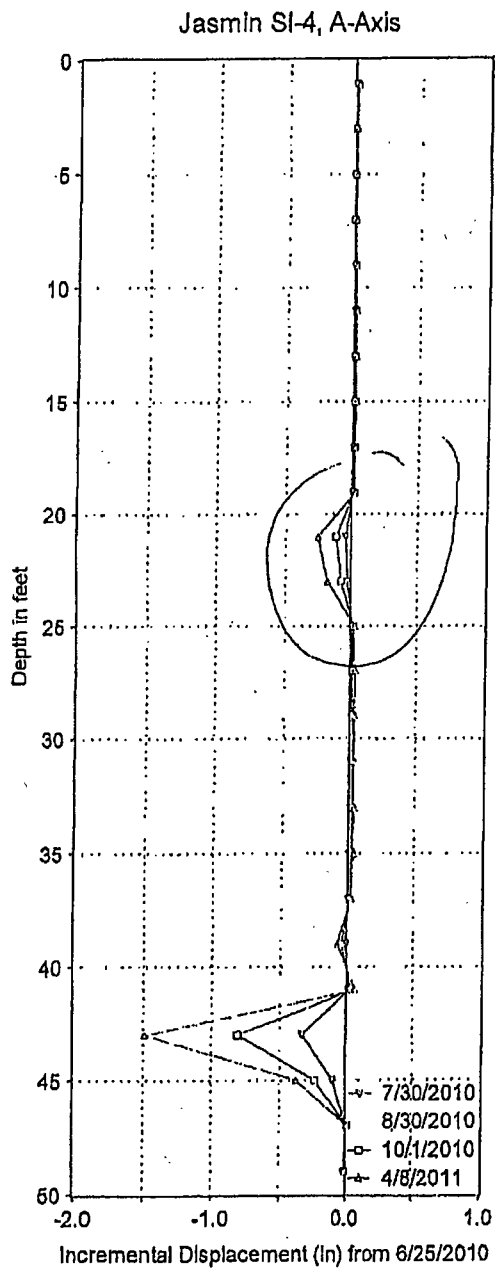
BLE Project No. J10-7112-01



Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

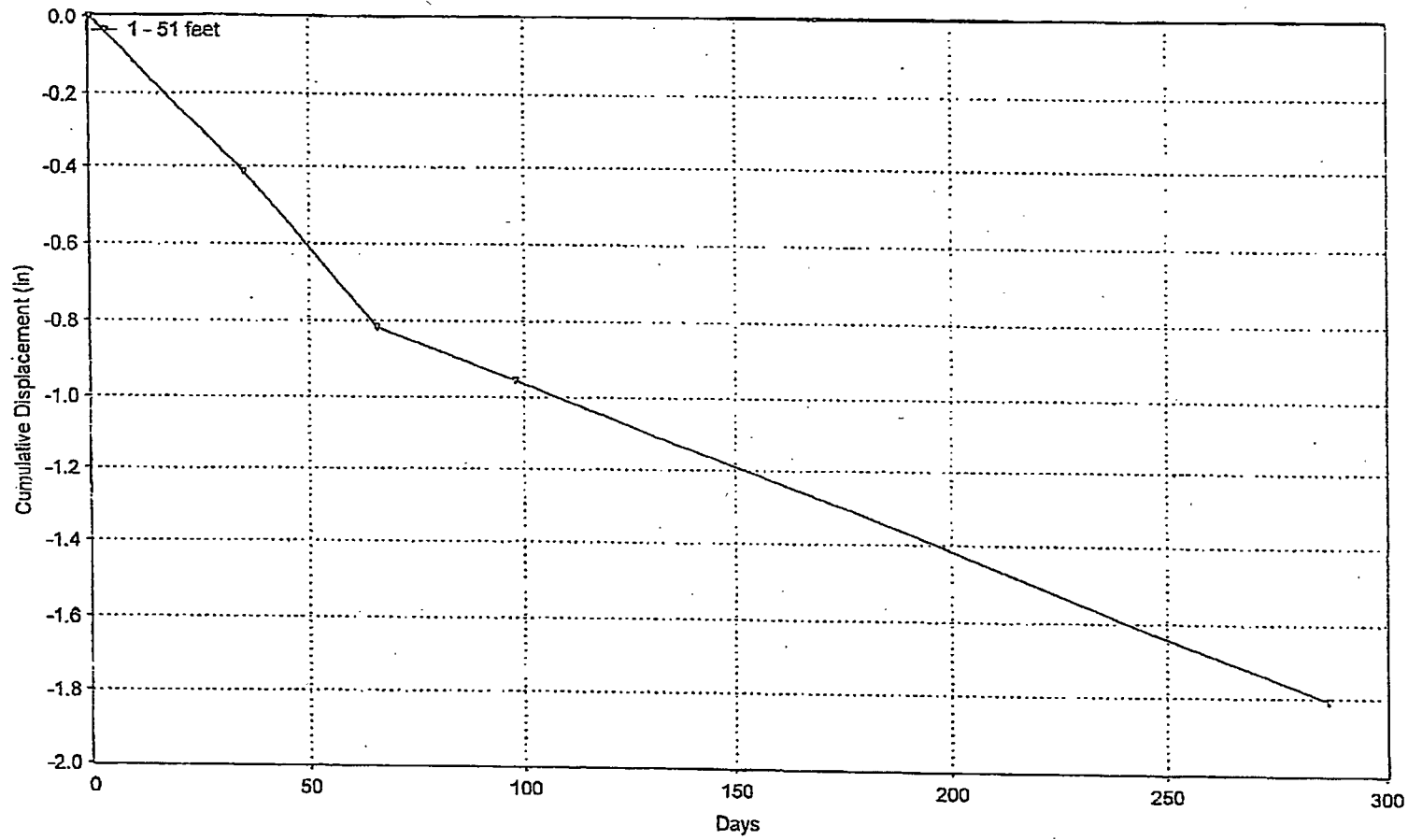


Jasmine Point

BLE Project No. J10-7112-01

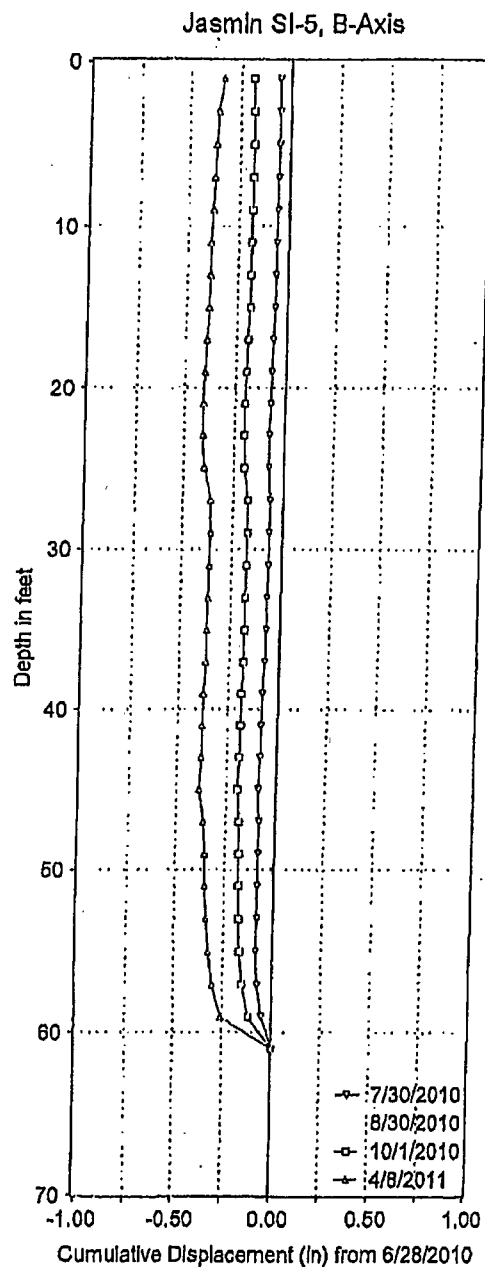
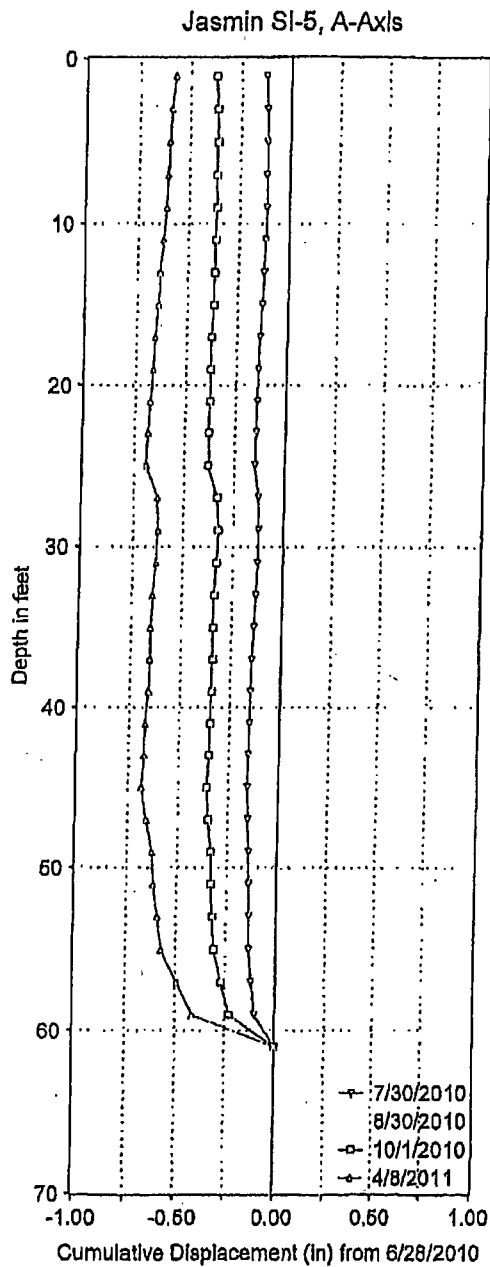
Cliffs at Keowee Falls South

Jasmin SI-4, A-Axis



Jasmine Point
Cliffs at Keowee Falls South

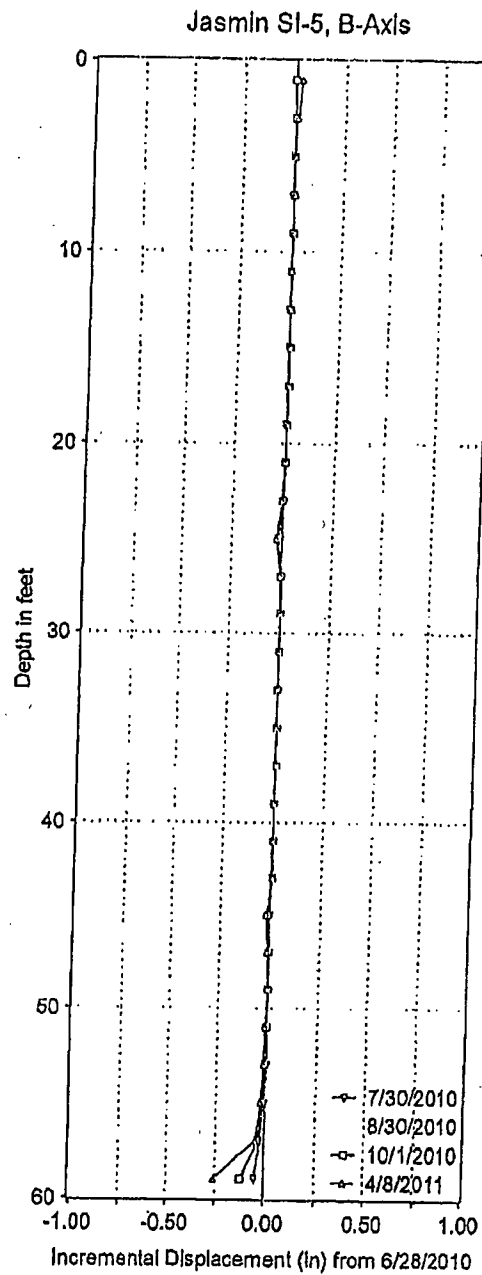
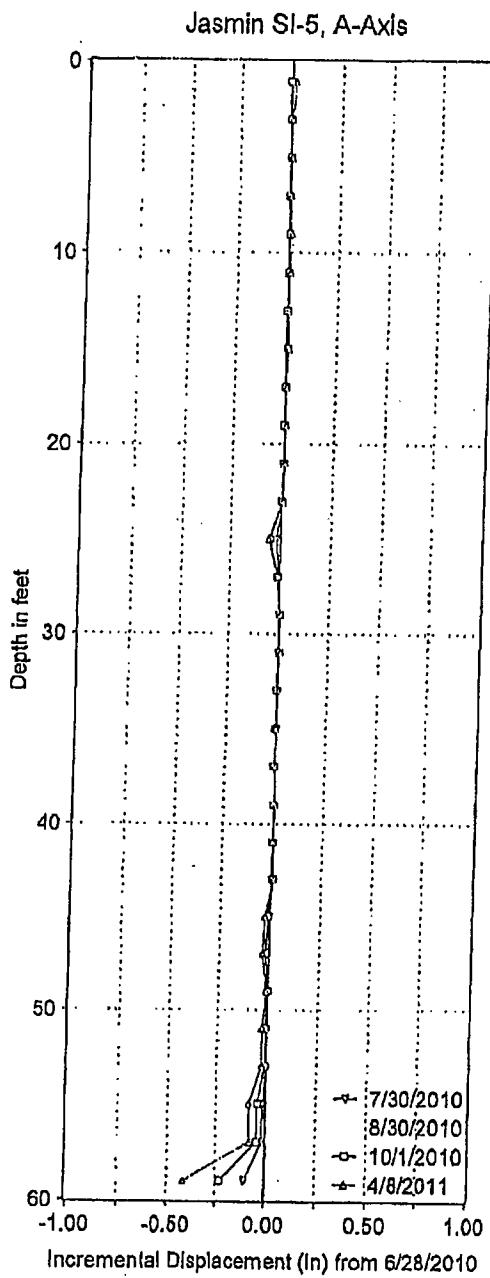
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Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

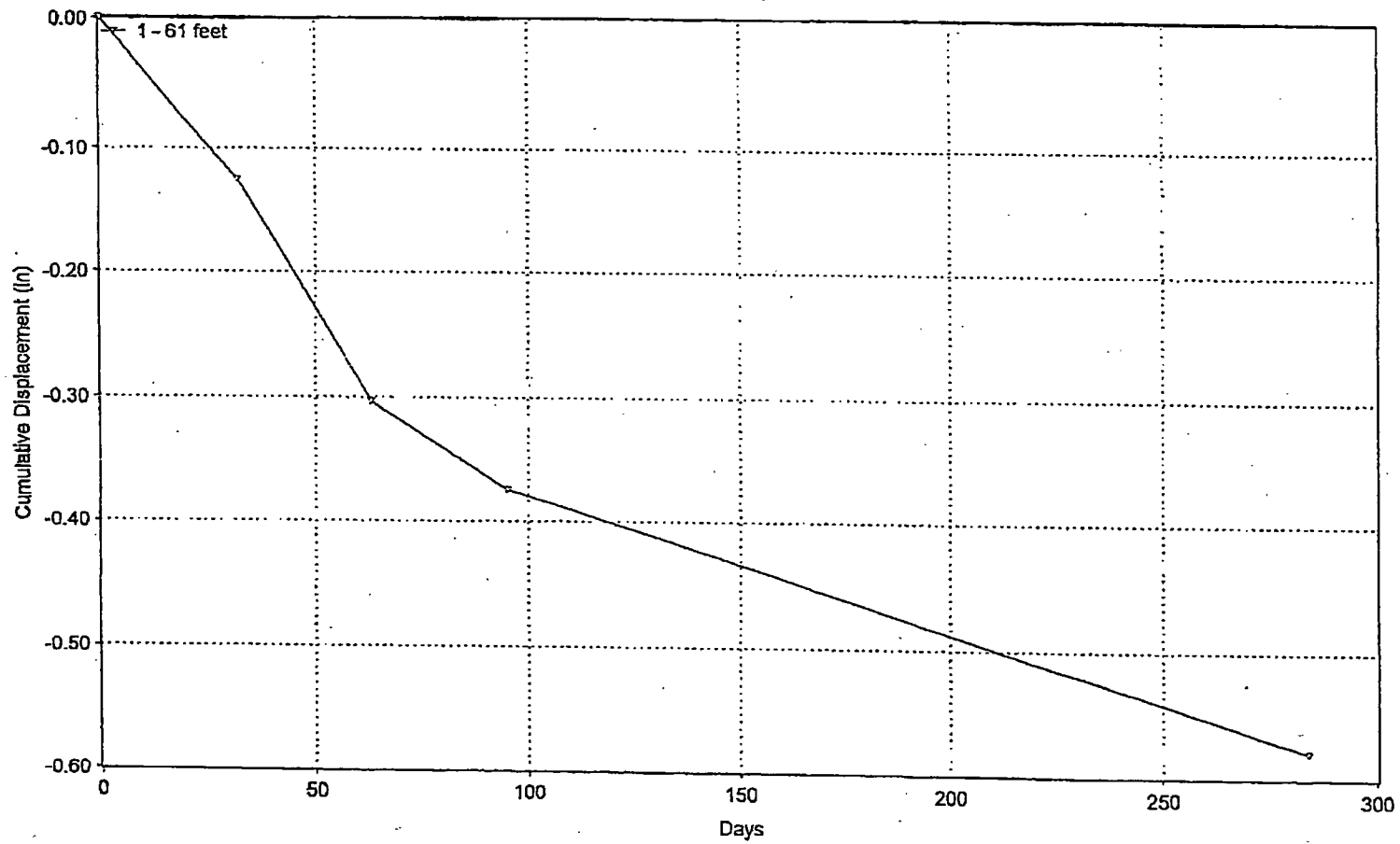


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BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

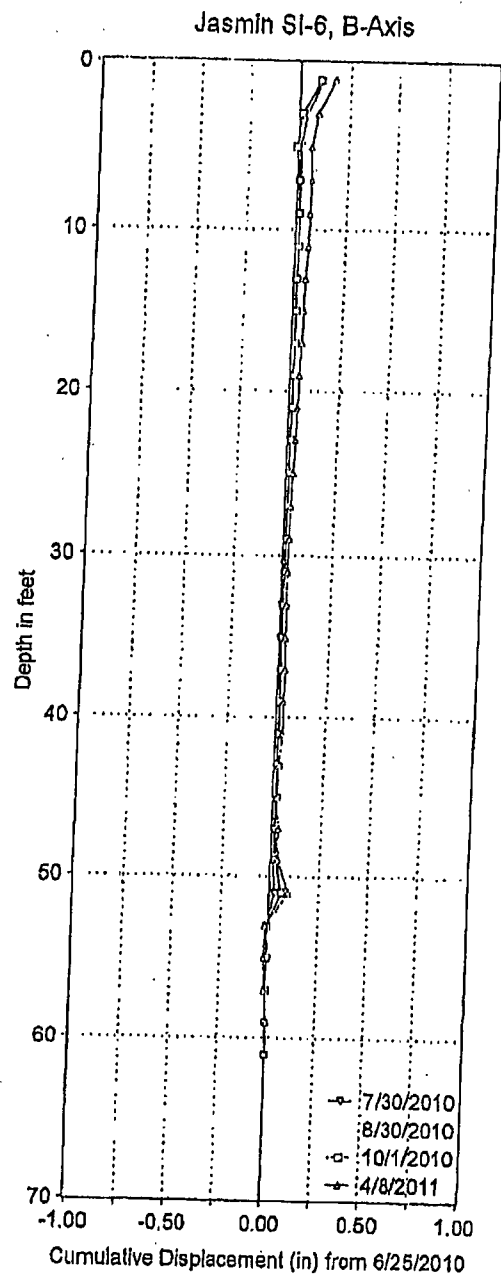
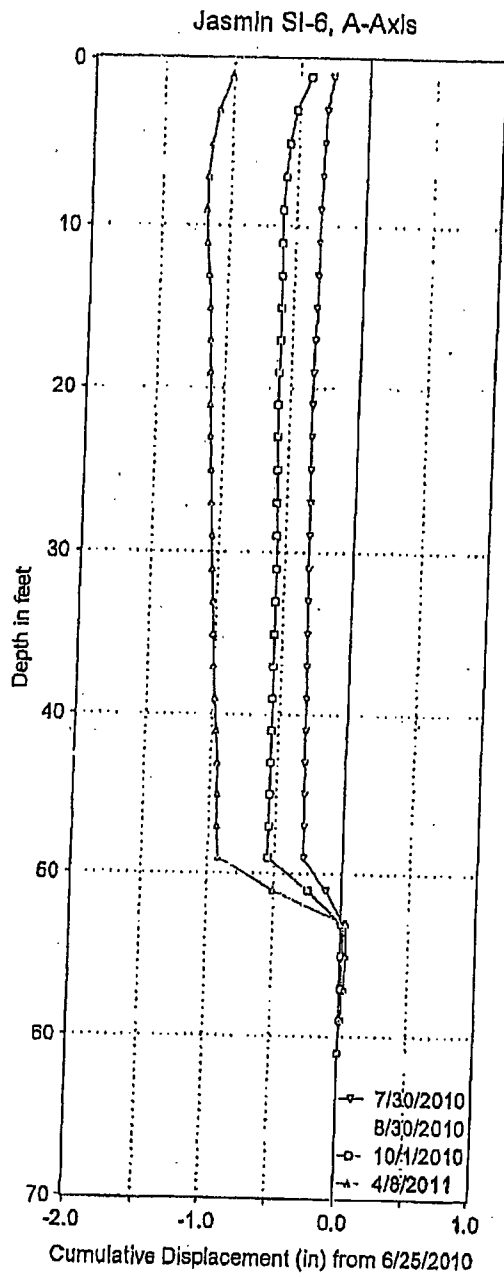
Jasmin SI-5, A-Axis



Jasmine Point

Cliffs at Keowee Falls South

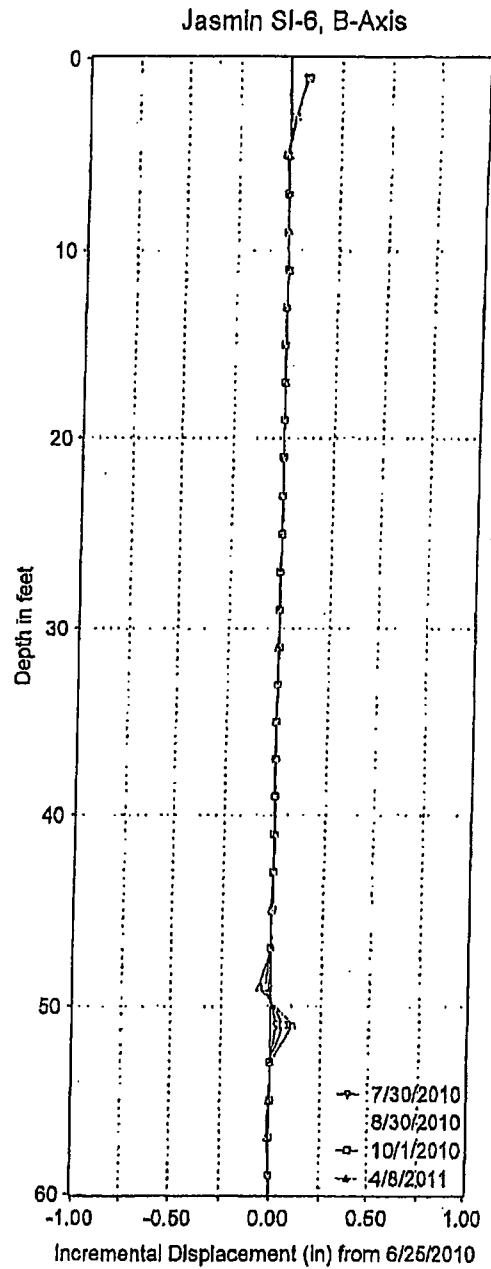
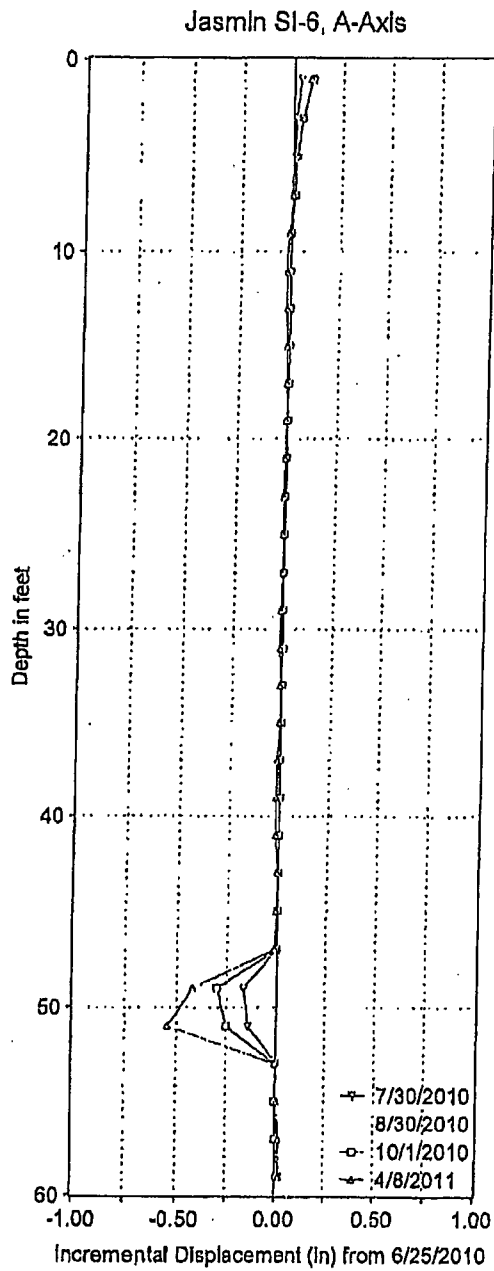
BLE Project No. J10-7112-01



Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

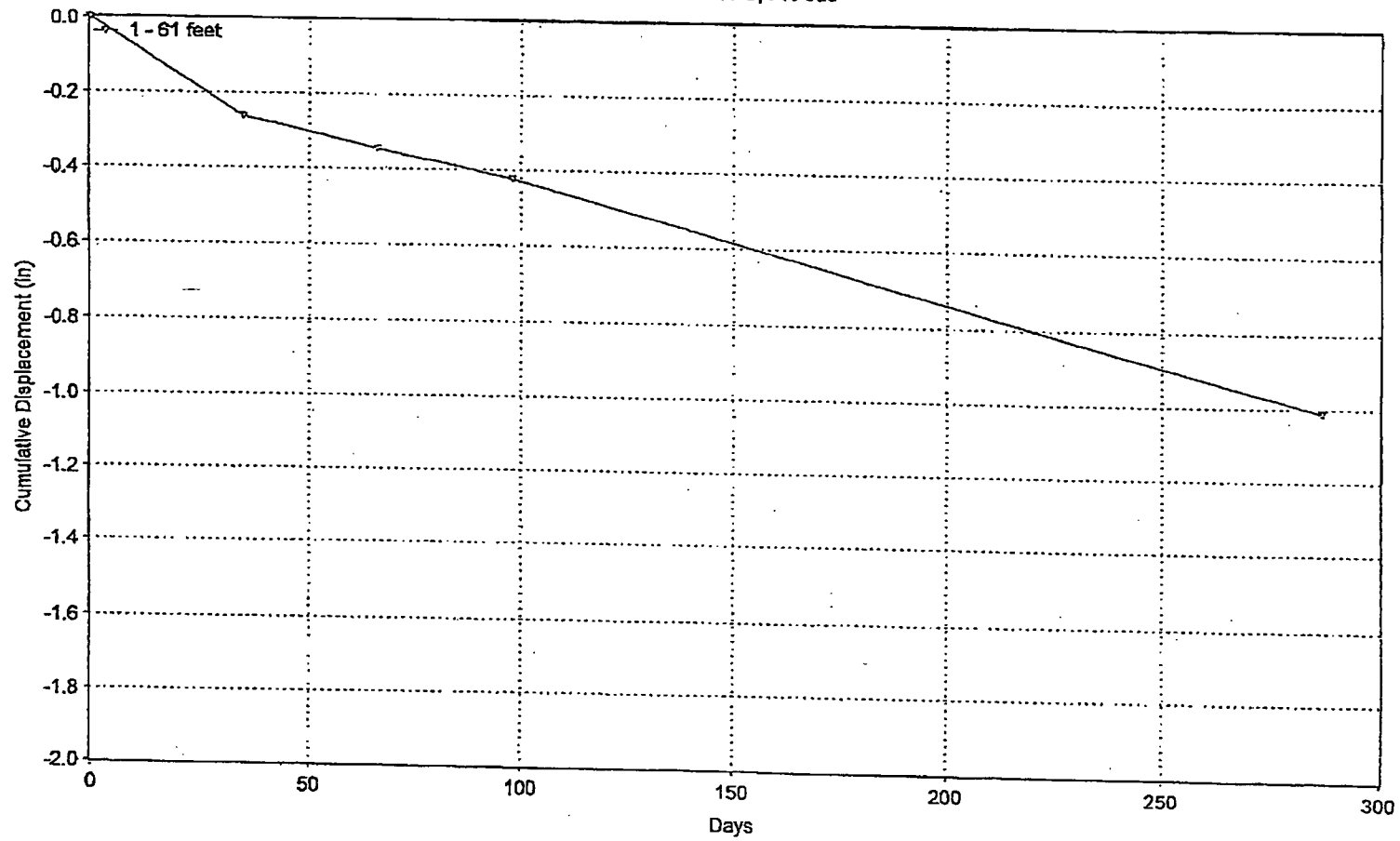


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

Jasmin SI-6, A-Axis



Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

		SOIL TEST BORING NO. B-1	
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u>	PROJECT NO.: <u>J10-7112-01</u>
		CLIENT: <u>The Cliffs</u>	START: <u>6-2-10</u> END: <u>6-3-10</u>
		LOCATION: <u>Lot 30</u>	ELEVATION: _____
		DRILLER: <u>Metro Drill, Inc., Reid and Keith</u>	LOGGED BY: <u>D. Parkins</u>
		DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u>	
DEPTH TO - WATER> INITIAL: <u>33.5</u> AFTER 24 HOURS: <u>28</u> CAVING> <u>XXXX</u>			

ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT											
				2	5	10	20	30	40	50	70	90			
2	2-Inches of TOPSOIL														
2	Very firm, yellowish-red with pink and white, silty, fine to coarse SAND with gravel - (residuum)		4												
4	Very loose, yellowish-red with white, silty, fine to medium SAND		3												
6			2												
8			1												
8			2												
10	Firm, yellowish-brown, fine to medium sandy SILT		3												
10			2												
12			2												
14			4												
16			4												
18															
20	Loose, white with gray, micaceous, silty, fine to medium SAND		3												
20			3												
22			5												
24	Firm, white with gray, micaceous, slightly silty, fine SAND		5												
24			7												
26			7												
28															
28	Loose, red with pink and gray, micaceous, silty, fine SAND		4												
30			4												
30			6												
32															
34	PARTIALLY WEATHERED ROCK which sampled as dark grayish-brown, micaceous, silty, fine SAND		18												
34			50/5"												
36	Slope inclinometer set at 37 feet														
38	Auger refusal at 37.5 feet. Groundwater encountered at 33.5 feet at time of drilling and at 28 feet after 24 hours.														
40															
42															
44															

NOVELL GPJ 9/9/10

		SOIL TEST BORING NO. B-2		
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u>		PROJECT NO.: <u>J10-7112-01</u>
		CLIENT: <u>The Cliffs</u>		START: <u>6-1-10</u> END: <u>6-2-10</u>
		LOCATION: <u>Lot 30</u>		ELEVATION: _____
		DRILLER: <u>Metro Drill, Inc., Reid and Keith</u>		LOGGED BY: <u>D. Parkins</u>
		DRILLING METHOD: <u>BK-51; 2-1/4 Inch ID hollow stem auger</u>		
DEPTH TO - WATER> INITIAL: <u>▽</u> AFTER 24 HOURS: <u>▽</u> CAVING> <u>XXX</u>				
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT
	3-Inches of TOPSOIL			2 5 10 20 30 40 50 70 90
2	Loose, yellowish-red with gray, micaceous, silty, fine to coarse SAND with some small roots - (residuum)		3 4 4	
4	Loose, yellowish-red with gray and white, micaceous, silty, fine SAND		2 3 3	
6	PARTIALLY WEATHERED ROCK which sampled as gray, fine to coarse SAND		7 50/5.5	
8	Loose, white with light gray, slightly silty, fine to medium SAND		3 4 6	
10				
12				
14	Stiff, yellowish-red with gray and black, micaceous, fine sandy SILT		5 8 5	
16				
18				
20	Firm, yellowish-red with gray and white, micaceous, silty, fine SAND with gravel		3 4 7	
22				
24	Very firm, gray with brown, silty, fine SAND		5 9 12	
26				
28				
30	Dense, white with gray, silty, fine to medium SAND		5 15 30	
32				
34	Very firm, yellowish-red with gray, silty, fine to medium SAND		10 10 12	
36				
38				
40	Very dense, white with pink and gray, micaceous, slightly silty, fine to coarse SAND		18 18 40	
42				
44	Auger refusal at 43 feet. No groundwater encountered at time of drilling. Slope inclinometer set at 42.5 feet.			

NOVELL 1 GP1 6/9/10

		SOIL TEST BORING NO. B-3	
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u>	PROJECT NO.: <u>J10-7112-01</u>
		CLIENT: <u>The Cliffs</u>	START: <u>8-8-10</u> END: <u>8-8-10</u>
		LOCATION: <u>Lot 31</u>	ELEVATION: _____
		DRILLER: <u>Metro Drill, Inc., Reid and Keith</u>	LOGGED BY: <u>D. Parkins</u>
		DRILLING METHOD: <u>EM-51; 2-1/4 inch ID hollow stem auger</u>	
DEPTH TO - WATER: INITIAL: <u>38.5</u> AFTER 24 HOURS: <u>38.5</u> CAVING: <u>XXX</u>			
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	STANDARD PENETRATION RESULTS BLOWS/FOOT
		SAMPLES	2 5 10 20 30 40 50 70 90
2	2-Inches of TOPSOIL	2	
4	Loose, yellowish-red, micaceous, silty, fine to medium SAND - (fill)	3	
6	Loose, yellowish-red with gray, silty, fine to coarse SAND - (fill)	3	
8	Loose to firm, yellowish-brown with white, micaceous, silty, fine to medium SAND - (residuum)	2	
10		2	
12		3	
14		3	
16		3	
18		3	
20		3	
22		3	
24		3	
26		3	
28		3	
30		3	
32		3	
34		3	
36		3	
38		3	
40	Firm, yellowish-red with gray and white, very micaceous, fine sandy SILT with some gravel	6	
42	Boring terminated at 40 feet. Groundwater encountered at 38.5 feet at time of drilling. Slope inclinometer set at 39 feet.	5	
44		10	

 3PJ 9/9/10
 HOWELL 7

		SOIL TEST BORING NO. B-4	
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 31</u> DRILLER: <u>Metro Drill, Inc., Reid and Keith</u> DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>▽</u> AFTER 24 HOURS: <u>▽</u> CAVING: <u>XXX</u>	
PROJECT NO.: <u>J10-7112-01</u> START: <u>6-27-10</u> END: <u>5-27-10</u> ELEVATION: _____ LOGGED BY: <u>D. Parkins</u>			

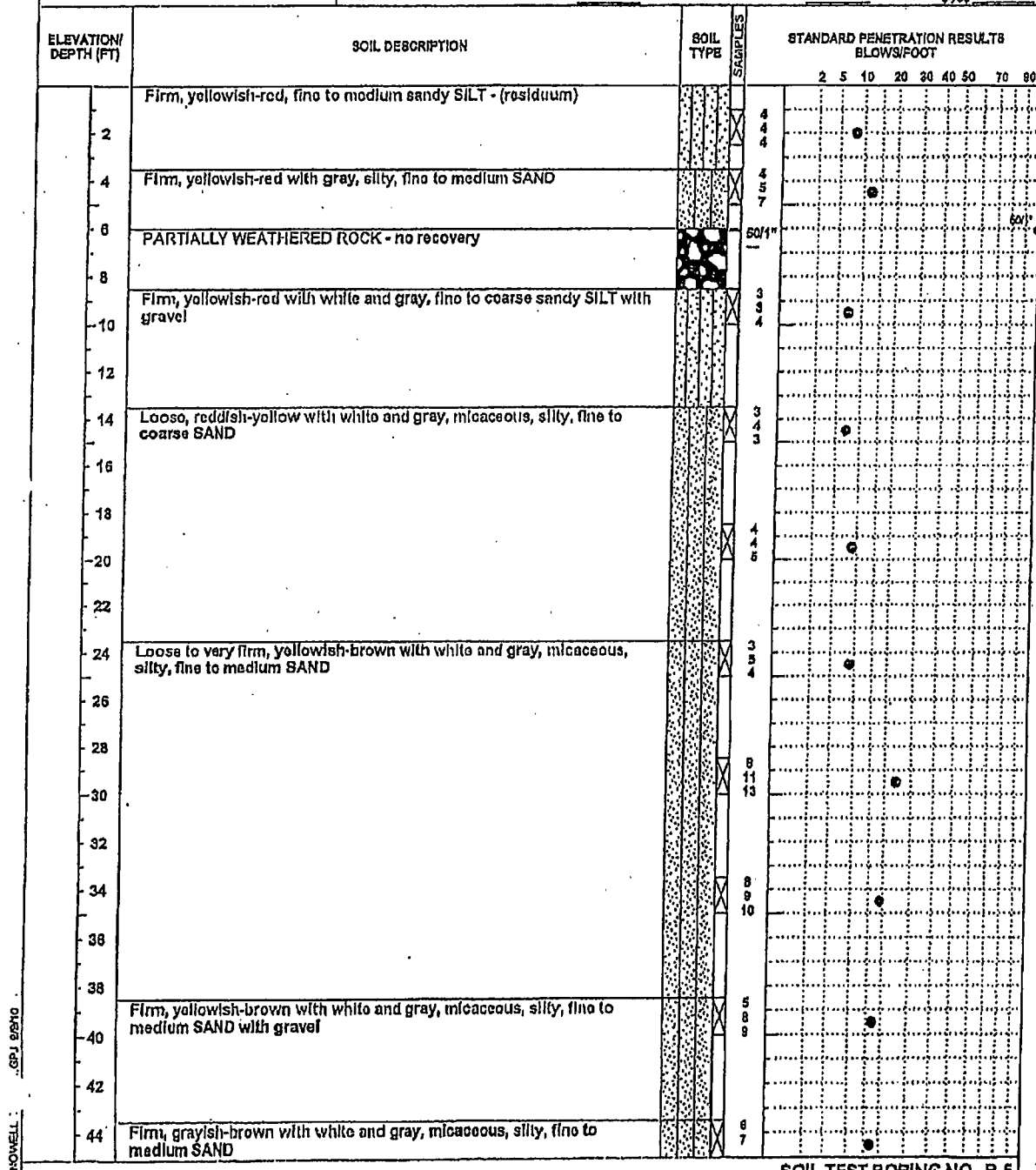
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT
				2 5 10 20 30 40 50 70 90
2	Stiff, red, fine to medium sandy SILT - (fill)		4 4 8	•
4	Firm, red with gray, silty, fine to medium SAND with gravel - (fill)		8 6 0	•
6	Firm, red with yellowish-brown, micaceous, silty, fine to medium SAND - (fill)		3 6 7	•
8	Stiff, red, fine to medium sandy SILT - (fill)		2 4 8	•
10				
12				
14	Loose, yellowish-red with gray, silty, fine to medium SAND - (residuum)		2 2 5	•
16				
18				
20			2 2 3	•
22				
24	Loose, gray, micaceous, slightly silty, fine to medium SAND		2 3 5	•
26				
28				
30	Loose, gray with white, micaceous, slightly silty, fine SAND		4 3 4	•
32				
34	Firm, reddish-brown with gray and white, micaceous, silty, fine to coarse SAND		2 4 7	•
36				
38				
40			4 4 7	•
42				
44	Firm, white with gray and brown, micaceous, silty, fine to coarse SAND with gravel		4 7	•

		SOIL TEST BORING NO. B-4			
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 31</u> DRILLER: <u>Metro Drill, Inc., Rold and Kolth</u> DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>∇</u> AFTER 24 HOURS: <u>∇</u>		PROJECT NO.: <u>J10-7112-01</u> START: <u>5-27-10</u> END: <u>5-27-10</u> ELEVATION: _____ LOGGED BY: <u>D. Parkins</u> CAVING> <u>5500</u>	

ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT
				2 5 10 20 30 40 50 70 90
46	Firm, white with gray and brown, micaceous, silty, fine to coarse SAND with gravel		12	
48	PARTIALLY WEATHERED ROCK - no return	X	4	
50	Boring terminated at 50 feet. No groundwater encountered at time of drilling. Slope inclinometer set at 48 feet.		7 60/0"	
52				
54				
56				
58				
60				
62				
64				
66				
68				
70				
72				
74				
76				
78				
80				
82				
84				
86				
88				

NOWELL
 6/1 9/8/10

IBLE INC. BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS	SOIL TEST BORING NO. B-5 PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Reid and Kelih</u> DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>53.5</u> AFTER 24 HOURS: <u>53.5</u> CAVING: <u>53.5</u>
PROJECT NO.: <u>J10-7112-01</u> START: <u>6-7-10</u> END: <u>6-7-10</u> ELEVATION: _____ LOGGED BY: <u>D. Perkins</u>	



NOVELL
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 BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		SOIL TEST BORING NO. B-5 PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Reid and Keith</u> DRILLING METHOD: <u>8K-51; 2-1/4 Inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>53.5</u> AFTER 24 HOURS: <u>53.5</u> CAVING> <u>XXXX</u>				PROJECT NO.: <u>J10-7112-01</u> START: <u>6-7-10</u> END: <u>6-7-10</u> ELEVATION: _____ LOGGED BY: <u>D. Parkins</u>							
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT									
					2	5	10	20	30	40	50	70	90
48	Firm, grayish-brown with white and gray, micaceous, silty, fine to medium SAND		10										
48			9										
50	Very firm, grayish-brown with white and gray, very micaceous, silty, fine to medium SAND with some gravel		11										
50			13										
52													
54	Firm to dense, yellowish-red with white, gray and yellowish-brown, very micaceous, silty, fine to medium SAND		7										
54			9										
56			11										
58													
60			10										
60			18										
62			16										
64	PARTIALLY WEATHERED ROCK which sampled as yellowish-brown with gray, micaceous, silty, fine to coarse SAND		21										
64			50/2"										
66	Auger refusal at 66 feet. Groundwater encountered at 53.5 feet at time of drilling. Slope Inclinometer set at 69 feet due to hole caving. Boring offset 5 feet.												
68													
70													
72													
74													
76													
78													
80													
82													
84													
86													
88													

		SOIL TEST BORING NO. B-6										
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Reid and Keith</u> DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>▽ 33.5</u> AFTER 24 HOURS: <u>▽ 33.5</u> CAVING: <u>XXX</u>		PROJECT NO.: <u>J10-7112-01</u> START: <u>6-3-10</u> END: <u>6-3-10</u> ELEVATION: _____ LOGGED BY: <u>D. Perkins</u>								
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT								
				2	5	10	20	30	40	60	70	80
2	Firm, red, micaceous, fine to medium sandy SILT - (fill)	1	3			6						
4	Loose, yellowish-red, silty, fine to medium SAND - (fill)	2	3									
6		3	3									
8		4	3									
10	Firm, yellowish-red, fine to medium sandy SILT with tiny roots - (residuum)	2	3									
12		3	3									
14	Loose, white with gray, fine to coarse SAND	3	4									
16		4	5									
18		5	5									
20	Loose, white with pink and light brown, fine to coarse SAND	3	3									
22		4	5									
24	Firm, yellowish-brown with white, very micaceous, silty, fine to coarse SAND	4	6									
26		6	7									
28		7	7									
30		8	7									
32		9	7									
34	Loose, brown with gray, very micaceous, silty, fine SAND	3	4									
36		4	6									
38		5	6									
40	Firm, grayish-brown, very micaceous, silty, fine to medium SAND	4	8									
42		8	7									
44		9	7									

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SOIL TEST BORING NO. B-6

 BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		SOIL TEST BORING NO. B-6 PROJECT: <u>Jasmine Point Cliffs at Keowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Reid and Keith</u> DRILLING METHOD: <u>BIG-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER> INITIAL: <u>33.5</u> AFTER 24 HOURS: <u>33.5</u> CAVING: <u>33.5</u>				PROJECT NO.: <u>J10-7112-01</u> START: <u>6-3-10</u> END: <u>6-3-10</u> ELEVATION: _____ LOGGED BY: <u>D. Parkins</u>							
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT									
				2 5 10 20 30 40 50 70 90									
-46	Firm, grayish-brown, very micaceous, silty, fine to medium SAND												
-48													
-50	Dense, white with yellow and gray, micaceous, silty, fine to coarse SAND with gravel		14 17 21										
-52													
-54	PARTIALLY WEATHERED ROCK which sampled as gray with pink, silty, fine to medium SAND		10 29 50/4"										
-56													
-58													
-60	Auger refusal at 59 feet. Groundwater encountered at 33.5 feet at time of drilling and at 33.5 feet after 24 hours. Slope inclinometer set at 59 feet.		50/2.5"										
-62													
-64													
-66													
-68													
-70													
-72													
-74													
-76													
-78													
-80													
-82													
-84													
-86													
-88													

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SOIL TEST BORING NO. B-6

KEY TO SOIL CLASSIFICATIONS AND CONSISTENCY DESCRIPTIONS

BUNNELL-LAMMONS ENGINEERING, INC.
GREENVILLE, SOUTH CAROLINA

Penetration Resistance* Blows per Foot

SANDS

0 to 4
5 to 10
11 to 20
21 to 30
31 to 50
over 50

Relative Density

Very Loose
Loose
Firm
Very Firm
Dense
Very Dense

Particle Size Identification

Boulder: Greater than 300 mm
Cobble: 75 to 300 mm
Gravel:
Coarse - 19 to 75 mm
Fine - 4.75 to 19 mm
Sand:
Coarse - 2 to 4.75 mm
Medium - 0.425 to 2 mm
Fine - 0.075 to 0.425 mm
Silt & Clay: Less than 0.075 mm

Penetration Resistance* Blows per Foot

SILTS and CLAYS

0 to 2
3 to 4
5 to 8
9 to 15
16 to 30
31 to 50
over 50

Consistency

Very Soft
Soft
Firm
Stiff
Very Stiff
Hard
Very Hard

*ASTM D 1586

KEY TO DRILLING SYMBOLS



Grab Sample



Split Spoon Sample



Undisturbed Sample

NR = No reaction to HCL

NA = Not applicable

NS = No sample



Groundwater Table at Time of Drilling



Groundwater Table 24 Hours after Completion of Drilling

KEY TO SOIL CLASSIFICATIONS



Well-graded Gravel
GW



Low Plasticity Clay
CL



Clayey Silt
MH



Silty Sand
SM



Poorly-graded Gravel
GP



Sandy Clay
CLS



Sandy Silt
MLS



Topsoil
TOPSOIL



Partially Weathered Rock
BLDRC88L



Silty Clay
CL-ML



Sand
SW



Trash
MUCKPEAT



High Plasticity Clay
CH



Silt
ML



Clayey Sand
SC



Fill
FILL



Poorly Graded Sand
SP



Bedrock
BEDROCK



Limestone
LIMESTONE

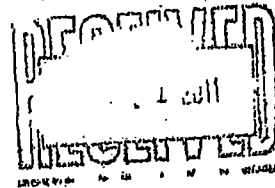


WHITAKER LABORATORY, INC.

P.O. Box 7078 2500 Tremont Road Savannah, Georgia 31418
(912) 234-0696 Fax (912) 233-5061
ccrowther@islc.net

August 8, 2011

Mr. Thomas E. Dudley III, Esquire
Kenison, Dudley, & Crawford, LLC
704 E. McBee Ave
Greenville, SC 29601



Re: Lot 32 Jasmine Cove, The Cliffs at Lake Keowee Falls South

Dear Tom:

On behalf of your client Mr. Kevin McCarthy, you have requested my opinions of the geologic and engineering stability of Lot 32, Jasmine Cove. Complying with your request, on August 1, 2011, I visited this site with you. Subsequently we met at the site with Mr. McCarthy and Mr. Channon Chambers, Building Codes Division Manager for Oconee County SC.

First I refer you to the attached sketch entitled, "Figure 2 - Slide Nomenclature". This sketch shows the components of an unstable hillside undergoing a shear failure, or "landslide". (From US Department of Commerce LANDSLIDE INVESTIGATIONS ; US Govt Printing Office July 1961)

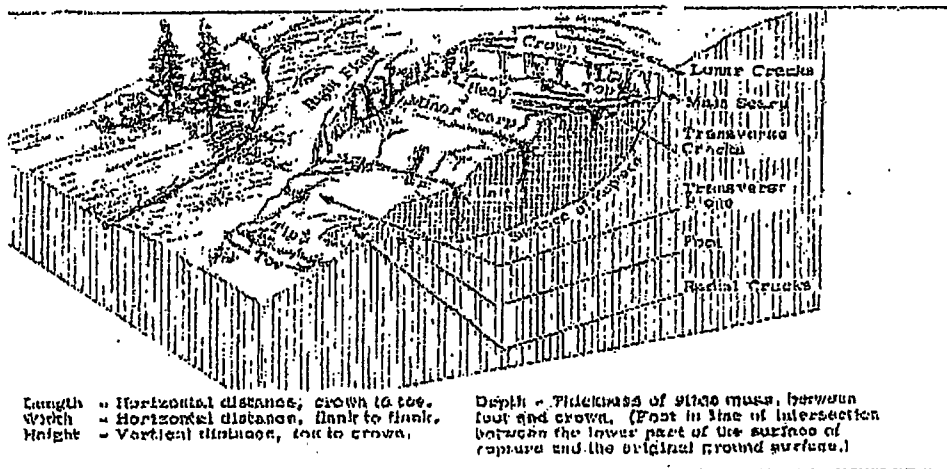


Figure 2 - Slide nomenclature.



The topography of this waterfront lot (#32) includes at least 3 readily discernable plateaus, (5 or more if you consider the upper level at the cul-de-sac and the lower levels at the lake front). These plateaus are the top surfaces of unit blocks of the original hillside that have sheared off, moving outward and downward toward the lake. The steep banks landward of the plateaus are the shear surface scars (scarps) of the past failures. See attached photos # 768, 769, 772.



Photo #768

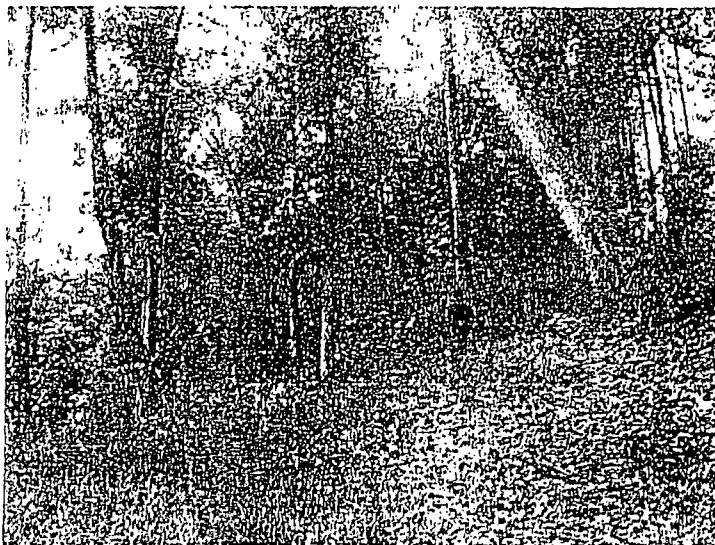


Photo #769

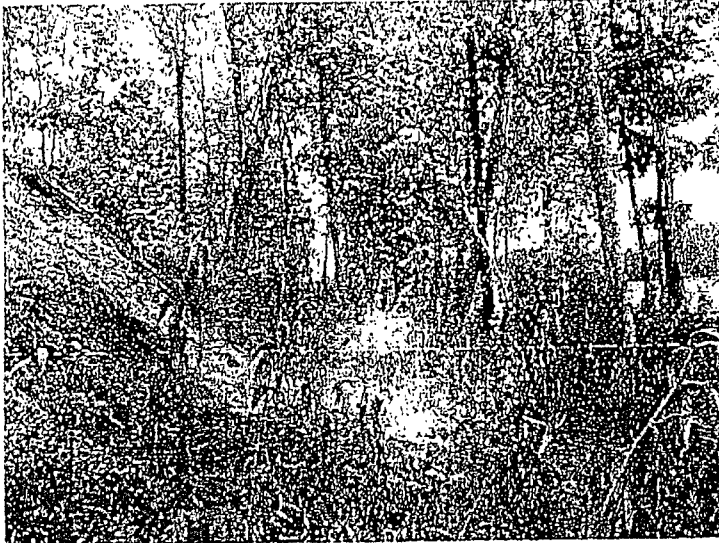


Photo #772

Also observed were numerous cracks in the ground surface, roughly paralleling the scarps. The leaf and other surface debris tends to cover these cracks, but minimal clearing of the surface makes the cracks readily visible. See attached photos # 768, 771, 774. These cracks are evidence of the continuing movement and shearing failures of this hillside. This area encompasses at least portions of lots 32, 31, and 30.



Photo # 771



Photo # 774

I also observed the 2 inclinometer casings installed on this lot by BLE, Inc at the request of the developer of the project. The data obtained by BLE, Inc from the inclinometers shows the ground to continue to move down slope. (See three BLE, Inc. reports attached dated March 1, 2010, October 25, 2010, & April 11, 2011)

It is my opinion that this hillside area is very unstable, and is undergoing an active shear failure or "landslide", and will continue to do so. The bent and leaning standing timber indicates this instability has existed, and has been ongoing for years. (See examples in Photos # 768, 769, 772).

Stabilization of this lot sufficient for construction of a house would be very expensive, if even possible. I would recommend that your client not consider building on this lot, due to the unstable soils. It is further my opinion that the unstable soils associated with this active shear failure make the site unsuitable for a septic system. Witness the recent rupture/failure of the Town of Salem water line in the Jasmine Point cul-de-sac in December 2009. Mr. McCarthy told us yesterday that he saw a vertical drop of 10 or more inches of the cul-de-sac pavement at the time of this water line failure. Note the BLE, Inc. site observations on February 26, 2010 (Report dated March 1, 2011) reports a estimated vertical drop of 2 feet. A failed septic system, due to earth movement could be very unpleasant and unhealthy for this lakeside community.

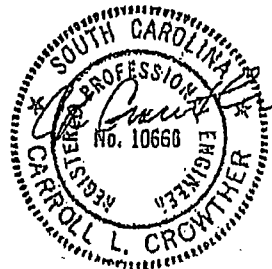
I am enclosing excerpts from technical publications that should help you and your client understand the severity of these conditions. (Homeowners Guide to Landslides (FEMA))

If I can be of further service, please call.

Respectfully submitted,
WHITAKER LABORATORY, Inc.



Carroll L. Crowther, PE
SC Registered Engineer # 10666



ATTACHMENTS:

Homeowners Guide to Landslides: FEMA / Portland State University
BLE, Inc. Data Report of Slope Inclinator Surveys, dated April 11, 2011
BLE, Inc. Data Report of Slope Inclinator Surveys, dated October 25, 2010
BLE, Inc. Report of Site Observations, dated March 1, 2010



HOMEOWNER'S GUIDE to LANDSLIDES

RECOGNITION, PREVENTION, CONTROL,
and MITIGATION

Compiled by
Dr. Scott F. Burns
Tessa M. Harden
Carln J. Andrew

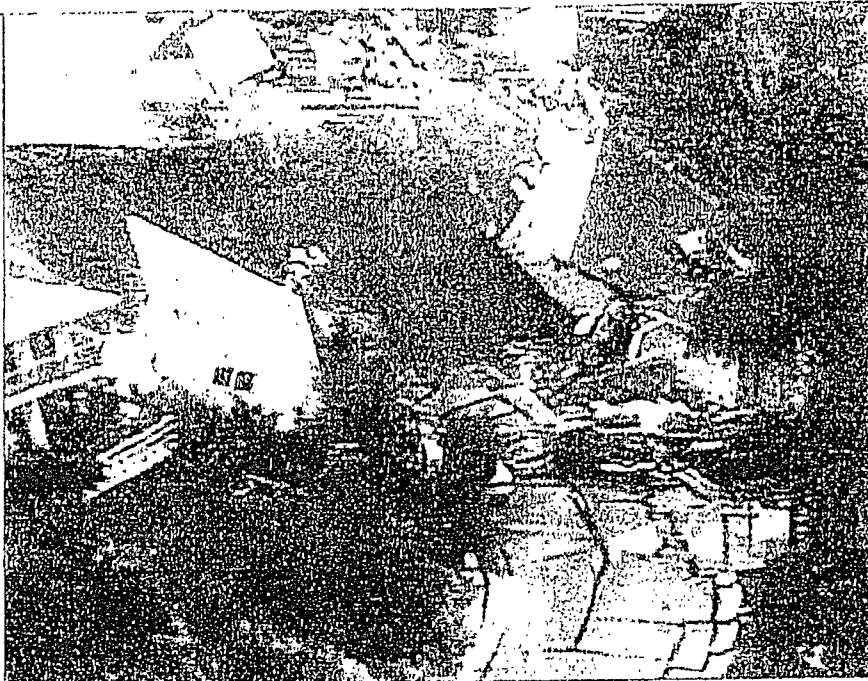


Portland State
UNIVERSITY

Federal Emergency
Management Agency
Region 10



CLC-0006



Laguna Beach, California (2007). Photo credit: USGS www.usgs.gov.

If you are in immediate danger:

- EVACUATE IMMEDIATELY
- Inform your neighbors
- Call the police or fire department
- Call a registered engineering geologist or a geotechnical engineer

Warning signs include:

- House is making noises
- Walls and floors are tilting
- Cracks in house are actively opening
- Cracks in ground are appearing
- Water in drainages becomes irregular or stops

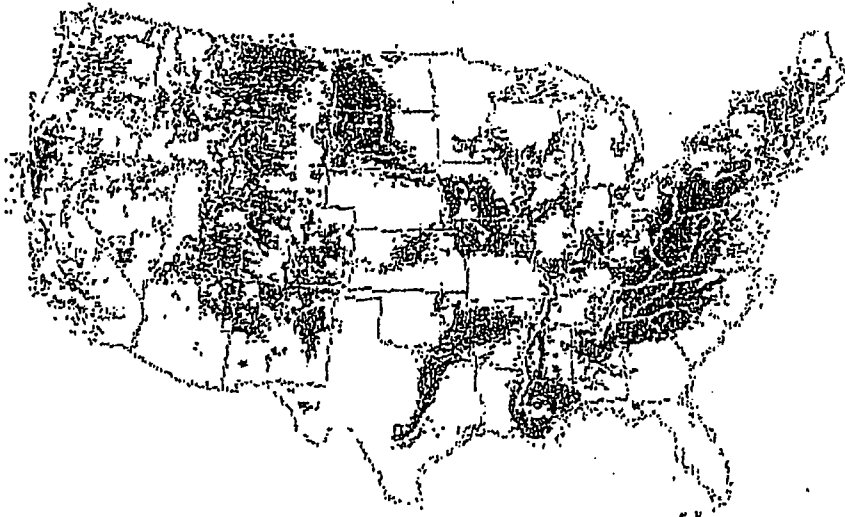
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VII. Reduce the Likelihood of a Landslide	10
VIII. Quick Guide to Assess Landslide Potential	11
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Cover: Kelso, Washington (1998), site of America's second largest landslide disaster involving homes where 60 homes were destroyed. Photo credit: Scott Burns.

I. DEFINITION

Landslides occur when masses of rock, soil, or debris move down a slope under the force of gravity. The term landslide includes a wide range of ground movement such as rockfalls, mud and debris flows, and surface failures called slumps, earthflows, and translational slides. Landslides can occur in a matter of seconds or over the course of weeks and longer.



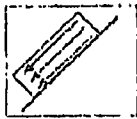
Landslide potential map - colors represent different levels of activity with red being highest, yellow moderate, green low, and white very low. Credit: USGS www.usgs.gov.

II. U.S. LANDSLIDE FACTS

- Landslides can occur in all 50 states
- Damages total approximately \$3.5 billion/year
- Landslides cause an average of 25-50 deaths/year
- Landslides reduce real estate value
- Landslides are generally not covered on homeowner's insurance policies

III. TYPES OF LANDSLIDES

SLIDES (translational or planar)



Down-slope movement of soil and/or rock on a plane of weak material can occur on relatively moderate to steep slopes, especially in weak geologic materials.

ROCKFALLS



Rapid, near vertical, movement of rocks that involves free-falling, bouncing, and rolling; often occurs in areas with near vertical exposures of rock.

SLUMPS (rotational)



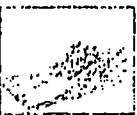
Unconsolidated materials (such as soil and debris) move down-slope in a distinctive rotational motion, usually occurs on moderate to steep slopes.

EARTH FLOWS



Unchannelized flow of water, soil, rock, and vegetation that moves down-slope, occurs on steep slopes. No failure surface at bottom.

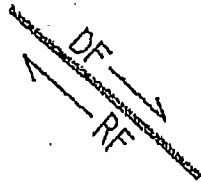
DEBRIS/ MUD FLOWS



Rapidly moving, channelized slurry flow of water, soil, rock, and vegetation; occurs mainly in drainage channels.

IV. CAUSES OF LANDSLIDES

Two forces affecting landslides are:



- 1) Driving Forces (DF)
cause the slope to move
- 2) Resisting Forces (RF)
stabilize the slope and prevent movement

When the driving forces exceed the resisting forces, landslides occur. To prevent or mitigate landslides, increase resisting forces or decrease driving forces.

Factors increasing driving forces:

- 1) Over-steepened slopes
- 2) Adding water to slope from landscape irrigation, roof downspouts, broken sewer and water lines, and poor stormwater drainage
- 3) Heavy rainfall and/or rapid snowmelt
- 4) Loading extra material at the top of the slope

Earthquakes and heavy precipitation can also trigger landslides on susceptible slopes.

Factors increasing resisting forces:

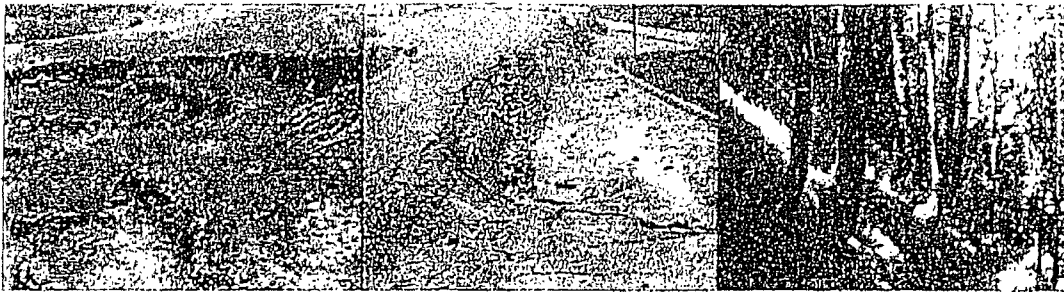
- 1) Removing excess water from slopes
- 2) Adding buttress material at base of a slope
- 3) Building retaining walls

V. LANDSLIDE RECOGNITION BEFORE YOU BUILD

SIGNS OF LANDSLIDE POTENTIAL OR ACTIVITY

Steep slopes — problems often occur on slopes steeper than 10-15 degrees.

Suspect landforms may indicate past ground movement. Landforms such as steep, curved scarps are common at the top of landslides. Hummocky (lumpy and bumpy) ground often indicates a former landslide. Trees that lean in different directions or have bent lower tree trunks (trees with knees) are also indicators.



Suspect landforms include: Scarps, sunken or down-dropped roads, and 'trees with knees'. Top left scarp photo credit: USGS www.usgs.gov. Middle road and trees top right photo credits: Scott Burns.

To learn where landslides have occurred in your area contact local officials, state geologic surveys, departments of natural resources, or university geosciences departments.

Slopes where landslides have occurred in the past have a higher likelihood of movement in the future.

WHEN YOU BUILD

Buildings should be located away from high risk areas such as steep slopes, rivers and streams (perennial or ephemeral), and fans at the mouth of mountain channels.

Consult a certified or licensed engineering geologist (**CEG** or **LEG**) or a registered/licensed geologist (**RG**) or a professional geotechnical engineer (**PE**) if you plan on building on a location that is a high risk area.

AREAS PRONE TO LANDSLIDES INCLUDE:

- Areas where previous landslides have occurred
- Steep natural slopes particularly in weak geologic materials
- Canyons and areas in or around drainages
- Developed hillsides where landscapes are irrigated
- Below cliffs or hills with outcrops of fractured rocks
- Steep slopes where surface runoff is directed onto the slope
- Areas where wildfires or human modification have removed vegetation from the slopes

VI. MONITORING YOUR HOUSE AND SURROUNDING PROPERTY

SIGNS OF LANDSLIDE ACTIVITY

STRUCTURES:



House cracks. Photo
credit: Scott Burns.

- Newly cracked pavement, foundation, support walls, sidewalks
- Tilted or cracked chimney
- Doors or windows that stick or jam for the first time
- Outside walls, walkways, or stairs start pulling away from the house
- Soil moves away from the foundation
- Plumbing or gas lines develop leaks

PROPERTY:



Foundation cracks. Photo
credit: FEMA www.fema.gov.

- Bulging ground at base of slope
- Leaning fence posts or retaining walls
- Springs, seeps, or saturated soil in areas that have been typically dry
- Cracks in the ground
- Tilted trees or utility poles



Street and ground cracks.
Photo credit: Scott Burns.

If you have some of the above signs, your land may be slowly creeping. It may be an old landslide that has started to reactivate. Call a registered/licensed professional.

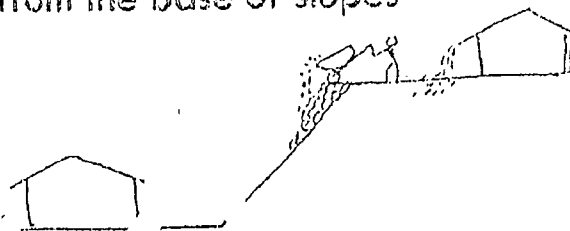
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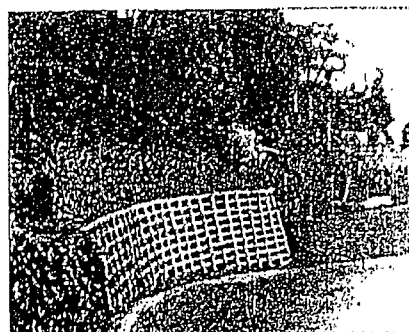
VII. REDUCE THE LIKELIHOOD OF A LANDSLIDE

- Minimize irrigation on slopes
- Make sure water and sewer lines do not leak
- Avoid removing material from the base of slopes

- Avoid adding material or excess water to the top of slopes



- Drain water from surface runoff, down-spouts, and driveways well away from slopes and into storm drains or natural drainages
- Plant ground cover with deep roots on slopes
- Build retaining walls at the base of the slope
- In debris/mud flow prone areas, in valley bottoms or on fans at the mouths of canyons, contact qualified professionals to determine how to best build channels and/or deflection walls to direct the flow around buildings (keeping in mind your neighbors)



Retaining wall at bottom of a slope.
Photo credit: Scott Burns.

VIII. QUICK GUIDE TO ASSESS LANDSLIDE POTENTIAL

- ☐ Have there been landslides in the area in the past?
- ☐ Is the house or site on or near a steep slope?
- ☐ Is there a cliff nearby?
- ☐ Is the ground cracked?
- ☐ Are there any old scarps on the slope?
- ☐ Is there a spring, seep or ponding water close by?
- ☐ Is there a drainage channel nearby?
- ☐ Are there any tilted or leaning trees, fences, or utility poles nearby?
- ☐ Do the trees have bent tree trunks?
- ☐ Is there any sign of cracking, or patched cracks in the walls or foundations
- ☐ Is the driveway or sidewalk cracked, patched, or down-dropped?
- ☐ Are any retaining walls cracked, tilted or off-set?
- ☐ Have any structures such as concrete steps moved away from the house?

If you have any of these signs your house could be susceptible to a landslide.

11

CLC-0016

IX. ADDITIONAL INFORMATION

Federal Emergency Management Agency (FEMA) www.fema.gov
1-800-621-FEMA (3362)

United States Geological Survey (USGS) www.usgs.gov

National Landslide Info Center <http://landslides.usgs.gov>
1-800-654-4666

Important local phone numbers and agencies:

(Oregon) Nature of the Northwest Information Center: carries landslide hazard maps and other reports <http://www.naturenw.org> (503) 872-2750

Oregon Department of Geology and Mineral Industries (DOGAMI): maps landslides and issues reports www.oregongeology.com (971) 673-1555

Oregon Department of Forestry Debris flow Warning System: provides current forecasts and warnings <http://egov.oregon.gov/ODF>

Oregon: to check licensing for engineers (Oregon State Board of Examiners for Engineering and Land Surveying): <http://osbeels.org/>
(503) 566-2837

Oregon: to get lists of licensed geologists (Oregon State Board of Geology Examiners) www.oregon.gov/OSBGE/registrants (503) 566-2837

Washington State Department of Natural Resources: landslide information www.dnr.wa.gov/geology/hazards/slides.htm

Washington State Department of Natural Resources: general information inquiries (360) 902-1000

Washington State Department of Licensing: to check professional license status www.dol.wa.gov/business/checkstatus.html

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CLC-0017

BLE
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

April 11, 2011

The Cliffs Communities
Post Office Box 1519
Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickoll, Jr.
dnickell@cliffscommunities.com

Subject: Data Report of Slope Inclinator Surveys
April 8, 2011 Readings
Jasmine Point-- Cliffs at Keowee Falls South
Oconee County, South Carolina
BLE Project No. J10-7112-01

Gentlemen:

We are pleased to submit this data report of the surveys obtained from the slope inclinometers installed at Jasmine Point in the Cliffs at Keowee Falls South development. The data presented herein includes the latest round of readings obtained on April 8, 2011. The data included in this report is referenced to baseline data obtained on June 25, 2010. There are six inclinometers installed on Lots 30, 31 and 32 as indicated in the following table.

Inclinometer Number	Location
SI-1	Lot 30 upper
SI-2	Lot 30 lower
SI-3	Lot 31 upper
SI-4	~~Lot 31~~ Lot 32 lower
SI-5	Lot 32 upper
SI-6	Lot 32 lower

Note: Locations identified as upper represent inclinometers installed on the upper side of the lots near the road, lower represents inclinometers installed on the lower side of the lots near the lake.

The inclinometers were installed into soil test borings (ASTM.D 1586) that were drilled between May 27, 2010 and June 8, 2010. Subsurface conditions that were encountered at each boring location are identified on the attached boring logs. The borings are identified as B-1 through B-6 and the boring numbers correspond with the inclinometer numbers (i.e. inclinometer SI-1 was

6004 POWERS COURT
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FAX (864) 200-4430

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*Data Report of Slope Inclinator Surveys
Jasmine Point - Cliffs at Kaowea Falls South*

*April 11, 2011
BLE Project No. J10-7112-01*

installed in boring B-1 and so on). The attached aerial photograph identifies the locations of the inclinometers that was produced by tagging the inclinometer locations with a handheld GPS and inputting the coordinates into Google Earth.

The attached graphs present information on each of the inclinometers. Where the attached graphs identify two axes (A-axis and B-axis), the A-axis is oriented in a generally uphill-downhill direction and the B-axis is oriented in a generally cross slope direction. Movement in the negative direction on the A-axis represents downslope (direction of potential failure) movement. There are three graphs for each inclinometer as follows:

1. Cumulative Displacement vs. Depth
2. Incremental Displacement vs. Depth
3. Cumulative Displacement vs. Time (A-axis)

Cumulative displacement vs. depth is a plot of movement. Displacements on these plots may appear abrupt because the horizontal scale is not proportional to the vertical scale, which makes it easier to identify displacements. Incremental displacement vs. depth is a plot of movement at each reading interval. A spike in these graphs indicates significant movement. Growth in the spike over time indicates continued movement. Cumulative displacement vs. time provides an indication as to the rate of movement.

EVALUATION

A review of the Cumulative Displacement vs. Depth plots indicate that movement is occurring in five of the six inclinometers. Inclinometers SI-1, SI-2, SI-4 and SI-6 indicate an apparent failure plane developing at depths ranging from approximately 35-ft to 53-ft below the ground surface. A review of the accompanying boring logs indicates that the failure plane appears to be developing at or near the interface between residual soils and partially weathered rock (or dense residual soils). In our report dated October 25, 2010 we indicated that only two of the inclinometers (SI-4 and SI-6) had indicated significant movement since the August 30, 2010 readings were collected. We noted that there had been little precipitation during that period and that it should be expected that additional movement may occur in the remaining inclinometers during wet weather cycles. Since that time there has been considerable precipitation, particularly in the month preceding the current readings and, as expected, five of the six inclinometers have indicated movement since October. The only inclinometer that does not appear to have indicated movement is SI-3, which has not indicated any appreciable movement since installation.

The plots from inclinometer SI-5 indicate that the movement appears to be occurring at or below the bottom of the inclinometer casing at this location. A review of boring B-5 indicates partially

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Data Report of Slope Inclinometer Surveys
Jasmine Point - Cliffs at Koowea Falls South

April 11, 2011
BLE Project No. J10-7112-01

weathered rock was encountered at a depth of approximately 64 feet. Therefore, it is our opinion that there may be a failure plane developing near the interface with the partially weathered rock similar to that observed in the inclinometers discussed above.

RECOMMENDATIONS

As previously reported, it is our opinion that there is an active, deep-seated slope failure occurring at the site. The rate at which movement occurs can be expected to vary over time and with environmental factors. However, it should be expected that movement will continue unless provisions to stabilize the slope are performed. Additional exploration, testing and analysis will be required to evaluate suitable methods for stabilizing the slope, which are beyond the scope of services for which we are currently authorized. If requested, we can prepare a proposal to provide additional engineering services required to develop conceptual stabilization methods.

This data submittal was the result of an extension of our scope of services as requested by Mr. Nickell in email correspondence with our Mr. Bill Mathews. Unless requested to collect additional inclinometer readings, we have completed the scope of services authorized for this project. We recommend that you retain a surveyor to develop a detailed topographic survey of the area. The topographic survey would be used in conjunction with the borings and inclinometer data to evaluate methods that could be used to stabilize the slope.

We appreciate the opportunity to provide our professional services on this project. If you have any questions or require additional information, please call.

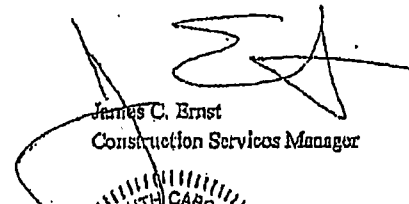
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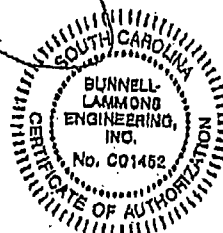
BUNNELL-LAMMONS ENGINEERING, INC.



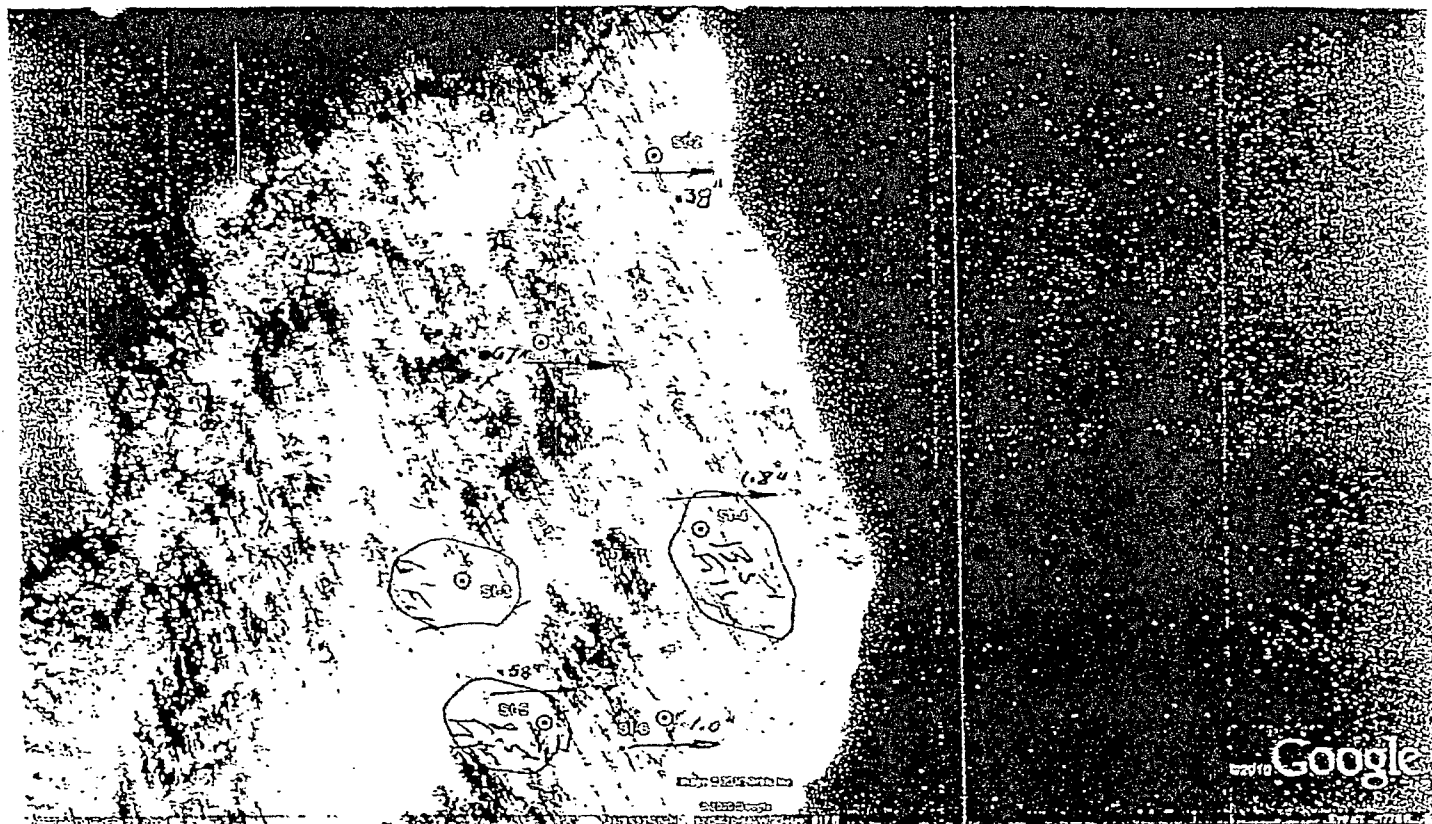
William A. Mathews, P.E.
Chief Engineer
Registered, SC #14039




James C. Ernst
Construction Services Manager



c:\public\pc079\projects\jasmine point inclinometer summary for april 2011.doc

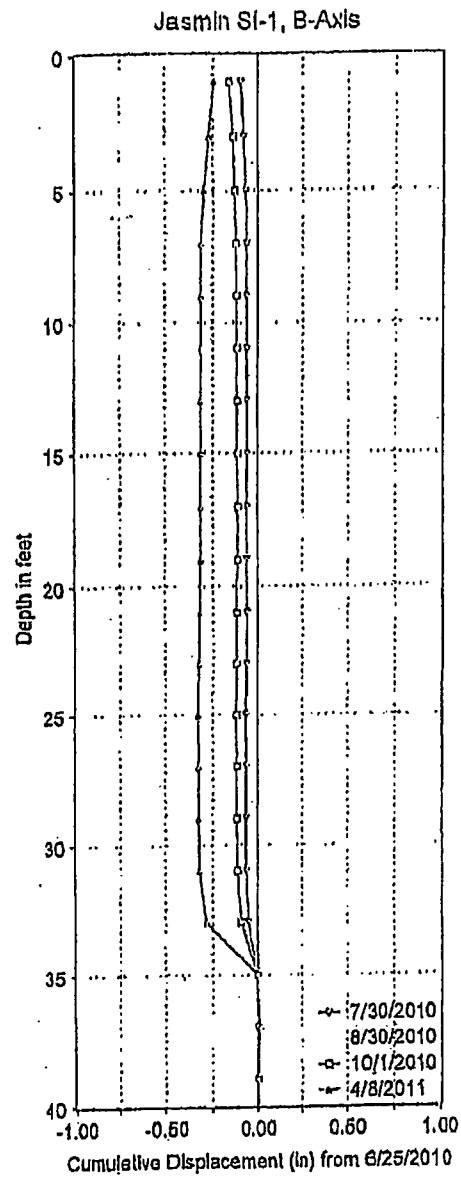
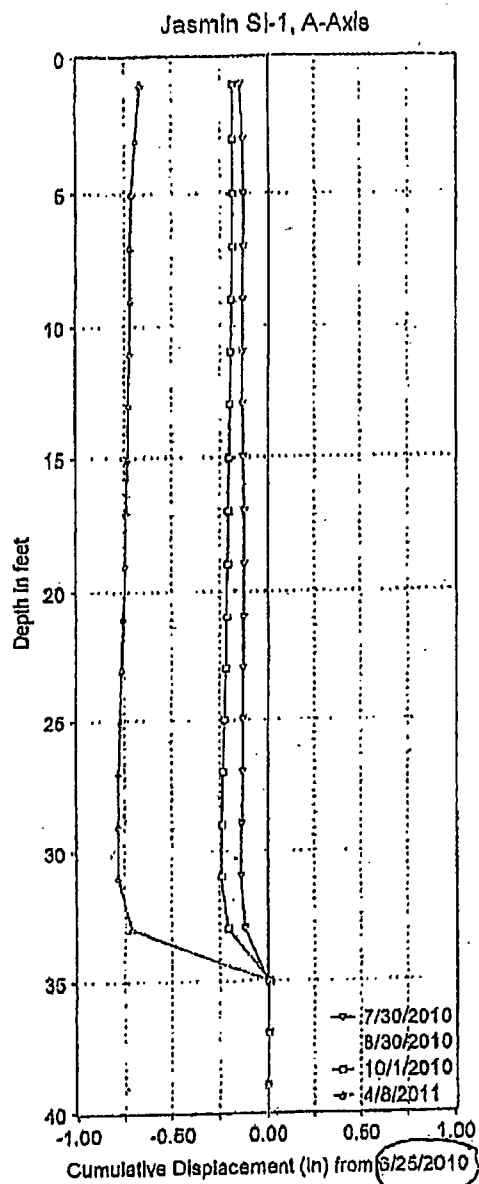


Jasmine Point
Cliffs @ Keowee Falls South

Inclinometer Locations
BLE Project No. J10-7112-01



POINT SLOPE
Movement as of 5 Apr 2011

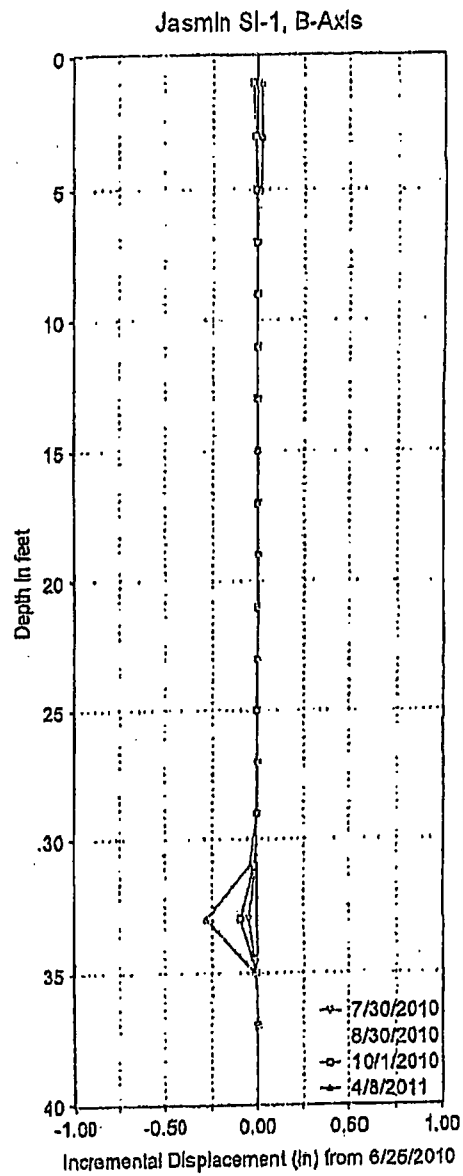
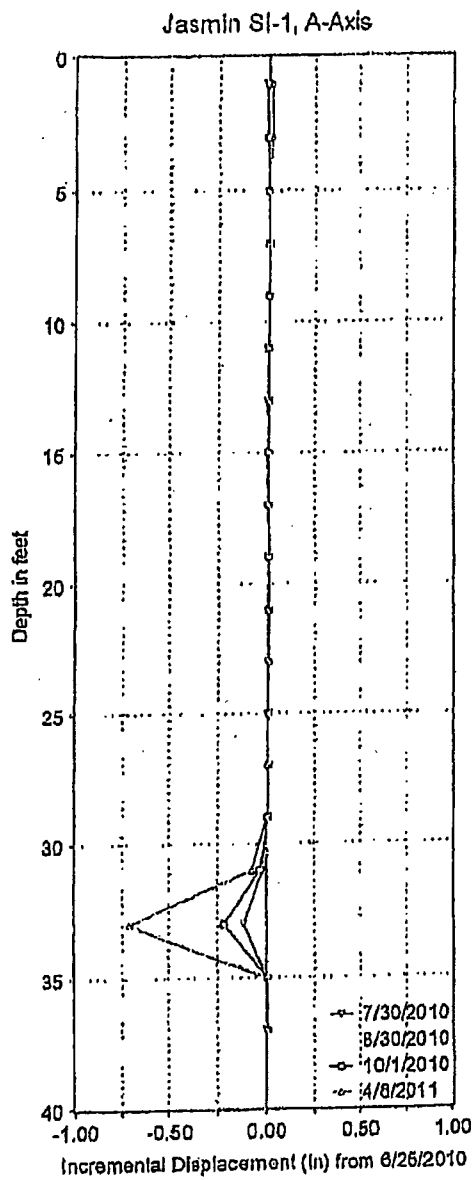


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

CLC-0022

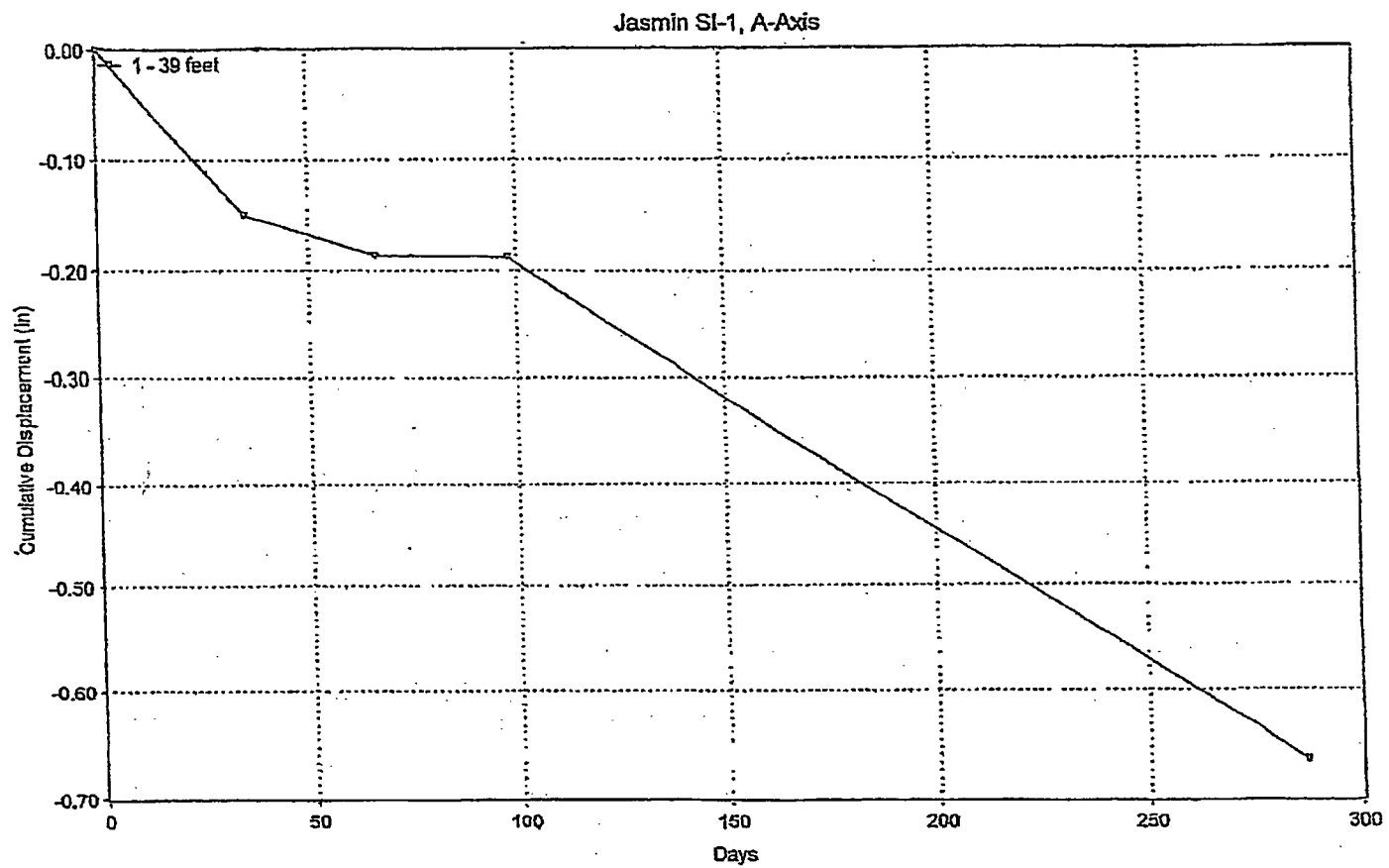


Jasmine Point

Climbs at Keowee Falls South

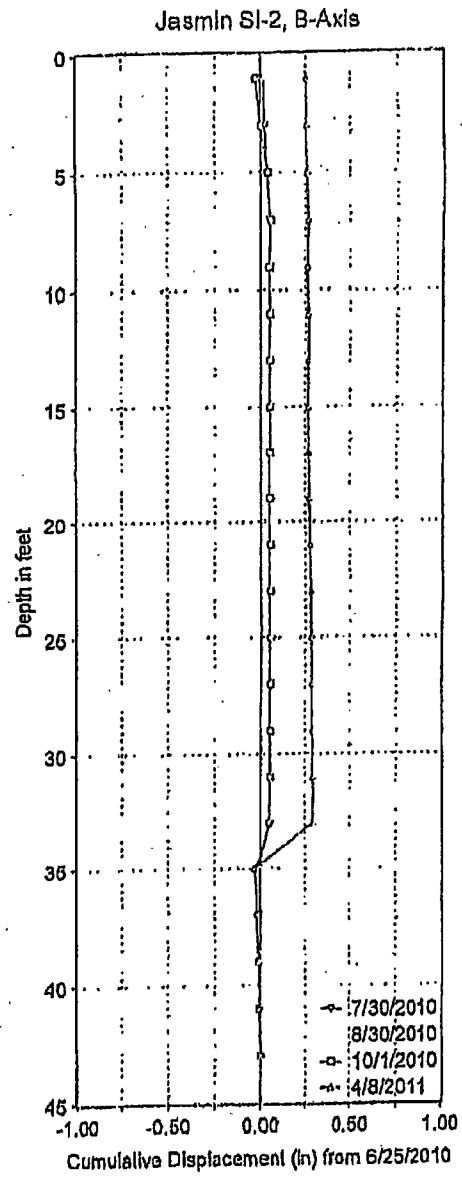
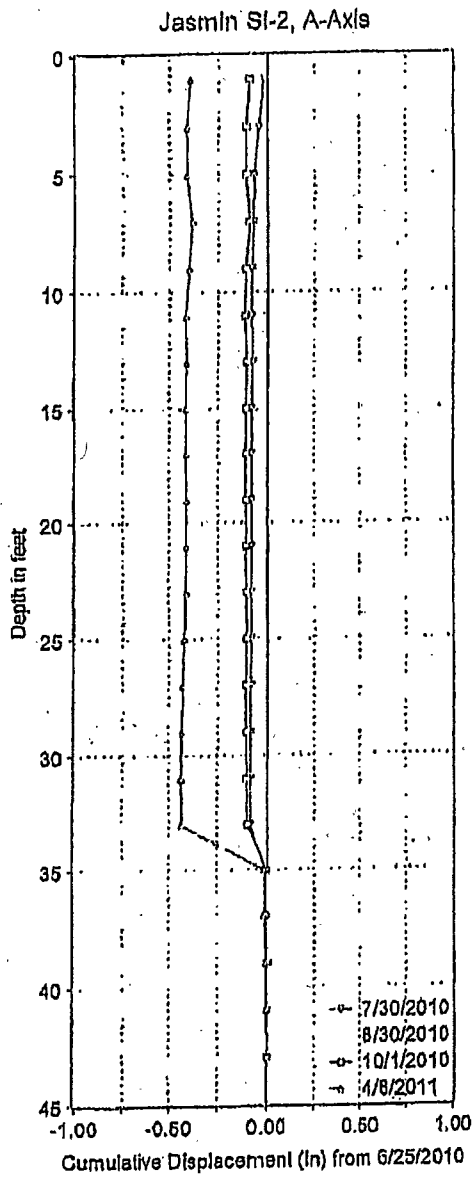
BLE Project No. J10-7112-01

CLC-0023



Jasmine Point
Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

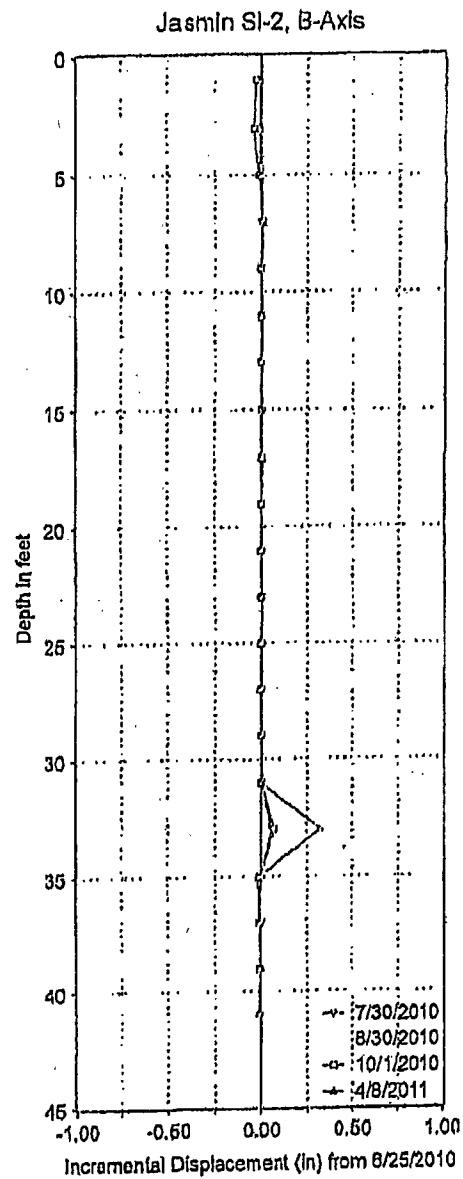
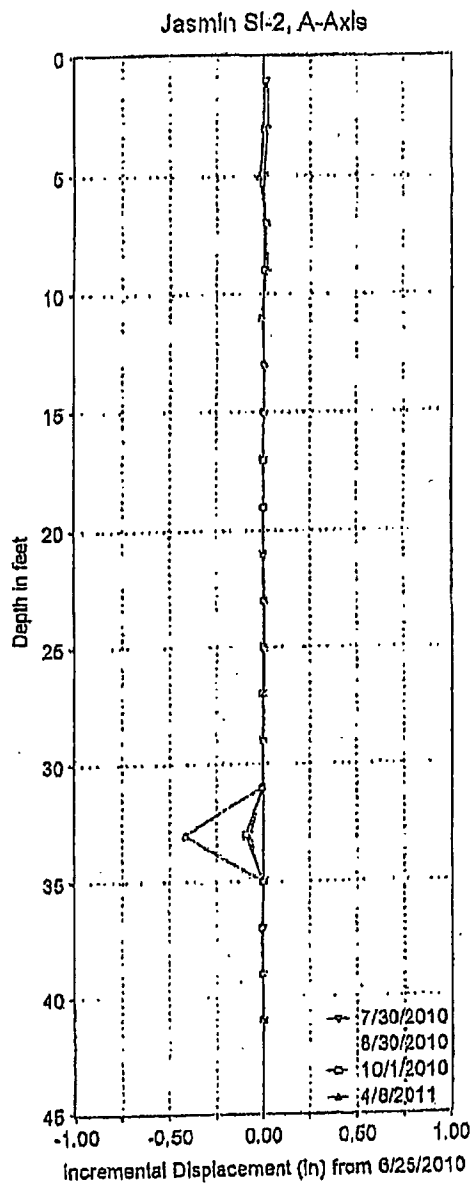


Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

CLC-0025

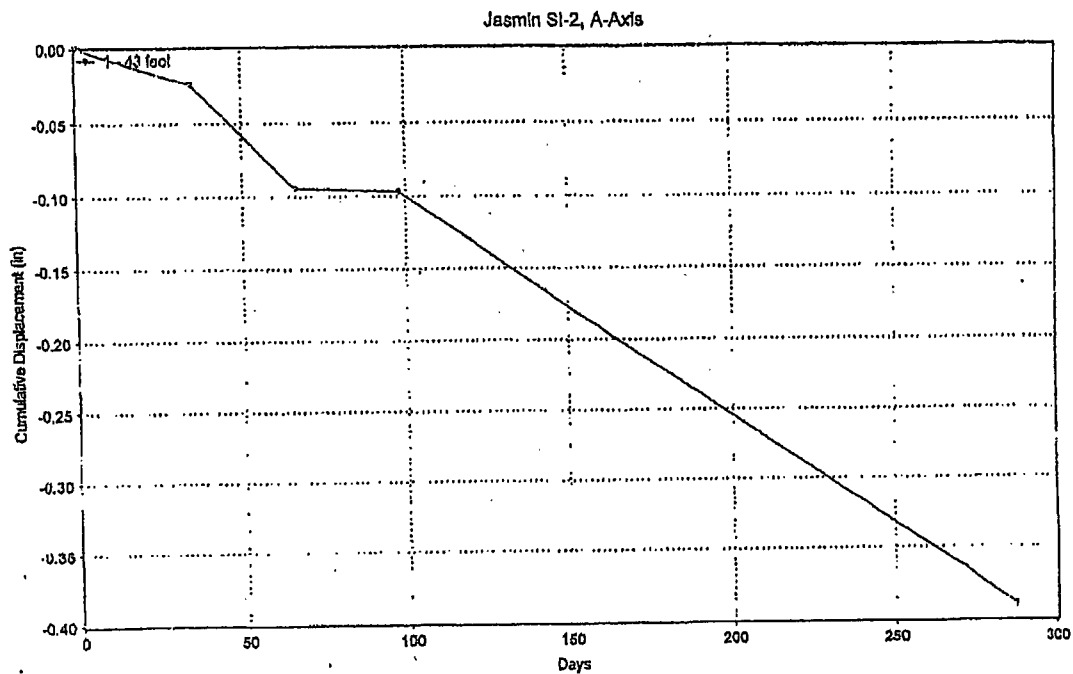


Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

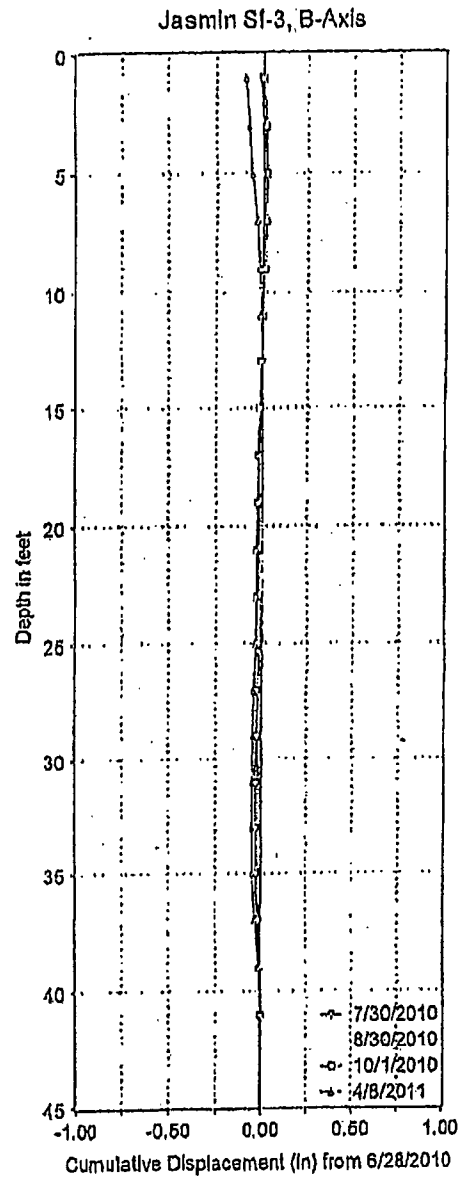
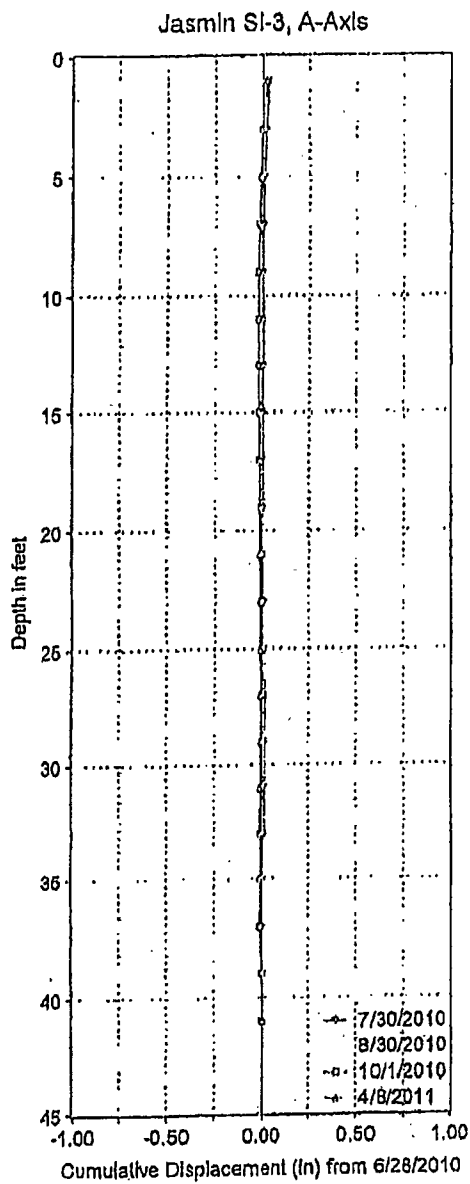
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Jasmine Point
Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

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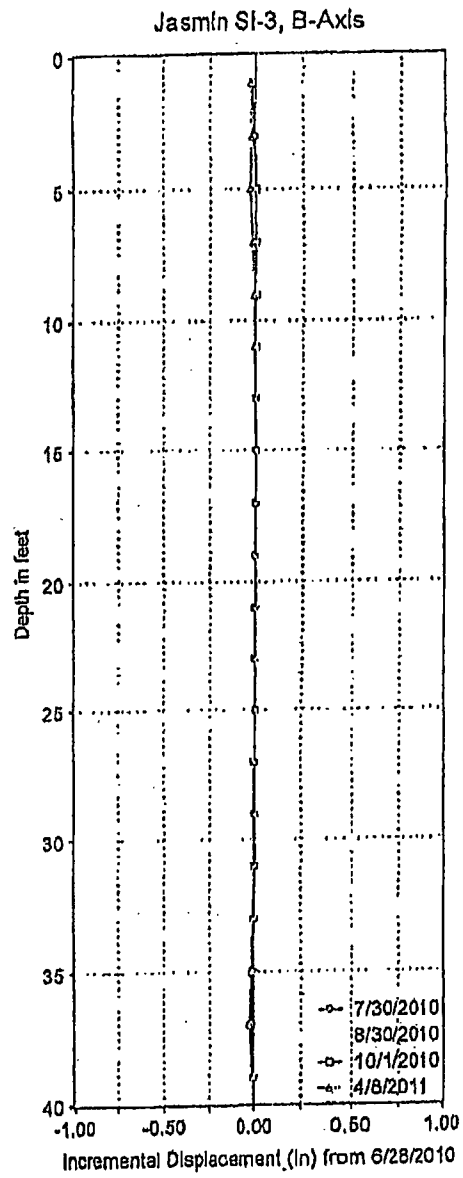
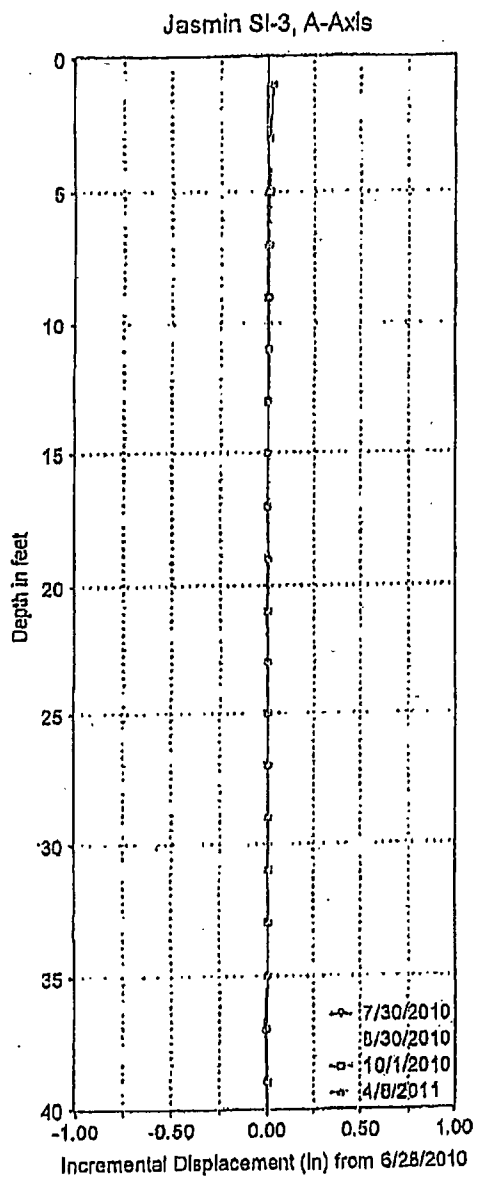


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

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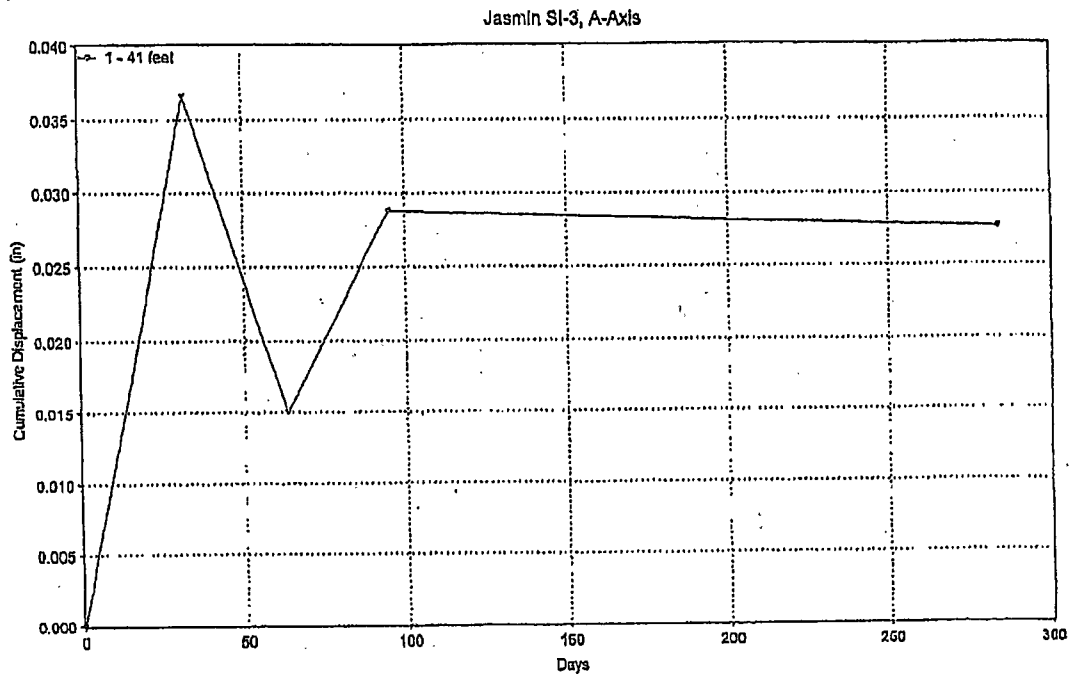


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

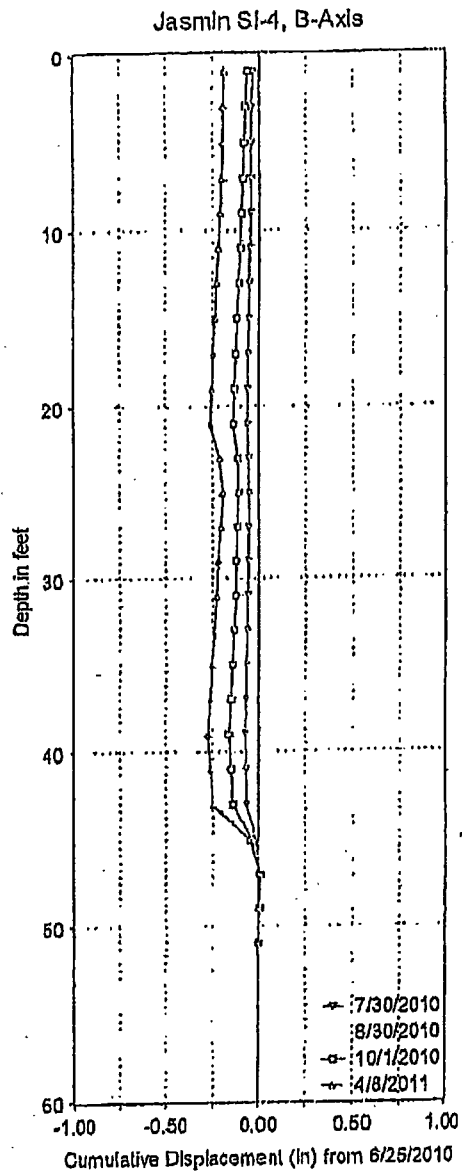
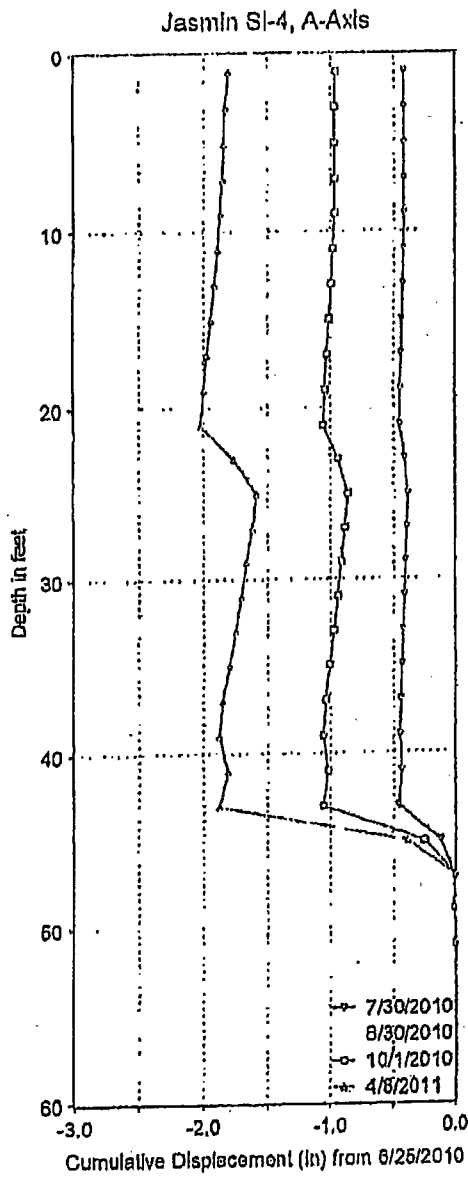
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Jasmine Point
Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

CLC-0030

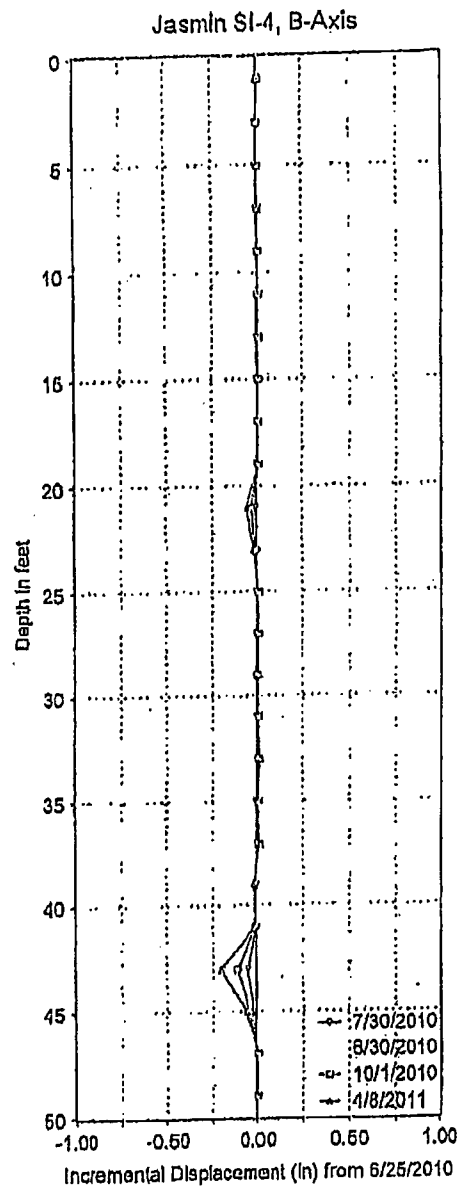
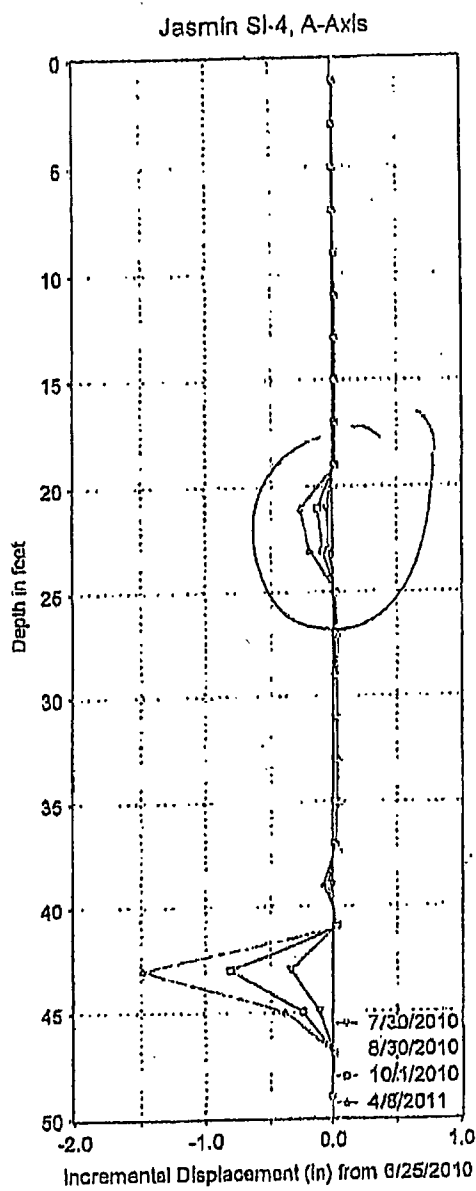


Jasmine Point

Cliffs at Keowee Falls South

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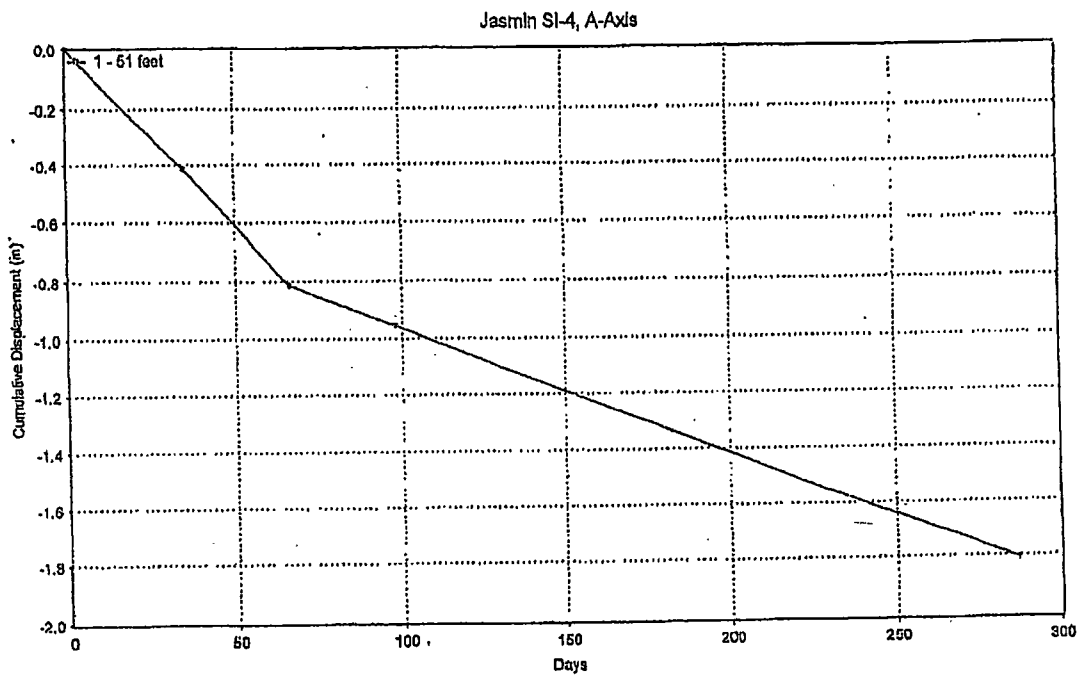


Jasmine Point

Cliffs at Keowee Falls South

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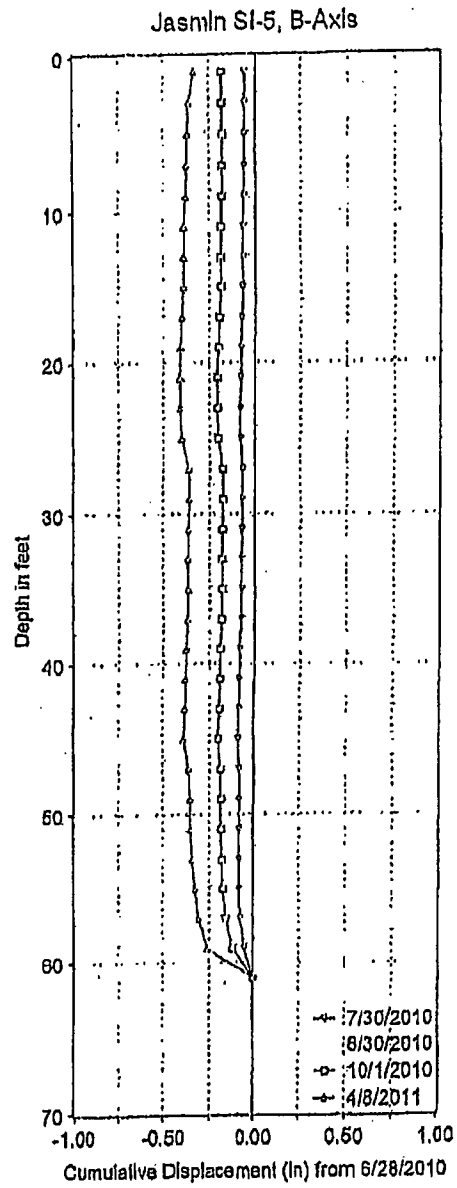
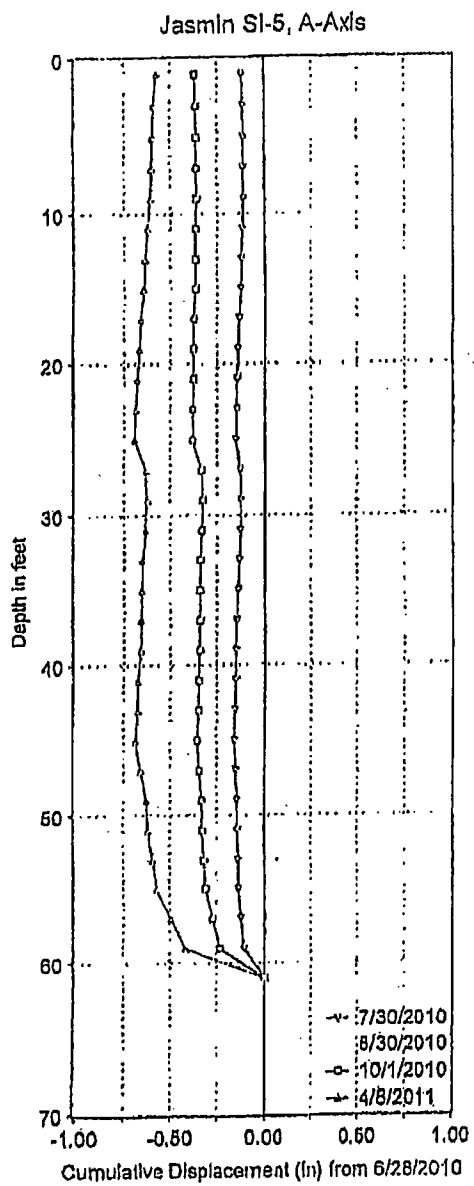
CLC-0032



Jasmine Point
 C1110 at Keowee Falls South

BLE Project No. J10-7112-01

CLC-0033

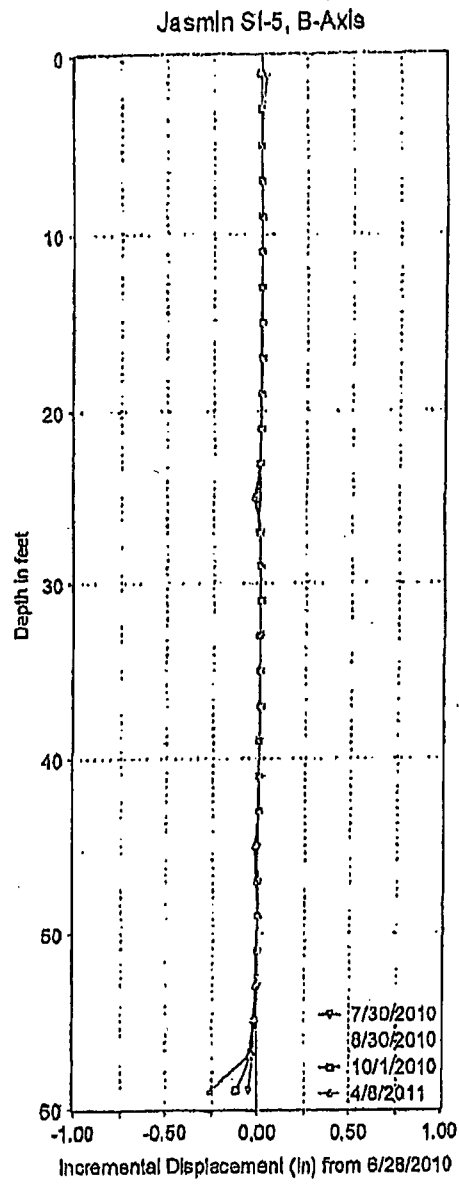
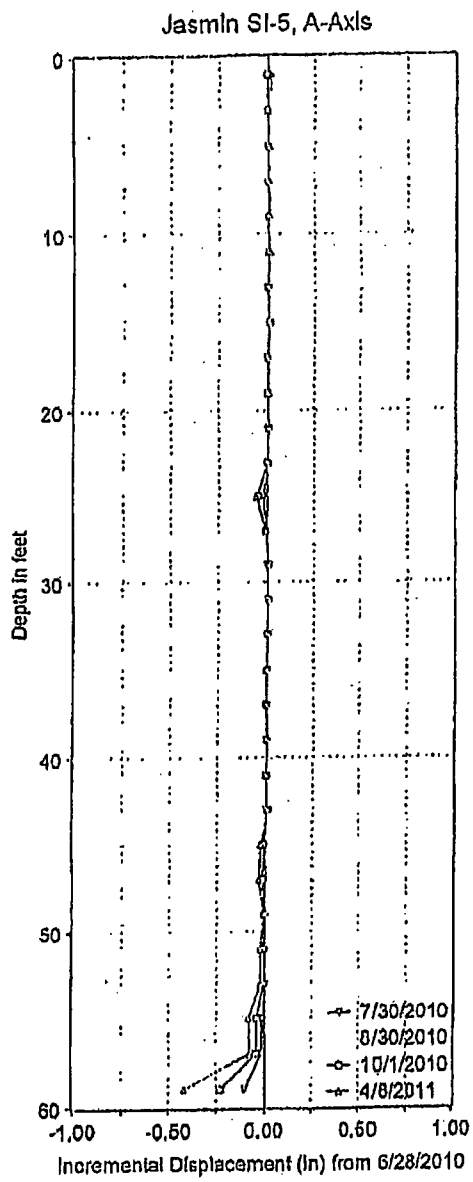


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

CLC-0034

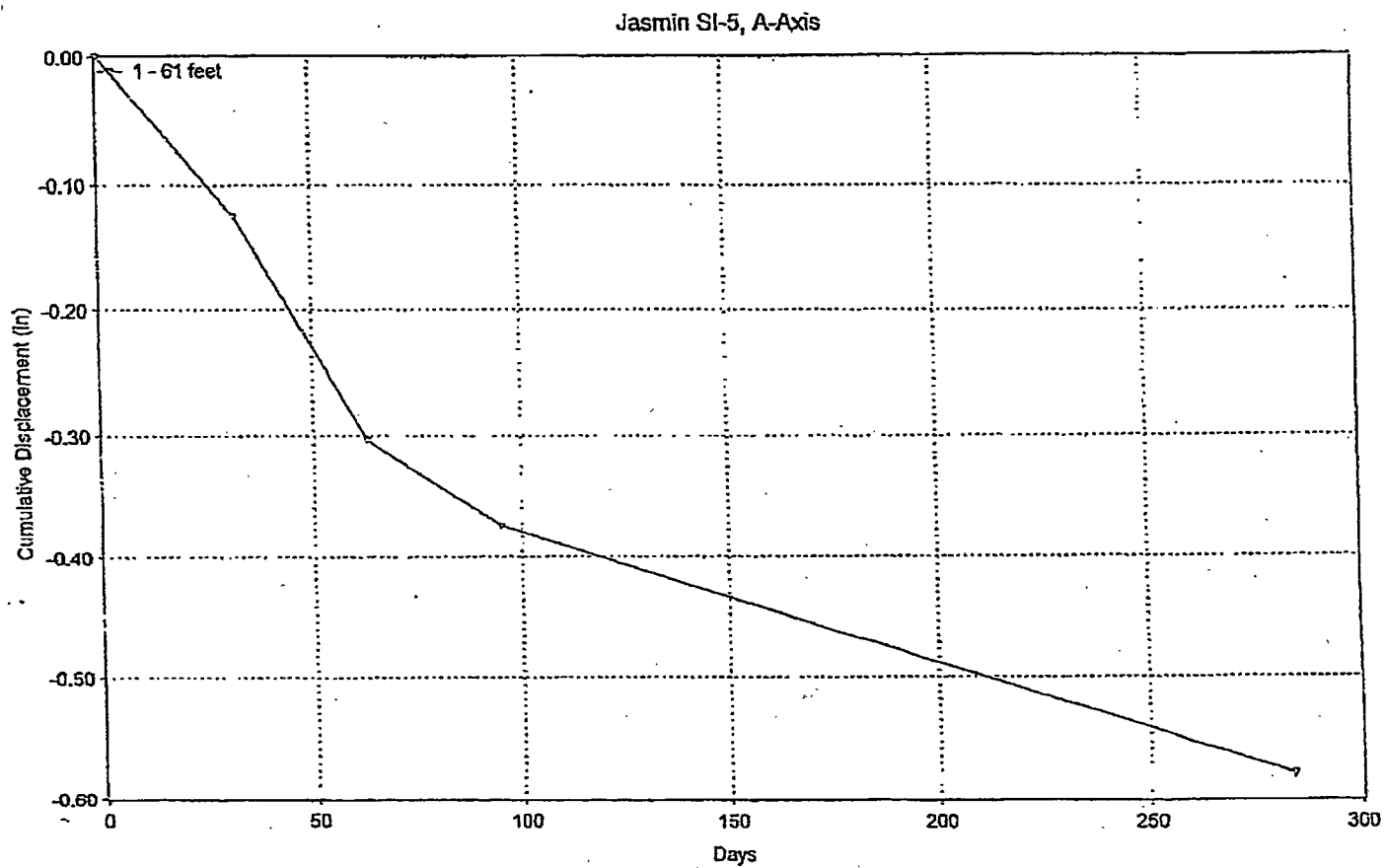


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BLE Project No. J10-7112-01

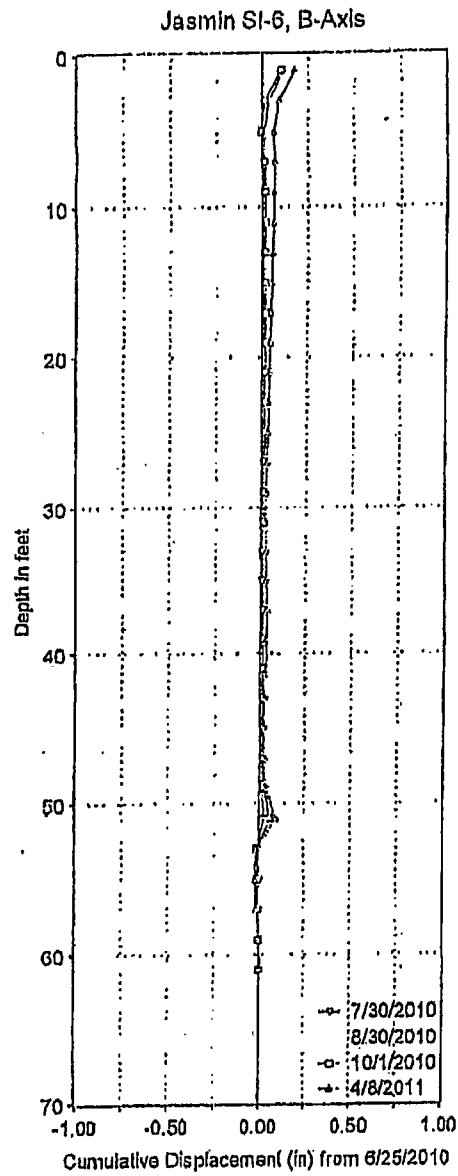
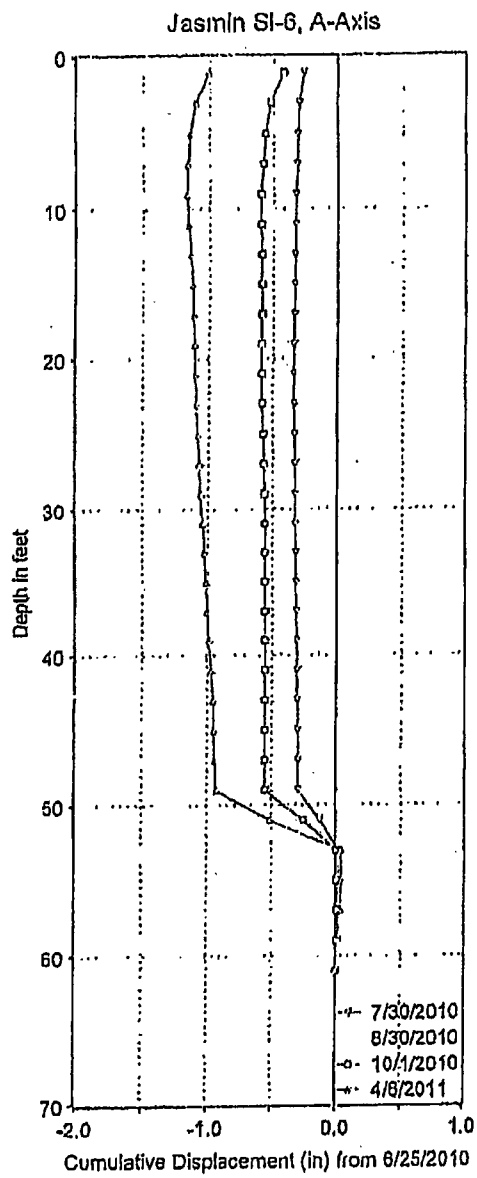
Climb at Keowee Falls South

CLC-0035



Jasmine Point
Cliffs at Keweenaw Falls South

BLE Project No. J10-7112-01

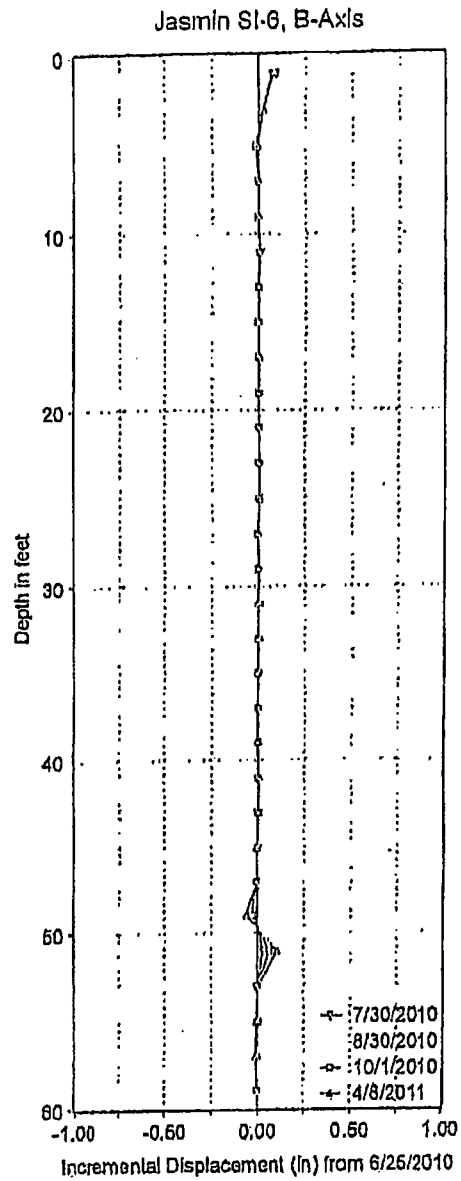
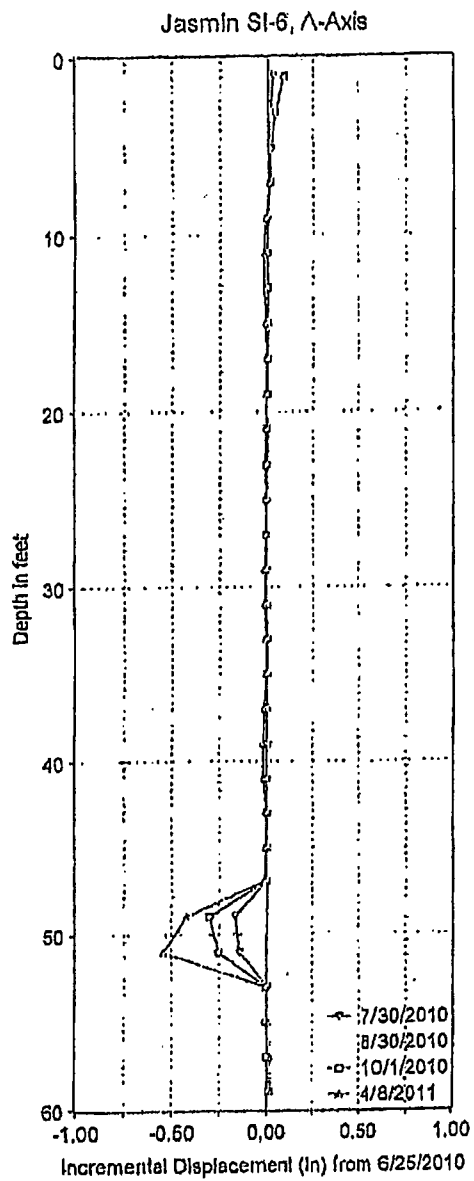


Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

CLC-0037

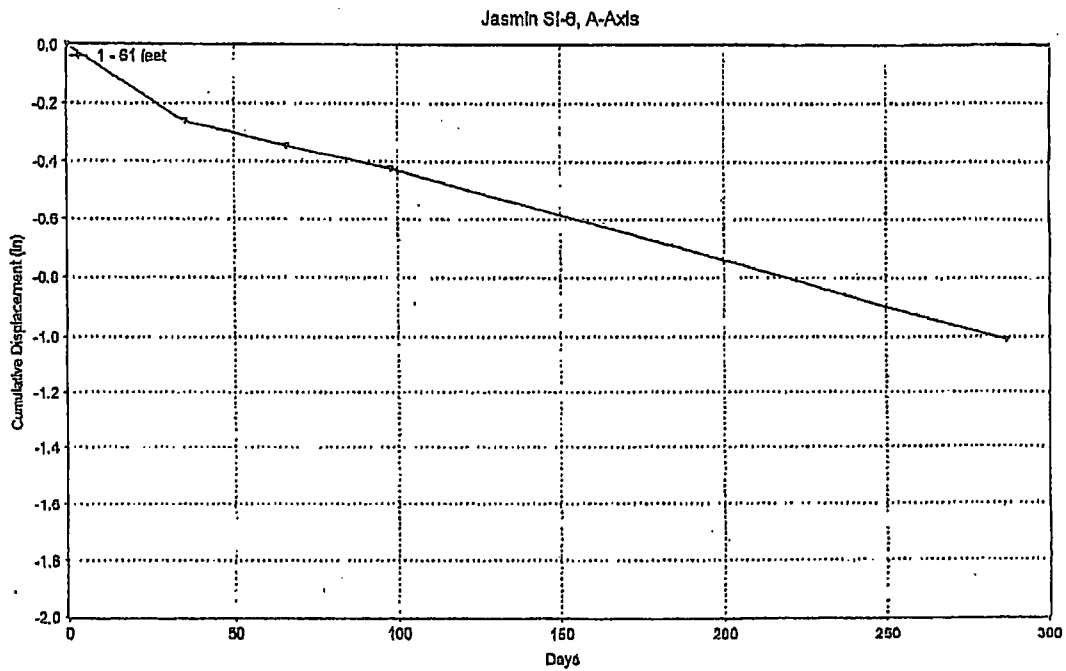


Jasmine Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

CLC-0038



Jasmine Point
Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

CLC-0039

FILE NO. BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		SOIL TEST BORING NO. B-1 PROJECT: <u>Jasmine Point Cliffs at Koores Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 30</u> DRILLER: <u>Metro Drill, Inc., Reid and Kelli</u> DRILLING METHOD: <u>BIG-61: 2-1/4 inch ID hollow stem auger</u> DEPTH TO WATER: INITIAL: <u>33.5</u> AFTER 24 HOURS: <u>28</u> CAVING: <u>33.5</u>		PROJECT NO.: <u>J10-7112-01</u> START: <u>6-2-10</u> END: <u>6-3-10</u> ELEVATION: _____ LOGGED BY: <u>D. Perkins</u>										
ELEVATION/DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT										
				2	5	10	20	30	40	50	60	70	80	
-2	2-inches of TOP SOIL Very firm, yellowish-red with pink and white, silty, fine to coarse SAND with gravel - (residual)		4 0 12											
-4	Very loose, yellowish-red with white, silty, fine to medium SAND		3 2 2											
-6			1 2 2											
-8	Firm, yellowish-brown, fine to medium sandy SILT		3 2 8											
-10			2 4 4											
-12			2 4 4											
-14			2 4 4											
-16			2 4 4											
-18	Loose, white with gray, micaceous, silty, fine to medium SAND		3 3 3											
-20			3 3 3											
-22			3 3 3											
-24	Firm, white with gray, micaceous, slightly silty, fine SAND		0 7 7											
-26			0 7 7											
-28	Loose, red with pink and gray, micaceous, silty, fine SAND		4 4 0											
-30			4 4 0											
-32			4 4 0											
-34	PARTIALLY WEATHERED ROCK which sampled as dark grayish-brown, micaceous, silty, fine SAND		18 50/5											
-36	Slope inclinometer set at 37 foot.		18 50/5											
-38	Auger refusal at 37.6 foot. Groundwater encountered at 33.6 foot at time of drilling and at 28 feet after 24 hours.		18 50/5											
-40			18 50/5											
-42			18 50/5											
-44			18 50/5											

SOIL TEST BORING NO. B-1
 Sheet 1 of 1

CLC-0040

		SOIL TEST BORING NO. B-2	
DUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Jaguna Point Cliffs at Koonas Falls South</u>	PROJECT NO.: <u>J10-7112-01</u>
		CLIENT: <u>The Gillette</u>	START: <u>6-1-10</u> END: <u>6-2-10</u>
		LOCATION: <u>Lot 30</u>	ELEVATION: _____
		DRILLER: <u>Metro Drill, Inc., Reid and Keith</u>	LOGGED BY: <u>D. Parlane</u>
		DRILLING METHOD: <u>BK-S1: 2-1/4 inch ID hollow stem auger</u>	
DEPTH TO WATER: INITIAL: ☒ AFTER 24 HOURS: ☒ CAVING: ☒			
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	STANDARD PENETRATION RESULTS (BLOWS/FOOT)
	3-Inches of TOPSOIL		
2	Loose, yellowish-red with gray, micaceous, silty, fine to coarse SAND with some small roots - (residuum)	X	3
4	Loose, yellowish-red with gray and white, micaceous, silty, fine SAND	X	2
6	PARTIALLY WEATHERED ROCK which sampled as gray, fine to coarse SAND	X	7
8	Loose, white with light gray, slightly silty, fine to medium SAND	X	3
10		X	4
12		X	5
14	Stiff, yellowish-red with gray and black, micaceous, fine sandy SILT	X	3
16		X	6
18		X	5
20	Firm, yellowish-red with gray and white, micaceous, silty, fine SAND with gravel	X	3
22		X	4
24	Very firm, gray with brown, silty, fine SAND	X	5
26		X	9
28		X	12
30	Dense, white with gray, silty, fine to medium SAND	X	6
32		X	16
34	Very firm, yellowish-red with gray, silty, fine to medium SAND	X	10
36		X	10
38		X	12
40	Very dense, white with pink and gray, micaceous, slightly silty, fine to coarse SAND	X	10
42		X	18
44	Auger refusal at 43 feet. No groundwater encountered at time of drilling. Slope inclinometer set at 42.5 feet.	X	40

SOIL TEST BORING NO. B-2
Sheet 1 of 1

CI C-0041

		SOIL TEST BORING NO. B-4	
BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		PROJECT: <u>Janolino Point Cliffs at Koaewo Falls South</u>	PROJECT NO.: <u>J10-7112-01</u>
		CLIENT: <u>The Cliffs</u>	START: <u>5-27-10</u> END: <u>5-27-10</u>
		LOCATION: <u>Lot 31</u>	ELEVATION: <u> </u>
		DRILLER: <u>Metro Drill, Inc., Reid and Kelly's</u>	LOGGED BY: <u>D. Perkins</u>
		DRILLING METHOD: <u>BK-61; 2-1/4" high ID hollow stem auger</u>	
DEPTH TO - WATER: INITIAL: <u> </u> AFTER 24 HOURS: <u> </u> CAVING: <u> </u>			
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	STANDARD PENETRATION RESULTS BLOWS/FOOT
			2 5 10 20 30 40 50 75 100
2	Stiff, red, fine to medium sandy SILT - (fill)	4	4
4	Firm, red with gray, silty, fine to medium SAND with gravel - (fill)	0	0
6	Firm, red with yellowish-brown, micaceous, silty, fine to medium SAND - (fill)	3	3
8	Stiff, red, fine to medium sandy SILT - (fill)	2	2
10		4	4
12		2	2
14	Loose, yellowish-red with gray, silty, fine to medium SAND - (residuum)	2	2
16		2	2
18		2	2
20		2	2
22		2	2
24	Loose, gray, micaceous, slightly silty, fine to medium SAND	2	2
26		3	3
28		4	4
30	Loose, gray with white, micaceous, slightly silty, fine SAND	4	4
32		3	3
34	Firm, reddish-brown with gray and white, micaceous, silty, fine to coarse SAND	2	2
36		4	4
38		4	4
40		4	4
42		4	4
44	Firm, white with gray and brown, micaceous, silty, fine to coarse SAND with gravel	4	4

SOIL TEST BORING NO. B-4
Sheet 1 of 2

CI C-0043

 BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		SOIL TEST BORING NO. B-4			
PROJECT: <u>Joachim Point Cliffs at Keweenaw Falls South</u>		PROJECT NO.: <u>J10-7112-01</u>			
CLIENT: <u>The Cliffs</u>		START: <u>5-27-10</u> END: <u>5-27-10</u>			
LOCATION: <u>Lot 31</u>		ELEVATION: _____			
DRILLER: <u>Metro Drill, Inc., Rold and Keith</u>		LOGGED BY: <u>D. Perkins</u>			
DRILLING METHOD: <u>DIK-51; 2-1/4 inch ID hollow stem auger</u>					
DEPTH TO WATER: INITIAL: <u>▽</u> AFTER 24 HOURS: <u>▽</u> CAVING: <u>NO</u>					

ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOWS/FOOT																	
				2	5	10	20	30	40	50	60	70	80								
40	Firm, white with gray and brown, micaceous, silty, fine to coarse SAND with gravel		12 4 7 63/0"																		
48	PARTIALLY WEATHERED ROCK - no return																				
50	Boring terminated at 50 feet. No groundwater encountered at time of drilling. Slope inclinometer set at 49 feet.																				
52																					
54																					
56																					
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GEOT. NO. B-4
 CPJ 5/2/10

SOIL TEST BORING NO. B-4
 Sheet 2 of 2

CI C-0044

 BUNNELL-LAMMONS ENGINEERING, INC. Geotechnical and Environmental Consultants		SOIL TEST BORING NO. B-5											
PROJECT: <u>Jasmine Point Cliffs at Koonce Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Reid and Kofth</u> DRILLING METHOD: <u>DK-61; 2-1/4 inch ID hollow stem auger</u> DEPTH TO WATER: INITIAL: ☒ 53.5 AFTER 24 HOURS: ☒ CAVING: ☒		PROJECT NO.: <u>J10-7112-01</u> START: <u>8-7-10</u> END: <u>8-7-10</u> ELEVATION: _____ LOGGED BY: <u>D. Perkins</u>											
ELEVATION/ DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	STANDARD PENETRATION RESULTS BLOWS/FOOT										
				2	5	10	20	30	40	60	70	90	
2	Firm, yellowish-red, fine to medium sandy SILT - (rocky)	4											
4	Firm, yellowish-red with gray, silty, fine to medium SAND	4											
6	PARTIALLY WEATHERED ROCK - no recovery	GM											
8	Firm, yellowish-red with white and gray, fine to coarse sandy SILT with gravel	3											
10		4											
12													
14	Loose, reddish-yellow with white and gray, micaceous, silty, fine to coarse SAND	3											
16		4											
18		4											
20		5											
22													
24	Loose to very firm, yellowish-brown with white and gray, micaceous, silty, fine to medium SAND	3											
26		5											
28		4											
30													
32		0											
34		11											
36		13											
38													
40	Firm, yellowish-brown with white and gray, micaceous, silty, fine to medium SAND with gravel	8											
42		9											
44	Firm, grayish-brown with white and gray, micaceous, silty, fine to medium SAND	5											
		8											
		7											

SOIL TEST BORING NO. B-5
Sheet 1 of 2

C.L.C. 0045

CI C-0047

 BUNNELL-LAMMONS ENGINEERING, INC. GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS		SOIL TEST BORING NO. B-6			
PROJECT: <u>Jasmine Point Cliffs at Kaowee Falls South</u> CLIENT: <u>The Cliffs</u> LOCATION: <u>Lot 32</u> DRILLER: <u>Metro Drill, Inc., Rold and Kellie</u> DRILLING METHOD: <u>BK-51; 2-1/4 inch ID hollow stem auger</u> DEPTH TO - WATER: INITIAL: <u>33.5</u> AFTER 24 HOURS: <u>33.8</u> DAIVING: <u>XXX</u>		PROJECT NO.: <u>J10-7112-01</u> START: <u>8-3-10</u> END: <u>8-3-10</u> ELEVATION: <u>6</u> LOGGED BY: <u>D. Perkins</u>			
ELEVATION/DEPTH (FT)	SOIL DESCRIPTION	SOIL TYPE	SAMPLES	STANDARD PENETRATION RESULTS BLOW/2 FEET	
				2 5 10 20 30 40 50 60 70 80	
46	Firm, grayish-brown, very micaceous, silty, fine to medium SAND				
48					
50	Dense, white with yellow and gray, micaceous, silty, fine to coarse SAND with gravel		14 17 21		
52					
54	PARTIALLY WEATHERED ROCK which sampled as gray with pink, silty, fine to medium SAND		10 20 30 60.4		
56					
58			50/2.0		
60	Auger refusal at 59 feet. Groundwater encountered at 33.8 foot at time of drilling and at 33.5 foot after 24 hours. Slope inclinometer set at 59 feet.				
62					
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88					

GEOT. MODEL 31/03/2010

SOIL TEST BORING NO. B-6
 Sheet 2 of 2

CLC-0048

KEY TO SOIL CLASSIFICATIONS AND CONSISTENCY DESCRIPTIONS

BUNNELL-LAMMONS ENGINEERING, INC.
GREENVILLE, SOUTH CAROLINA

Penetration Resistance* Blows per Foot

SANDS
0 to 4
5 to 10
11 to 20
21 to 30
31 to 50
over 50

Relative Density

Very Loose
Loose
Firm
Very Firm
Dense
Very Dense

Particle Size Identification

Rock: Greater than 300 mm
Cobbles: 75 to 300 mm
Gravel:
Coarse - 19 to 75 mm
Fine - 4.75 to 10 mm
Sands:
Coarse - 2 to 4.75 mm
Medium - 0.425 to 2 mm
Fine - 0.075 to 0.425 mm
Silt & Clay: Less than 0.075 mm

Penetration Resistance* Blows per Foot

SILTS and CLAYS
0 to 2
3 to 4
5 to 8
9 to 16
16 to 30
31 to 50
over 50

Consistency

Very Soft
Soft
Firm
Stiff
Very Stiff
Hard
Very Hard

*ASTM D 1586

KEY TO DRILLING SYMBOLS



Grab Sample



Split Open Sample



Undisturbed Sample

NR = No reaction to HCL

NA = Not applicable

NS = No sample



Groundwater Table at Time of Drilling



Groundwater Table 24 Hours after Completion of Drilling

KEY TO SOIL CLASSIFICATIONS



Well-graded Gravel
GW



Low Plasticity Clay
CL



Clayey Silt
MH



Silty Sand
SM



Poorly-graded Gravel
GP



Sandy Clay
CLS



Sandy Silt
MLS



Topsoil
TOPSOIL



Partially Weathered Rock
BLDRCBBL



Silty Clay
CL-ML



Sand
SW



Trash
MUCKPEAT



High Plasticity Clay
CH



Silt
ML



Clayey Sand
SC



Fill
FILL



Poorly Graded Sand
SP



Bedrock
BEDROCK



Limestone
LIMESTONE

CLC-0049

BLE
BUNNELL-LAMMONS ENGINEERING, INC.
GEOTECHNICAL, ENVIRONMENTAL AND CONSTRUCTION MATERIALS CONSULTANTS

October 25, 2010

The Cliffs Communities
Post Office Box 1519
Travelers Rest, South Carolina 29690

Attention: Mr. Donald H. Nickell, Jr.
dnickell@cliffscommunities.com

Subject: Data Report of Slope Inclinometer Surveys
October 1, 2010 Readings
Jasmine Point - Cliffs at Keowee Falls South
Oconee County, South Carolina
BLE Project No. J10-7112-01

Gentlemen:

We are pleased to submit this data report of the surveys obtained from the slope inclinometers installed at Jasmine Point in the Cliffs at Keowee Falls South development. The data presented herein includes the latest round of readings obtained on October 1, 2010. The data included in this report is referenced to baseline data obtained on June 25, 2010. There are six inclinometers installed on Lots 30, 31 and 32 as indicated in the following table.

Inclinometer Number	Location
SI-1	Lot 30 upper
SI-2	Lot 30 lower
SI-3	Lot 31 upper
SI-4	3.1 Lot 32 lower > JK
SI-5	Lot 32 upper
SI-6	Lot 32 lower

Note: Locations identified as upper represent inclinometers installed on the upper side of the lots near the road, lower represents inclinometers installed on the lower side of the lots near the lake.

The inclinometers were installed into soil test borings (ASTM D 1586) that were drilled between May 27, 2010 and June 8, 2010. Subsurface conditions that were encountered at each boring location are identified on the attached boring logs. The borings are identified as B-1 through B-6 and the boring numbers correspond with the inclinometer numbers (i.e. inclinometer SI-1 was

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CLC-0050

FILE

*Data Report of Slope Inclinometer Surveys
Jasmina Point - Cliffs at Keowee Falls South*

*October 25, 2010
BLE Project No. J10-7112-01*

installed in boring B-1 and so on). The attached aerial photograph identifies the locations of the inclinometers that was produced by tagging the inclinometer locations with a handheld GPS and inputting the coordinates into Google Earth.

The attached graphs present information on each of the inclinometers. Where the attached graphs identify two axes (A-axis and B-axis), the A-axis is oriented in a generally uphill-downhill direction and the B-axis is oriented in a generally cross slope direction. Movement in the negative direction on the A-axis represents downslope (direction of potential failure) movement. There are three graphs for each inclinometer as follows:

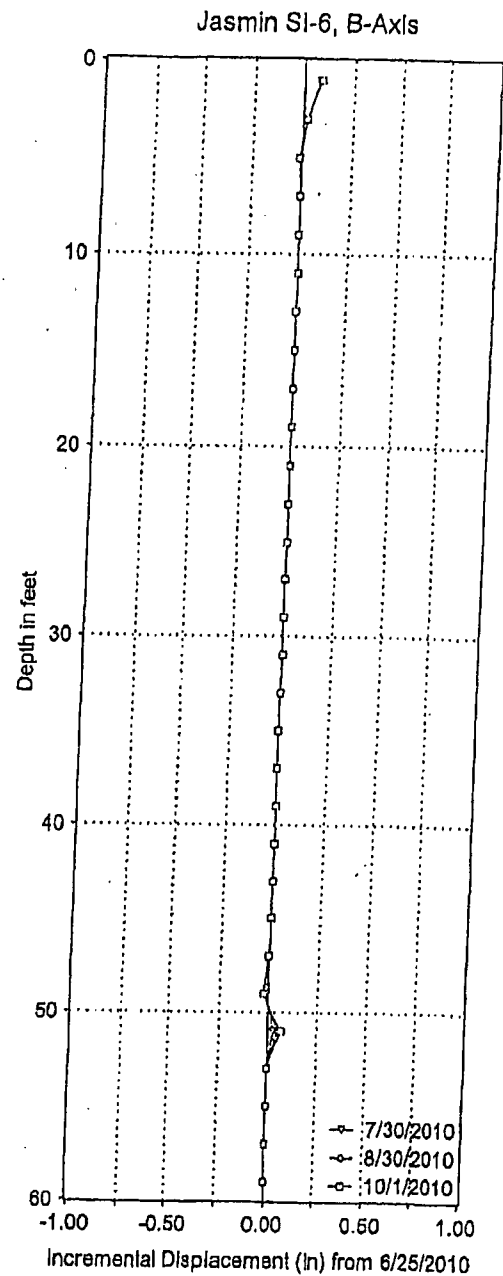
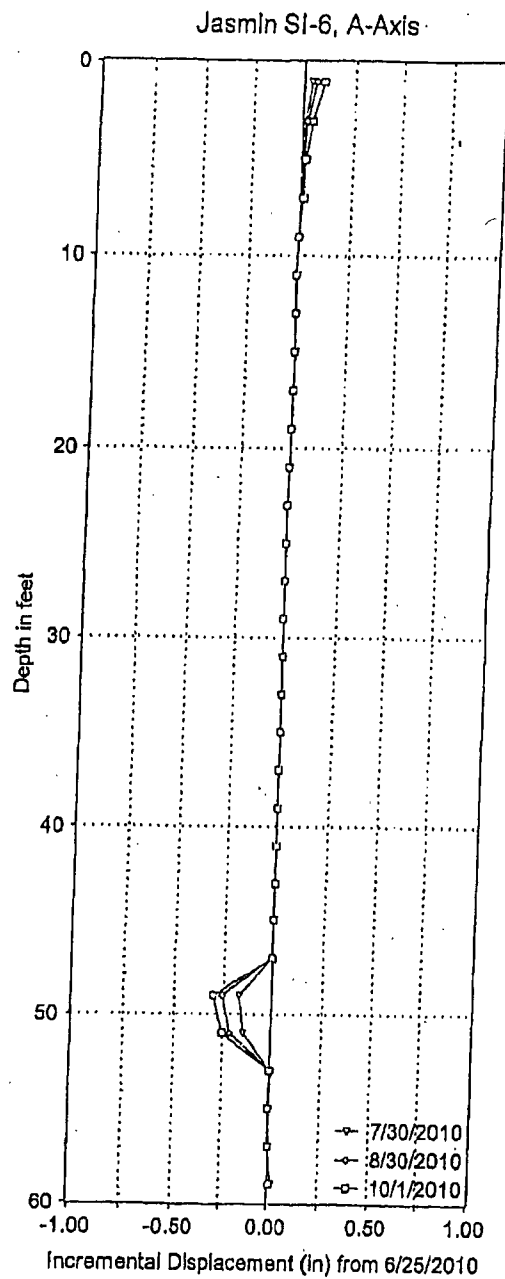
1. Cumulative Displacement vs. Depth
2. Incremental Displacement vs. Depth
3. Cumulative Displacement vs. Time (A-axis)

Cumulative displacement vs. depth is a plot of movement. Displacements on these plots may appear abrupt because the horizontal scale is not proportional to the vertical scale, which makes it easier to identify displacements. Incremental displacement vs. depth is a plot of movement at each reading interval. A spike in these graphs indicates significant movement. Growth in the spike over time indicates continued movement. Cumulative displacement vs. time provides an indication as to the rate of movement.

EVALUATION

A review of the Cumulative Displacement vs. Depth plots indicate that movement is occurring in five of the six inclinometers. Inclinometers SI-1, SI-2, SI-4 and SI-6 indicate an apparent failure plane developing at depths ranging from approximately 35-ft to 53-ft below the ground surface. A review of the accompanying boring logs indicates that the failure plane appears to be developing at or near the interface between residual soils and partially weathered rock (or dense residual soils). Inclinometers SI-4 and SI-6 are the only two inclinometers that have indicated significant movement since the August 30, 2010 readings were collected. However, it should be noted there has been little precipitation during this period and it should be expected that additional movement may occur in the remaining inclinometers during wet weather cycles.

The plots from inclinometer SI-5 indicate that the movement appears to be occurring at or below the bottom of the inclinometer casing at this location. A review of boring B-5 indicates partially weathered rock was encountered at a depth of approximately 64 feet. Therefore, it is our opinion that there may be a failure plane developing near the interface with the partially weathered rock similar to that observed in the inclinometers discussed above. Inclinometer SI-3 has not indicated movement based on the inclinometer readings taken thus far.

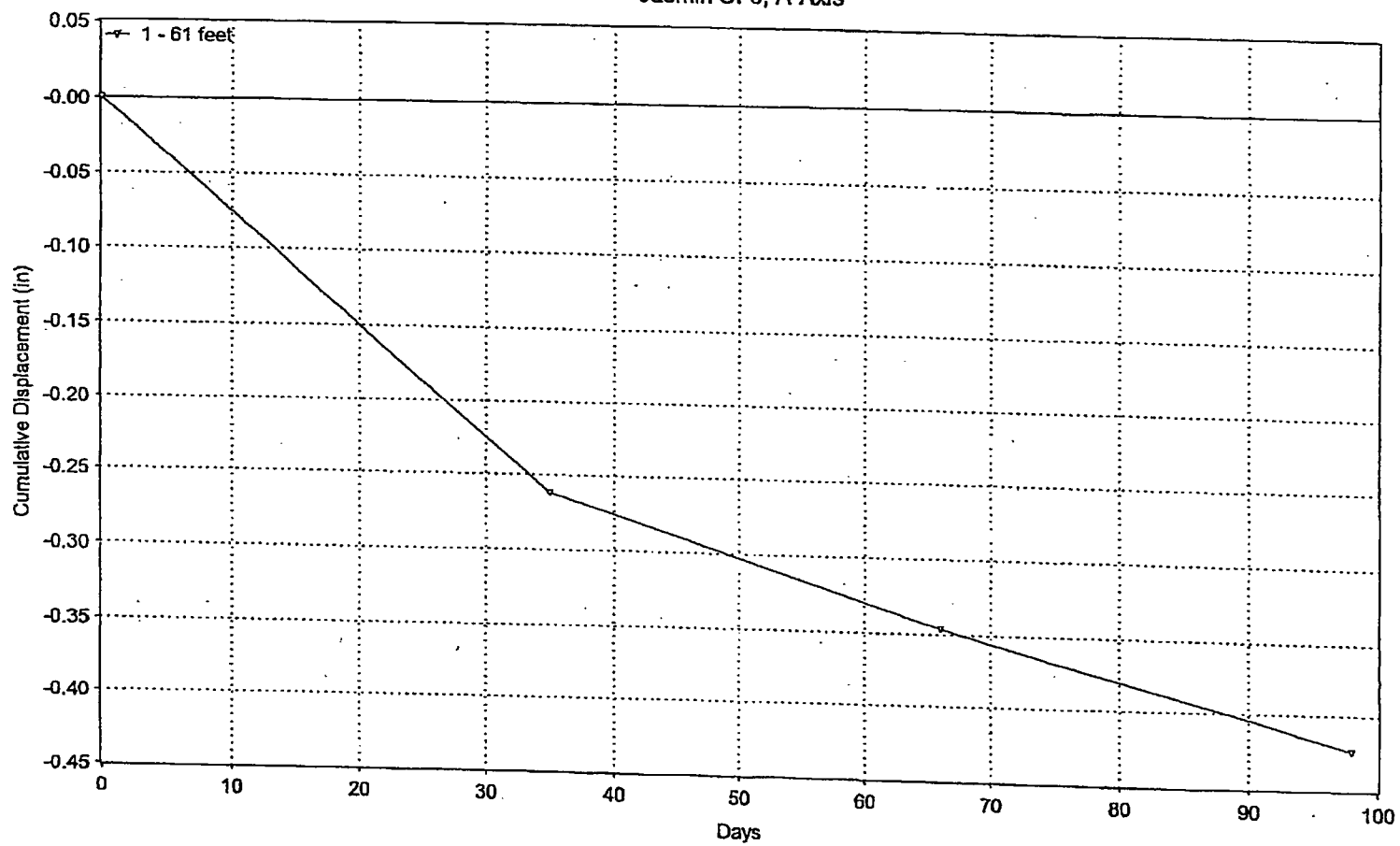


Jasmin Point

BLE Project No. J10-7112-01

Cliffs at Keowee Falls South

Jasmin SI-6, A-Axis



Jasmine Point

Cliffs at Keowee Falls South

BLE Project No. J10-7112-01

- 1 borings. why six?
- 2 A. That was, I assume, what we thought necessary to
- 3 explore the lots.
- 4 Q. So that -- would that have been two soil borings
- 5 per lot?
- 6 A. I don't know.
- 7 Q. And we have -- it's proposed that the borings go
- 8 15 to 20 feet deep. And how did you decide on
- 9 that depth?
- 10 A. That's a typical depth for residential
- 11 structures, based on the pressures that
- 12 foundations would exert. Plus, I assume what we
- 13 thought would be necessary to explore conditions
- 14 on the lot.
- 15 Q. Were you told anything about the lots by cliffs
- 16 prior to preparing the proposal?
- 17 A. As well as I remember, yes, we were.
- 18 Q. What were you told?
- 19 A. We were told that -- and I can't remember
- 20 exactly how this came about -- but as well as I
- 21 remember, we were told that another -- or a
- 22 geology firm had looked at the lot and felt
- 23 there was concern regarding the lot. That the
- 24 initial owner of the lot was given another
- 25 similar lot and that they were -- I don't know

1 Jasmine Cove area?

2 A. No. I don't think so.

3 MS. WRIGHT:

4 Mr. Birdsong, we're going to take a short break
5 right about now.

6 (Off the record; recess.)

7 EXAMINATION RESUMED BY MS. WRIGHT:

8 Q. Mr. Birdsong, my question to you is, this report
9 you have in front of you, did Cliffs ever give
10 you a copy of this report?

11 A. I can't remember if they gave us a copy or they
12 showed us a copy. I did see a copy of this
13 report.

14 Q. Do you recall when you saw it?

15 A. I believe it was when we first did geotechnical
16 work on lot 31.

17 Q. 2005?

18 A. Yes. As well as I remember.

19 Q. And you were given an opportunity to read over
20 this report.

21 A. Yes. Since that time, I've been given a copy of
22 the report. I don't know -- and it has other
23 information with it. I don't know whether I saw
24 that other information or just what you've shown
25 me, this text.

- 1 Q. And do you --
- 2 A. Maybe we did see all of it. I can't remember.
- 3 Q. Did you discuss this report with Don Nickell?
- 4 A. I don't know whether you'd call it a discussion.
- 5 Yes. I'll say yes.
- 6 Q. And what did you discuss?
- 7 A. Don asked us to look at this report and to
- 8 evaluate the lot.
- 9 Q. Were you familiar with Alpha Environmental at
- 10 the time you first looked at this report?
- 11 A. At the time I looked at this report, I can't
- 12 remember.
- 13 Q. Have you since become familiar with them?
- 14 A. Very briefly.
- 15 Q. And what is your opinion of them?
- 16 A. I don't know enough about them to really have an
- 17 opinion.
- 18 Q. And do you agree with their conclusions they
- 19 have listed in this report?
- 20 A. No.
- 21 Q. Do you agree with their conclusion the lot,
- 22 lot 31 should not be built on?
- 23 A. No. We didn't agree with that.
- 24 Q. And why is that?
- 25 A. We evaluated the lot. We explored it and it was

1 MS. WRIGHT:

2 You may answer.

3 A. I don't know. Not necessarily.

4 EXAMINATION RESUMED BY MS. WRIGHT:

5 Q. Would you agree that situations such as slope
6 failure and landslides don't stop at property
7 lines?

8 MS. BURTON:

9 Object to the form of your question.

10 MS. WRIGHT:

11 You may answer.

12 A. Yes.

13 EXAMINATION RESUMED BY MS. WRIGHT:

14 Q. Going further in this paragraph, it says: We
15 would strongly urge that no construction be
16 performed on this particular lot and perhaps
17 both the lots (background coughing) south.
18 However, further evaluation would be necessary
19 for the adjoining lots to determine if stable
20 soils are available in these areas.

21 Does your proposal address the further
22 evaluation recommended by Alpha?

23 A. We didn't address our proposal based on Alpha's
24 recommendations.

25 Q. What was your proposal based on?

- 1 A. What Don Nicholas -- Don Nickells asked us.
- 2 Q. And what, specifically, did Don Nickell ask you?
- 3 A. Don -- I'm not sure. Or -- I don't remember
- 4 would be the correct response to that.
- 5 Q. So do you agree with what this report says, that
- 6 no construction be performed on this particular
- 7 lot?
- 8 MS. BURTON:
- 9 Object to the form of the question.
- 10 A. No.
- 11 EXAMINATION RESUMED BY MS. WRIGHT:
- 12 Q. And why do you not agree?
- 13 A. Based on our evaluation and our experience.
- 14 Q. How many times did you go out to look at lot 31
- 15 when you were preparing the proposal?
- 16 A. This initial proposal?
- 17 Q. Uh-huh.
- 18 A. Once.
- 19 Q. Do you know if Mr. Revis made any visits to the
- 20 lot?
- 21 A. I don't know. I think he did, but I don't know.
- 22 Q. Did anyone else at S&ME go out to visit the lot
- 23 in preparing this proposal?
- 24 A. Not that I know of.
- 25 Q. Were records kept of visits made by people from

1 Q. About how much revenue did S&ME gets from Cliffs
2 each year?

3 A. I would have to guess. And it varies from year
4 to year from maybe, say, two or three thousand
5 dollars to maybe 15 -- 20,000. And those are
6 ballpark guesses.

7 Q. About how many years has S&ME been doing work
8 for Cliffs?

9 A. Fifteen, maybe longer than that.

10 Q. Now, the figures you're referring to, that's
11 Cliffs in general, not just Keowee Falls South;
12 is that correct?

13 A. That's correct.

14 Q. So who are your competitors in getting business
15 from The Cliffs?

16 A. I'm not totally sure. Bunnell-Lammons,
17 Froehling and Robertson, maybe MACTEC. There's
18 probably some others that I don't know about.
19 (Exhibit No. 6 marked: Attached.)

20 Q. If you look at page three, that's page three in
21 the upper right-hand corner. And it has your
22 name listed and Mr. Revis. Do you agree?

23 A. Yes.

24 Q. And this was provided to us by your attorney.
25 It's the April 30th, 2009, proposal. The

1 saying?

2 A. That is correct.

3 Q. Now, what was the purpose of these reports?

4 A. The purpose of the reports was to determine if
5 the lot would be suitable to support a
6 residential structure.

7 Q. And what was your conclusion?

8 A. That it was, with modification.

9 Q. What did you base that on?

10 A. We based that off the subsurface data that we
11 collected from the site.

12 Q. Now did anyone with The Cliffs tell you that
13 these reports -- let me rephrase that. Did
14 anyone with Cliffs tell you that the report
15 would be incorporated into a contract for the
16 buyer of lot 31?

17 A. Not to my knowledge.

18 Q. Now, I believe you said you had walked the
19 property when you went out to do the soil
20 borings; is that correct?

21 A. Yes. And test pits.

22 Q. And what did you recall seeing when you walked
23 the property?

24 A. We saw -- or I remember seeing several kind of
25 terraced areas, I guess is what I would call



1 anybody you thought was employed by S&ME?

2 A. No.

3 Q. Other than Mr. Scott and Ms. Castleman, and perhaps
4 clerical people that work with them, have you had any
5 substantive conversations with anybody you thought
6 was employed by a Cliffs entity or Keowee Falls
7 Investment Group, LLC?

8 A. Other than clerical things like questions about club
9 dues or homeowners association dues, I don't believe
10 so.

11 Q. Are you the person that prepared that fancy
12 spreadsheet we looked at?

13 A. Yes, I am.

14 Q. All right. I thought that was the case.

15 And I don't want to go through every single
16 column on it with you. But there were a few items
17 where your husband perhaps deferred to you.

18 (Brief recess.)

19 BY MS. BURTON:

20 Q. Exhibit number 19, do you have that handy?

21 A. I do.

22 Q. Okay, you've got something in front of you that's
23 different than I've got in front of me.

24 MR. DUDLEY: It's the small version.

25 BY THE WITNESS:

DEPOSITIONS AND..., INC.
864-235-3518



1 A. I can work off the exhibit, that's fine. Same thing.

2 Q. And I think the first few columns I understood.

3 Perhaps where we had some question was the
4 column that says Less Tax Deduction for MI and Taxes,
5 on the first page of Exhibit 19.

6 Can you tell me the mathematical calculation
7 that makes up that column?

8 A. Well, we have been taking mortgage, we have been
9 taking deductions for the investment expense
10 associated with this property, and the Investment
11 Expense is the mortgage interest and property taxes
12 we paid on this property.

13 We've applied, your questions earlier around
14 whether this was a number off of tax documents or a
15 calculated number, it is a calculated number based on
16 20 percent as a representative level of
17 deductibility, assuming, and that's actually probably
18 a little low, based on the North Carolina state tax
19 rate, but that's based on long-term capital gains and
20 state taxes.

21 And I believe that is formulaic based on the
22 payments that we made during those tax years.

23 And the reason I believe that we did it that
24 way, was because we could, the alternative way would
25 be to just take our tax documents and actually match

1 the deductions that were taken.

2 But we can only take those deductions to the
3 extent that we have investment income to match
4 against the expense. And so if we have years where
5 we don't have big enough capital gains to apply the
6 expenses to, we may not maximize the deduction.

7 So what I believe we were trying to do is show
8 the full effect of the deduction, recognizing that
9 eventually it should be deductible against capital
10 gains that we will have, regardless of whether we've
11 utilized the full deduction at this point in time.

12 Q. Okay. And I don't pretend to understand everything
13 that occurs on your tax return.

14 A. Having said that, we have not had, we have not
15 matched this with our tax records or had our
16 accountant match this. So if that's the direction we
17 end up going, we can, we can look at that.

18 Q. Okay. And just so I understand, you have, at times,
19 I guess, investment income that's reflected on your
20 tax return?

21 A. Correct.

22 Q. And against that investment income, you are taking
23 certain deductions; is that correct?

24 A. That's correct.

25 Q. And those deductions include mortgage expense and

1 property taxes, mortgage interest and property taxes
2 on Lot 32?

3 A. Correct.

4 Q. And you can offset that against your capital gains,
5 other capital gains?

6 A. To the extent we have enough gains.

7 Q. And I gather you have not analyzed year-by-year
8 return to see how much expense you are able to deduct
9 off a particular year return?

10 A. I don't believe we have done that.

11 Q. And so this is just an estimated number, the 20
12 percent?

13 A. I believe so. It may be 20 percent based on the
14 actual P and I, because this number is recorded in
15 the year we actually made, or the month we actually
16 paid the tax payments.

17 In other words, it's October because we do file
18 extensions, so we pay our taxes October 15th. So
19 this may be the actual deduction we've taken in that
20 year, times 20 percent.

21 But we would have to pull from our tax records
22 the actual deduction and the effective tax rate year
23 by year to get the exact number of the tax benefit.

24 Q. Okay.

25 A. This was our best estimate.

1 Q. Did your husband accurately describe to me your
2 mathematical calculations on these Lost Investment
3 Returns A, B and C?

4 A. Yes, he did.

5 Q. I think I understood what he was saying to me.

6 A. Yes, he did.

7 Q. And tell me, I want to make sure I understand, in the
8 column that's Cash Expenses Excluding Principal; do
9 you see that column?

10 A. Yes.

11 Q. Tell me what that column is, please?

12 A. What that's meant to represent is, the A, B, and C
13 tie back to the principal payments that we made and
14 the principal investment that we've had tied up in
15 this property that we otherwise may have invested in
16 the market or some other investment vehicle.

17 The Other Cash Expenses are cash outlays that we
18 had to pay to support this property, or the expenses
19 associated with it, that again otherwise would have
20 been available to us to invest in any number of
21 investment vehicles.

22 Q. So what does the column reflect, what's the math in
23 that column?

24 A. It should be all the expenses other than the
25 principal payment.

1 Q. So it's just a sum --

2 A. Correct.

3 Q. -- of expenses?

4 A. Correct.

5 Q. And then the next column, Cumulative Cash Expenses,
6 Excluding Principal, what's that calculation? Is
7 that just adding numbers up, 43 plus 5130, then plus
8 5848, is that just a running total?

9 A. It's just a running total.

10 Q. Okay, got that one.

11 Column Lost Investment Return D, 5.0 percent?

12 A. Yes.

13 Q. What's the math that you used to get into that
14 column?

15 A. That is to calculate the lost investment return on
16 the cumulative cash outlays, other than the principal
17 payments.

18 And we picked a 5 percent return versus the
19 returns we put on the principal payments. Because
20 these payments are made every single month, we did
21 not run hypothetical increases in the S&P over every
22 single month.

23 And the 5 percent is, you know, as you can see,
24 well below the 13 to 14 percent we used for the bulk
25 of the principal payments, because that's what the

1 market's done since those payments were made.

2 And it's a number that's at or below sort of
3 long term historical equity trends. So it's meant to
4 reflect the return we could have gotten on the money,
5 had we invested it.

6 Q. Assuming you could get a return on investment of 5
7 percent?

8 A. Correct.

9 Q. What's Total Lost Investment Returns? Is that a
10 running cumulative too, or what is that column?

11 A. That column is the summation of the lost investment
12 returns on the principal and on the other cash
13 expenses. So it should be --

14 Q. Which two columns is that, I'm sorry, the sum of what
15 two columns?

16 A. Should be the subtotal of A, B, and C and D.

17 Q. Subtotal, and the 5 percent column?

18 A. Correct.

19 Q. So if we look at the first one that we can find, it
20 would be 16797 plus 18281?

21 A. Yes.

22 Q. I got it.

23 And then the last column is adding up, I gather,
24 a variety of columns from both page 1 and page 2; is
25 that accurate?

1 A. That's right.

2 Mechanically I don't know whether it adds up the
3 individuals columns or the subtotals and the totals,
4 but it captures essentially the total from page 1 of
5 the expenditures by category, and then the lost
6 investment returns.

7 Q. Okay. I think I understand that.

8 Tell me what relatives you have in Greenville
9 County, South Carolina?

10 A. I don't. I have --

11 Q. He was wrong?

12 MR. DUDLEY: No, he said South Carolina.

13 MS. BURTON: Okay.

14 BY MS. BURTON:

15 A. My parents live in Columbia, South Carolina, Richland
16 County.

17 Q. Okay. Do you have any relatives that live in
18 Greenville County?

19 A. I do not.

20 Q. Have you talked with Carroll Crowther?

21 A. I have not.

22 Q. Have you talked with any person you thought to be a
23 geologist, a geotechnical engineer, a forester,
24 anybody that you thought was an expert in the land
25 about Lot 32?

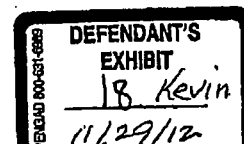
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
Kevin McCarthy and Courtney E. McCarthy,	)	C.A. No.: 2011-CP-23-6376
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' VERIFIED
	)	ANSWERS TO THE
	)	INTERROGATORIES OF
Keowee Falls Investment Group, LLC	)	DEFENDANT S&ME, INC.
The Cliffs Communities, LLC d/b/a The	)	
Cliffs at Keowee Falls South, Cliffs	)	
Real Estate, Inc., The Cliffs Golf and	)	
County Club, Inc., and S&ME, Inc.,	)	
	)	
Defendants.	)	

TO: STEPHANIE H. BURTON, ATTORNEY FOR DEFENDANT S&ME, INC.:

Pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure, the Plaintiffs Kevin McCarthy and Courtney E. McCarthy (collectively "Plaintiffs") hereby provide answers to Defendant S&ME, Inc.'s ("Defendant") Interrogatories as follows:

GENERAL OBJECTIONS

1. Plaintiffs object to the Interrogatories to the extent that they purport to impose obligations beyond those imposed by the South Carolina Rules of Civil Procedure.
2. Plaintiffs object to the Interrogatories to the extent that they request information which is protected by the attorney-client privilege and/or the work product doctrine and/or any other applicable law, rule or privilege.
3. Plaintiffs object to the Interrogatories to the extent that the requested information is equally available to the defendant, on the grounds that producing such



information is unnecessary, unduly burdensome and harassing.

4. Plaintiffs object to the Interrogatories to the extent defendant seeks information which is in the possession of the Defendant or persons or entities other than Plaintiffs.

5. Plaintiffs object to the Interrogatories to the extent that they seek information which is not relevant to issues in this litigation and is not reasonably calculated to lead to the discovery of admissible evidence and to the extent that they are overbroad, oppressive, vague, and unduly burdensome and would impose upon plaintiff an unreasonable burden of inquiry.

6. Plaintiffs object to the Interrogatories to the extent that they seek information without regard to any time period limitation and are therefore not reasonably calculated to lead to the discovery of admissible evidence.

7. Plaintiffs object to the Interrogatories to the extent that they seek information which calls for a legal conclusion by Plaintiffs.

OBJECTIONS AND PRIVILEGES NOT WAIVED

The responses given below are made without waiving, or intending to waive, but to the contrary, intending to preserve and preserving:

(a) The right to object, on the grounds of competency, privilege, relevancy or materiality, or any other proper grounds, to the use of this information for any purpose, in whole or in part, in any subsequent proceeding in this action or any other action;

(b) The right to object, on any and all grounds, at any time, to other discovery procedures involving or relating to the subject matter of the Interrogatories to which plaintiff has responded herein; and

(c) The right at any time to revise, correct, add to or clarify any of the responses propounded herein.

INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiffs or counsel to have knowledge concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Kevin McCarthy
2518 Forest Drive
Charlotte, NC 28211

Courtney McCarthy
2518 Forest Drive
Charlotte, NC 28211

Jay Scott, Real Estate Agent
Cliffs Communities
South Carolina

James B. Anthony
Keowee Falls Investment Group, LLC
1849 Cleo Chapman Highway
Sunset, SC

Marty Ritsch
Cliffs Communities, Inc.
301 Beaver Dam Road
Travelers Rest, SC

Sandra Hyder, Closing Coordinator
The Cliffs
15 Fair Green Lane
Travelers Rest, SC

Donald H. Nickell, Jr., P.E.
Cliffs Communities, Inc.

301 Beaver Dam Road
Travelers Rest, SC

Brandon Smith
Cliffs Communities, Inc.
3598 Highway 11
Travelers Rest, SC

Matthew W. Vogt
Resort Custom Homes
55 Beattie Place, Suite 100
Greenville, SC

Jeffrey Hughey, Project Manager
Resort Custom Homes
55 Beattie Place, Suite 100
Greenville, SC

William A. Matthews, P.E., Chief Engineer
BLE, Inc.
6004 Ponders Court
Greenville, SC 29615

James C. Ernst, Construction Services Manager
BLE, Inc.
6004 Ponders Court
Greenville, SC 29615

Walker Birdsong, P.E., Senior Engineer
S&ME, Inc.

David Swoap, P.E., Senior Engineer
S&ME, Inc.

Mike Revis, P.E., Project Engineer/Senior Engineer
S&ME, Inc.

Howard Perry, P.E., Senior Engineer
S&ME, Inc.

Jason Vaughn, E.I.T., Staff Professional
S&ME, Inc.

Jack Harrell
Address to be provided

Dr. Daniel McCollum
c/o Oaktree Medical Centre
115 Brushy Creek Road
Easley, SC 29642

Roger D. Moore, PG or
Representative of
Alpha Environmental Services, Inc.
1300 E. Wade Hampton Boulevard
Greer, SC 29651

Larry Hutchinson or
Representative of
The Paragon Group
111 Trout Lilly Lane
Sunset, SC 29685

2. For each person known to Plaintiffs or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform S&ME of the important facts known to or observed by such persons, or provide a copy of any written or recorded statements taken from such persons.

ANSWER: Kevin McCarthy is expected to testify about the purchase of the lot at The Cliffs Communities and all other aspects related therein.

Courtney McCarthy is expected to testify about the purchase of the lot at The Cliffs Communities and all other aspects related therein.

Jay Scott is expected to testify about his knowledge of the sale of the lot at The Cliffs Communities to Plaintiffs.

James Anthony is expected to testify about his knowledge of the lot sold to Plaintiffs and the sale of the lots in the vicinity of Plaintiffs' lot.

Marty Ritsch is expected to testify about his knowledge of the lot sold to Plaintiffs and the sale of the lots in the vicinity of Plaintiffs' lot.

Sandra Hyder is expected to testify about her knowledge of the lot sold to Plaintiffs and the sale of the lots in the vicinity of Plaintiffs' lot.

Donald H. Nickell, Jr., P.E. is expected to testify about his knowledge of the lot sold to Plaintiffs and the sale of the lots in the vicinity of Plaintiffs' lot.

Brandon Smith is expected to testify about his knowledge of the lot sold to Plaintiffs and the sale of the lots in the vicinity of Plaintiffs' lot.

Matthew W. Vogt is expected to testify about his knowledge of the lots in the area designated Jasmine Cove and reports from S&ME, Inc., specifically, but not limited to, the Harrell lot.

Jeffrey Hughey is expected to testify about his knowledge of the lots in the area designated Jasmine Cove and reports from S&ME, Inc., specifically, but not limited to, the Harrell lot.

William A. Matthews, P.E. is expected to testify about the site observations and report prepared for Zone 7 Nursery, dated March 1, 2010 concerning Jasmine Point; and the reports prepared for The Cliffs Communities dated October 25, 2010 and April 11, 2011 concerning the slope inclinometers at Jasmine Point.

James C. Ernst is expected to testify about the site observations and report prepared for Zone 7 Nursery, dated March 1, 2010 concerning Jasmine Point; and the reports prepared for The Cliffs Communities dated October 25, 2010 and April 11, 2011 concerning the slope inclinometers at Jasmine Point.

Walker Birdsong, P.E. is expected to testify about the exploration conducted on behalf of, and reports prepared for, Resort Custom Homes dated May 15, 2009 and February 12, 2010 on Lot 31, Jasmine Cove; and exploration conducted on behalf of,

and reports prepared for, the Cliffs Communities dated March 5, 2010 concerning the Cul-de-Sac at Jasmine Point.

David Swoap, P.E. is expected to testify about the exploration conducted on behalf of, and reports prepared for, Resort Custom Homes dated May 15, 2009 and February 12, 2010 on Lot 31, Jasmine Cove; and exploration conducted on behalf of, and reports prepared for, the Cliffs Communities dated March 5, 2010 concerning the Cul-de-Sac at Jasmine Point.

Mike Revis, P.E. is expected to testify about the inspection conducted on behalf of, and report prepared for, The Cliffs Communities dated June 3, 2008 on Lot 31, Jasmine Cove; and the exploration and report prepared for The Cliffs Communities dated July 18, 2005 concerning Lot 31, Jasmine Cove.

Howard Perry is expected to testify about and the exploration and report prepared for The Cliffs Communities dated July 18, 2005 concerning Lot 31, Jasmine Cove.

Jason Vaughn, E.I.T. is expected to testify about the inspection conducted on behalf of, and report prepared for, The Cliffs Communities dated June 3, 2008 on Lot 31, Jasmine Cove.

Jack Harrell is expected to testify about the lot he purchased at Jasmine Cove and all matters related therein.

Dr. Daniel McCollum is expected to testify about the lot he purchased at Jasmine Cove and all matters related therein.

Roger Moore, PG, is expected to testify about the evaluation performed on Lot 31, Jasmine Cove in 2005.

Larry Hutchinson is expected to testify about his knowledge of Lot 31, Jasmine Cove from 2005.

3. Please identify all photographs, sketches, charts, diagrams, plans or other prepared documents which pertain to this case.

ANSWER: Pursuant to S.C. Rules of Civil Procedure, Rule 33(c), all relevant, non-privileged project documents related to this claim will be exchanged with Defendant. These documents include, but are not limited to, sales contract, H.U.D. statement, settlement sheet from closing, correspondence, reports of BLE, reports of Pridgen & Associates, and reports of Carroll L. Crowther, P.E.

4. Please state each item or category of damage which you are claiming in this lawsuit.

ANSWER: Plaintiffs have been damaged in that they are unable to build a house on their lot due to the unstable soil conditions on their lot. Plaintiffs are informed that, due to the unstable soil conditions on their lot, they are unable to sell their lot for a value comparable to the amount they paid for the it, because no house can be built on their lot. Plaintiffs are entitled to have the lot re-purchased along with reimbursements for real estate taxes paid, loss of opportunity damages, and reimbursement of club membership dues, plus any improvements made to the lot. See spreadsheet as to damages attached hereto, showing total damages to date as \$1,858,559.30.

5. With respect to each item or category of damage identified in answer to the preceding interrogatory, please:

- (a) describe in general terms the damage or damages involved;
- (b) state the amount of damage or damages claimed;

- (c) set forth in detail the precise manner in which you have calculated your claim for such damage or damages;
- (d) identify each written document, memorandum, bill, check, or other writing pertaining to your claim for this damage; and
- (e) identify each person (name, address, telephone number and occupation) who has knowledge concerning this item or category of claimed damage or damages.

ANSWER: (a) unstable soil conditions renders lot un-buildable;

(b) purchase price of \$1,140,000.00 for the lot, as well as fees for membership in various Cliffs Communities, and attorneys' fees and costs;

(c) what has been paid to date and the mortgage interest for the lot, real estate taxes paid, improvements made to the lot, club membership costs;

(d) see answer to Interrogatory # 3 above; and

(e) see answer to Interrogatory # 2 above.

6. List the names and addresses of any expert witnesses whom Plaintiffs propose to use as a witness at the trial of the case to support their claims.

ANSWER: Carroll L. Crowther, P.E., 18 Old Ferry Cove, Beaufort, SC 29907.

7. With respect to each expert named in answer to the preceding interrogatory, please:

- (a) the subject matter on which the expert is expected to testify;
- (b) the substance of the facts and opinions as to which the expert is expected to testify;
- (c) a summary of the grounds for each such opinion; and
- (d) the qualifications of such individual which support the basis for your contention that the individual is an expert. (You may produce a copy of the individual's curriculum vitae).

ANSWER: (a) about the geologic and engineering stability of Plaintiffs' lot, including but not limited to, his inspection of the lot and review of various reports;

(b) See report of Carroll L. Crowther, copy of which is attached hereto;

(c) See answer to Interrogatory #7(b) above; and

(d) Bachelor of Science in Civil Engineering degree from The Citadel (1961); Master of Science in Civil Engineering degree from The Georgia Institute of Technology (1963); Professional Engineer licenses in the States of South Carolina and Georgia.

Plaintiffs reserve the right to amend, supplement, modify, alter and/or change their answers to the foregoing Interrogatories up until the trial of this matter.

Respectfully submitted,



Thomas E. Dudley, III (SC Bar # 66154)
M. Stokely Holder (SC Bar # 73892)
Kenison, Dudley & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864) 242-4899
(864-242-4844 - facsimile)

Attorneys for Plaintiffs

February 6th, 2012
Greenville, SC

☐ Highlighted items need follow-up verification

Property tax deductions classified as investment expenses
and reduce investment income; therefore tax rate is estimated
low-term federal and state capital gains rate

Tax Year	MI	Property Tax	Total
2005	-	-	-
2006	-	9,015.00	9,015.00
2007	51,374.00	14,256.00	65,630.00
2008	59,237.00	14,202.00	73,439.00
2009	50,875.00	-	50,875.00
2010	37,363.00	13,735.00	51,097.00

billization work and associated permitting fees

Investment Return (Principal Payments only)

Date	S&P 500	% Increase	Prin. Paymt	Cost Inv. Return	Total	Ann. Return	Wtd. Avg. Life
1/31/2012	1,312.41						
8/5/2005	1,326.42	7.0%	105,000.00	7,362.04	112,362.4	1.05%	0.62
7/1/2009	922.33	42.3%	250,000.00	105,732.23	355,732.2	15.16%	0.57
7/1/2010	1,027.37	19.4%	750,000.00	143,310.36	893,310.3	12.53%	1.03
Total		23.4%	1,105,000.00	256,404.61	1,361,404.6	10.02%	2.20

Return A	Return B
1.05%	15.38%

Cliff's Expenses - McCarth

		Returns		Last Inv. Ret. - Cash		Total Last Investment Returns	Total Expenses
		Cash Expenses (Ex. Prin.)	Cum. Cash Expense (Ex. Prin.)	Last Investment Return D	5.0%		
2005	Aug-05	43,874.76	43,874.76	-	-		1,148,874.76
	Sep-05	-	43,874.76	182.81	274.51	274.51	274.51
	Oct-05	5,130.00	49,004.76	304.19	295.89	295.89	5,425.89
	Nov-05	-	49,004.76	304.19	295.89	295.89	295.89
	Dec-05	-	49,004.76	304.19	295.89	295.89	295.89
2006	Jan-06	-	49,004.76	304.19	295.89	295.89	295.89
	Feb-06	-	49,004.76	304.19	295.89	295.89	295.89
	Mar-06	5,348.20	54,352.96	328.55	320.25	320.25	6,168.45
	Apr-06	-	54,352.96	328.55	320.25	320.25	320.25
	May-06	-	54,352.96	328.55	320.25	320.25	320.25
	Jun-06	-	54,352.96	328.55	320.25	320.25	320.25
	Jul-06	-	54,352.96	328.55	320.25	320.25	320.25
	Aug-06	20,000.00	74,352.96	311.89	401.59	401.59	20,403.59
	Sep-06	-	74,352.96	311.89	401.59	401.59	401.59
	Oct-06	4,609.21	79,522.17	331.34	432.04	432.04	5,092.25
	Nov-06	4,609.21	84,191.38	350.80	442.50	442.50	5,111.71
	Dec-06	4,609.21	88,800.59	370.35	461.95	461.95	5,131.66
2007	Jan-07	4,688.71	93,489.30	389.79	481.49	481.49	5,170.20
	Feb-07	4,688.71	98,178.01	409.33	501.03	501.03	5,189.74
	Mar-07	18,152.71	116,330.72	484.96	576.66	576.66	18,729.37
	Apr-07	4,688.71	121,019.43	504.50	596.20	596.20	5,284.91
	May-07	4,688.71	125,708.14	524.03	615.73	615.73	5,304.44
	Jun-07	4,688.71	130,396.85	543.57	635.27	635.27	5,323.98
	Jul-07	4,688.71	135,085.56	563.11	654.81	654.81	5,343.52
	Aug-07	24,688.71	159,774.27	665.98	757.68	757.68	25,446.39
	Sep-07	4,688.71	164,462.98	685.51	777.21	777.21	5,465.97
	Oct-07	2,883.71	167,346.69	697.54	789.24	789.24	3,674.95
	Nov-07	4,688.71	172,035.40	717.07	808.77	808.77	5,497.48
	Dec-07	4,688.71	176,724.11	736.61	828.31	828.31	5,517.02
2008	Jan-08	19,994.71	196,718.82	819.92	911.62	911.62	20,906.33
	Feb-08	4,688.71	201,407.53	839.46	931.16	931.16	5,619.87
	Mar-08	4,688.71	206,096.24	858.99	950.69	950.69	5,639.40
	Apr-08	4,688.71	210,784.95	878.53	970.23	970.23	5,658.94
	May-08	4,688.71	215,473.66	898.07	989.77	989.77	5,678.48
	Jun-08	4,688.71	220,162.37	917.60	1,009.30	1,009.30	5,698.01
	Jul-08	4,688.71	224,851.08	937.14	1,028.84	1,028.84	5,717.55
	Aug-08	4,688.71	229,539.79	956.67	1,048.37	1,048.37	5,737.08
	Sep-08	4,688.71	234,228.50	976.21	1,067.91	1,067.91	5,756.62
	Oct-08	(5,323.25)	228,905.25	954.03	1,045.73	1,045.73	(4,277.53)
	Nov-08	5,335.56	234,240.81	976.35	1,068.05	1,068.05	6,423.61
	Dec-08	5,183.44	239,424.25	997.94	1,089.64	1,089.64	6,373.08
2009	Jan-09	21,789.18	261,213.43	1,098.72	1,180.43	1,180.43	22,969.61
	Feb-09	6,110.18	267,323.61	1,114.19	1,203.89	1,203.89	7,316.67
	Mar-09	5,592.38	272,916.00	1,137.49	1,229.10	1,229.10	6,821.57
	Apr-09	6,110.18	279,026.18	1,162.95	1,254.65	1,254.65	7,364.83
	May-09	6,110.18	285,136.36	1,188.41	1,280.11	1,280.11	7,390.29
	Jun-09	6,110.18	291,246.54	1,213.87	1,305.57	1,305.57	7,415.76
	Jul-09	5,937.58	297,184.12	1,238.61	1,330.31	1,330.31	7,267.89
	Aug-09	4,599.91	301,784.03	1,257.78	1,356.34	1,356.34	9,106.15
	Sep-09	4,599.91	306,383.94	1,276.94	1,382.41	1,382.41	9,125.32
	Oct-09	(9,925.29)	296,458.65	1,235.54	1,344.01	1,344.01	(5,451.08)
	Nov-09	4,643.06	301,101.71	1,254.89	1,369.36	1,369.36	9,146.42
	Dec-09	5,331.76	306,433.47	1,277.11	1,395.57	1,395.57	9,857.33
2010	Jan-10	20,542.06	326,975.53	1,362.70	1,411.17	1,411.17	21,956.23
	Feb-10	12,372.52	339,348.05	1,413.84	1,462.30	1,462.30	16,394.82
	Mar-10	29,412.51	368,760.56	1,536.39	1,784.86	1,784.86	34,197.37
	Apr-10	4,384.15	373,144.71	1,554.66	1,803.12	1,803.12	9,187.27
	May-10	4,772.52	377,917.23	1,574.54	1,823.01	1,823.01	9,595.53
	Jun-10	4,643.06	382,560.29	1,593.89	1,842.35	1,842.35	9,485.41
	Jul-10	4,643.05	387,203.34	1,613.33	1,861.70	1,861.70	9,504.75
	Aug-10	739.50	387,942.84	1,616.40	1,867.18	1,867.18	13,456.68
	Sep-10	739.50	388,682.34	1,619.56	1,870.25	1,870.25	13,489.85
	Oct-10	(9,415.50)	379,266.84	1,580.33	1,861.11	1,861.11	3,245.61
	Nov-10	739.50	380,006.34	1,583.50	1,864.28	1,864.28	13,423.78
	Dec-10	1,591.21	381,597.55	1,590.13	1,870.91	1,870.91	14,294.12
2011	Jan-11	15,949.10	397,546.65	1,656.58	1,737.36	1,737.36	28,036.46
	Feb-11	739.50	398,286.15	1,659.87	1,740.65	1,740.65	13,530.75
	Mar-11	789.50	399,075.65	1,663.16	1,743.94	1,743.94	13,533.44
	Apr-11	789.50	399,865.15	1,666.45	1,747.23	1,747.23	13,536.73
	May-11	789.50	400,654.65	1,669.74	1,750.52	1,750.52	13,540.02
	Jun-11	806.16	401,460.81	1,673.10	1,753.88	1,753.88	13,543.31
	Jul-11	806.16	402,266.97	1,676.46	1,757.24	1,757.24	13,546.60
	Aug-11	806.16	403,073.13	1,679.82	1,760.60	1,760.60	13,550.00
	Sep-11	1,306.16	404,379.29	1,684.84	1,765.62	1,765.62	13,553.39
	Oct-11	(9,415.24)	394,964.05	1,645.62	1,726.40	1,726.40	3,113.16
	Nov-11	24.50	394,988.55	1,645.72	1,726.50	1,726.50	12,751.00
	Dec-11	24.50	394,988.55	1,645.83	1,726.61	1,726.61	12,751.11
2012	Jan-12	13,538.95	408,527.50	1,701.24	1,783.02	1,783.02	26,211.97
	Feb-12	-	408,527.50	1,701.24	1,783.02	1,783.02	12,783.02
	Mar-12	-	408,527.50	1,701.24	1,783.02	1,783.02	12,783.02
Total		408,537.00	408,537.00	10,115.16	118,022.50	1,858,559.30	

02.06.12 Plaintiffs 000003

Cliffs Expenses - McCarth

Returns		Last Inv. Ret. - Cdn		Total Last Investment Return	Total Expenses
Cash Expenses (Ex. Prin.)	Cash Expenses (Ex. Prin.)	Last Investment Return 12	5.0%		

Notes:

☐ Hiding

(1) Mort. int. + property tax

(2) Shoreline stabilization w

(3) Estimate of Last Investo

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Kevin McCarthy and Courtney E.
McCarthy,

Plaintiffs,

vs.

Keowee Falls Investment Group, LLC
The Cliffs Communities, LLC d/b/a The
Cliffs at Keowee Falls South, Cliffs
Real Estate, Inc., The Cliffs Golf and
County Club, Inc., and S&ME, Inc.,

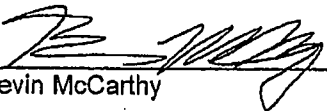
Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-23-6376

VERIFICATION

PERSONALLY APPEARED before me Kevin McCarthy who, after being duly sworn, states that he is one of the Plaintiffs in this action; that he has read the statements contained in the foregoing Answers to Interrogatories of Defendant S&ME, Inc., and the same are true and correct of his own knowledge, and as to those statements made upon information and belief, he believes them to be true.


Kevin McCarthy

SWORN to before me this the
6th day of February, 2012.


Notary Public for South Carolina
My Commission Expires: 1-29-2017

167.97	-	-	167.97	4,669.21	79,522.17	331.34	499.31	5,168.52
167.97	-	-	167.97	4,669.21	84,191.38	350.80	518.77	5,187.98
167.97	-	-	167.97	4,669.21	88,860.59	370.25	538.22	5,207.43
167.97	-	-	167.97	4,688.71	93,549.30	389.79	557.76	5,246.47
167.97	-	-	167.97	4,688.71	98,238.01	409.33	577.30	5,266.01
167.97	-	-	167.97	18,152.71	116,390.72	484.96	652.93	18,885.64
167.97	-	-	167.97	4,688.71	121,079.43	504.50	672.47	5,361.18
167.97	-	-	167.97	4,688.71	125,768.14	524.03	692.00	5,380.71
167.97	-	-	167.97	4,688.71	130,456.85	543.57	711.54	5,400.25
167.97	-	-	167.97	4,688.71	135,145.56	563.11	731.08	5,419.79
167.97	-	-	167.97	24,688.71	159,834.27	645.98	833.95	25,522.66
167.97	-	-	167.97	4,688.71	164,522.98	685.51	853.48	5,542.19
167.97	-	-	167.97	2,815.71	167,408.69	697.54	865.31	3,751.22
167.97	-	-	167.97	4,688.71	172,097.40	717.07	885.04	5,573.75
167.97	-	-	167.97	4,688.71	176,786.11	736.61	904.58	5,593.29
167.97	-	-	167.97	19,994.71	196,780.82	819.92	987.89	20,982.60
167.97	-	-	167.97	4,688.71	201,469.53	839.46	1,007.43	5,696.14
167.97	-	-	167.97	4,688.71	206,158.24	858.99	1,026.96	5,715.67
167.97	-	-	167.97	4,688.71	210,846.95	878.53	1,046.50	5,735.21
167.97	-	-	167.97	4,688.71	215,535.66	898.07	1,066.04	5,754.75
167.97	-	-	167.97	4,688.71	220,224.37	917.60	1,085.57	5,774.28
167.97	-	-	167.97	4,688.71	224,913.08	937.14	1,105.11	5,793.82
167.97	-	-	167.97	4,688.71	229,601.79	956.67	1,124.64	5,813.35
167.97	-	-	167.97	4,688.71	234,290.50	976.21	1,144.18	5,832.89
167.97	-	-	167.97	(5,323.25)	228,967.25	954.03	1,122.00	(4,201.25)
167.97	-	-	167.97	5,355.56	234,322.81	976.35	1,144.32	6,499.88
167.97	-	-	167.97	5,183.44	239,506.25	997.94	1,165.91	6,349.35
167.97	-	-	167.97	21,789.18	261,295.43	1,088.73	1,256.70	23,045.88
167.97	-	-	167.97	6,110.18	267,405.61	1,114.19	1,282.16	7,392.34
167.97	-	-	167.97	5,592.38	272,997.99	1,137.49	1,305.46	6,897.84
167.97	-	-	167.97	6,110.18	279,108.17	1,162.93	1,330.92	7,441.10
167.97	-	-	167.97	6,110.18	285,218.35	1,188.41	1,356.38	7,466.56
167.97	-	-	167.97	6,110.19	291,328.54	1,213.87	1,381.84	7,492.03
167.97	-	-	167.97	5,937.58	297,266.12	1,238.61	1,406.58	7,344.16
167.97	2,755.34	-	2,923.31	4,599.91	301,866.03	1,257.78	4,181.08	8,780.99
167.97	2,755.34	-	2,923.31	4,599.91	306,465.94	1,276.94	4,200.25	8,800.16
167.97	2,755.34	-	2,923.31	(9,935.29)	296,530.65	1,235.54	4,158.85	(5,776.44)
167.97	2,755.34	-	2,923.31	4,643.06	301,173.71	1,254.89	4,178.20	8,821.26
167.97	2,755.34	-	2,923.31	5,331.76	306,505.47	1,277.11	4,200.41	9,532.17
167.97	2,755.34	-	2,923.31	20,543.06	327,048.53	1,362.70	4,286.01	24,829.07
167.97	2,755.34	-	2,923.31	12,272.52	339,321.05	1,413.84	4,337.14	16,609.66
167.97	2,755.34	-	2,923.31	29,412.51	368,733.56	1,536.39	4,459.70	33,872.21
167.97	2,755.34	-	2,923.31	4,384.15	373,117.71	1,554.66	4,477.96	8,862.11
167.97	2,755.34	-	2,923.31	4,772.52	377,890.23	1,574.54	4,497.83	9,270.37
167.97	2,755.34	-	2,923.31	4,643.05	382,533.29	1,593.89	4,517.20	9,160.26
167.97	2,755.34	-	2,923.31	4,643.05	387,176.34	1,613.23	4,536.54	9,179.59
167.97	2,755.34	8,746.63	11,669.94	759.50	387,935.84	1,616.40	13,286.34	14,045.84
167.97	2,755.34	8,746.63	11,669.94	759.50	388,695.34	1,619.56	13,289.51	14,049.01
167.97	2,755.34	8,746.63	11,669.94	(9,415.50)	379,279.84	1,580.33	13,250.27	3,834.77
167.97	2,755.34	8,746.63	11,669.94	759.50	380,039.34	1,583.50	13,253.44	14,012.94
167.97	2,755.34	8,746.63	11,669.94	1,591.21	381,630.55	1,590.13	13,260.07	14,851.28
167.97	2,755.34	8,746.63	11,669.94	15,949.10	397,579.85	1,656.58	13,326.52	29,275.62
167.97	2,755.34	8,746.63	11,669.94	789.50	398,369.15	1,659.87	13,329.81	14,119.31
167.97	2,755.34	8,746.63	11,669.94	789.50	399,158.65	1,663.16	13,333.10	14,122.60
167.97	2,755.34	8,746.63	11,669.94	789.50	399,948.15	1,666.45	13,336.39	14,125.89
167.97	2,755.34	8,746.63	11,669.94	789.50	400,737.65	1,669.74	13,339.68	14,129.18
167.97	2,755.34	8,746.63	11,669.94	806.16	401,543.81	1,673.10	13,343.04	14,149.20
167.97	2,755.34	8,746.63	11,669.94	806.16	402,349.97	1,676.46	13,346.40	14,152.56
167.97	2,755.34	8,746.63	11,669.94	806.16	403,156.13	1,679.82	13,349.76	14,155.92
167.97	2,755.34	8,746.63	11,669.94	1,206.16	404,362.29	1,684.84	13,354.78	14,560.94
167.97	2,755.34	8,746.63	11,669.94	(9,413.24)	394,949.05	1,645.62	13,315.56	3,902.32
167.97	2,755.34	8,746.63	11,669.94	24.50	394,973.55	1,645.72	13,315.66	13,340.16
167.97	2,755.34	8,746.63	11,669.94	24.50	394,998.05	1,645.83	13,315.77	13,340.27
167.97	2,755.34	8,746.63	11,669.94	13,538.95	408,537.00	1,702.24	13,372.18	26,911.13
167.97	2,755.34	8,746.63	11,669.94	24.50	408,561.50	1,702.34	13,372.28	13,396.78
167.97	2,755.34	8,746.63	11,669.94	24.50	408,586.00	1,702.44	13,372.38	13,396.88
167.97	2,755.34	8,746.63	11,669.94	24.50	409,492.50	1,706.22	13,376.16	13,400.66
167.97	2,755.34	8,746.63	11,669.94	24.50	409,517.00	1,706.32	13,376.26	13,400.76
167.97	2,755.34	8,746.63	11,669.94	24.50	409,541.50	1,706.42	13,376.36	13,400.86
167.97	2,755.34	8,746.63	11,669.94	24.50	409,566.00	1,706.53	13,376.47	13,400.97
167.97	2,755.34	8,746.63	11,669.94	24.50	409,590.50	1,706.63	13,376.57	13,401.07
167.97	2,755.34	8,746.63	11,669.94	24.50	409,615.00	1,706.73	13,376.67	13,401.17
167.97	2,755.34	8,746.63	11,669.94	24.50	409,639.50	1,706.83	13,376.77	13,401.27
167.97	2,755.34	8,746.63	11,669.94	24.50	409,664.00	1,706.93	13,376.87	13,401.37
167.97	2,755.34	8,746.63	11,669.94	24.50	409,688.50	1,707.04	13,376.98	13,401.48
167.97	2,755.34	8,746.63	11,669.94	24.50	409,713.00	1,707.14	13,377.08	13,401.58
167.97	2,755.34	8,746.63	11,669.94	24.50	409,737.50	1,707.24	13,377.18	13,401.68
15,117.31	118,479.48	271,145.67	404,742.46	409,737.50	409,737.50	98,889.49	503,637.95	2,018,369.45

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1 observations were, that not only did it come to
2 the property boundary, but it extended beyond
3 it. Since we were -- the -- as I recall, the
4 property boundaries were identified either by
5 flagging or a stake or something like that. And
6 the feature that we were looking at extended
7 beyond that.

8 Q. Look down into the next paragraph. The sentence
9 starts, it says: Other evidence of the both
10 lateral and downward movement of the massive
11 soil and rock towards the lake was noted during
12 our field examination of lot 31 and the lots on
13 the north and south sides consisting of numerous
14 linear crevices and small pits.
15 why did you include that observation in your
16 report?

17 A. I'm not clear on your question.

18 Q. I'm just asking, you were engaged by Paragon to
19 look at lot 31. And there's two occasions in
20 your report where you've noted your observations
21 that extend beyond the lot 31. And what I'm
22 asking you, is that something that as a practice
23 that you put in your reports, you fully document
24 the observations that you make regardless of
25 property lines?

- 1 A. Try to, yeah. Because typically the geologic
2 features are -- features such as these would be
3 something that you'd want to know, do they --
4 for some reason, do they stop at the property
5 line? Well, no, they don't stop at the property
6 line, they continue on.
- 7 Q. And is that a practice that Alpha Environmental
8 incorporates --
- 9 A. That would typically be a standard practice.
- 10 Q. And do you understand whether or not that's a
11 standard practice in the industry?
- 12 A. To my knowledge it is.
- 13 Q. Okay. All right. Did you conduct all of the
14 testing and investigations that you felt was
15 necessary to draft this report in June of 2005?
16 Do you feel like you had done everything you
17 needed to do to issue a report to Paragon?
- 18 A. For the scope of work that we had proposed, yes.
- 19 Q. Did Paragon limit you in anything that you
20 wanted to do and they said, No, I don't want to
21 do that?
- 22 A. Not that I recall.
- 23 Q. Okay. All right. Did they prevent you from
24 doing any testing or investigation?
- 25 A. No.

1 Q. Is it a practice of BLE to include, if you are going
2 to make a proposal or offer an investigation about a
3 piece of property, that you disclose what other
4 investigations you may have done in the vicinity of
5 that property?

6 A. If I feel it's pertinent to what we're proposing, I
7 will.

8 Q. And you would agree that geological conditions that
9 you investigate, like a slope failure, they don't end
10 at property lines, do they?

11 A. No.

12 MS. BURTON: Object to the form of your question.

13 BY MR. DUDLEY:

14 Q. If it's a practice of BLE to include information
15 that's relevant that other observations, reports or
16 investigations you've done on the property in the
17 vicinity of where you're proposing to conduct an
18 investigation, is that, in your opinion an industry
19 standard that that kind of information is disclosed
20 in a report?

21 MS. BURTON: Object to the form of your question.

22 MS. McMILLAN: Same objection.

23 BY THE WITNESS:

24 A. I would say it often is, yes.

25 Q. Now, with regards to the first, we looked at the Bing

DEPOSITIONS AND..., INC.
864-235-3518

PLAINTIFF'S
EXHIBIT
"DD"

1 map where you noted, where you thought the general
2 vicinity of the scarp was, that you were there
3 offering doing an investigation for Lot 29, weren't
4 you?

5 A. Yes, for the landscaper.

6 Q. And you actually were marking where you thought the
7 scarp was on Lot 30, 31 and 32, in addition to lot
8 29?

9 A. Yes.

10 Q. And in this letter to Matt Vogt at Resort Custom
11 Homes, you were noting your opinion about the
12 property in addition to his lot, you were noting
13 where you thought the conditions were occurring?

14 A. Yes.

15 Q. All right. And when you're offering an opinion as to
16 a geological condition, you describe the full extent
17 of the geological condition that you observe;
18 correct?

19 A. I try to.

20 Q. You don't limit your description or your
21 investigation to property lines, do you?

22 A. No.

23 Q. And is that an industry standard, that the geological
24 condition is to be described to the full extent that
25 it is capable of being described?

1 A. Yes.

2 Q. Not just who's paying your bill?

3 A. Yes.

4 Q. You can set that aside.

5 Did you ask Mr. Nickell if there had been other
6 investigations done on that property, on the Jasmine
7 Cove cul-de-sac?

8 A. I don't recall asking him directly if I did that, but
9 I don't remember for certain.

10 Q. Was that something that you would be interested in,
11 if there had been other investigations by other
12 engineers on the same property, in the vicinity of
13 the same property?

14 A. Yes.

15 Q. And that would be something that you would want to
16 look and see, because it's an accumulation of data,
17 isn't it?

18 A. Yes.

19 Q. But you were not provided any information from Mr.
20 Nickell from any other engineering reports?

21 A. I mentioned I have some of --

22 MS. McMILLAN: Objection to the form.

23 BY THE WITNESS:

24 A. I have some of the S&ME reports, but I don't recall
25 what avenue, I don't think those came directly from

1 Mr. Nickell.

2 Q. Do you consider it your professional obligation, when
3 you are engaged to conduct a site observation, to
4 fully identify the condition you're offering your
5 opinion on or you're giving your observation of?

6 A. As best I can.

7 MR. DUDLEY: Can we take a minute?

8 (Brief recess.)

9 BY MR. DUDLEY:

10 Q. I do have one final question.

11 Looking at Exhibit 3, Mr. Mathews, this is your
12 letter to Zone 7 Nursery, March 2010.

13 This, the last page, the Bing map, I think I
14 understood your testimony: The line that you, the
15 dashed line with the question marks on either end of
16 it, that was your attempt to estimate the scarp
17 itself that you observed when you were walking on the
18 property?

19 A. Yes, based on what we saw up here --

20 Q. And when you're pointing up here?

21 A. Standing in the cul-de-sac, walking a short distance
22 off the cul-de-sac toward --

23 Q. Lot 32.

24 A. -- Lot 32, and looking, looking off down in this
25 direction --

- 1 A. I do not.
- 2 Q. Bullet point number two says, By failing to
3 recognize the extension of the failure zone to
4 adjacent lots 30 and 32.
- 5 A. Right.
- 6 Q. Do you see that?
- 7 A. Yes.
- 8 Q. What was S&ME supposed to do with respect to
9 this failure zone on Lot 30 and 32?
- 10 A. Say that there's -- to me, you would have to at
11 least acknowledge that what we see on Lot 31
12 extends into Lot 32 and to Lot 30 -- the sloughs
13 and the scars.
- 14 Q. Okay. Well, how far -- tell me where that ends.
15 Do they go to 33? Do they walk over to 34?
- 16 A. Well, being that they were retained to look at
17 Lot 31, I think it's certainly reasonable to say
18 you got to do the adjacent lots.
- 19 Q. So it doesn't extend beyond adjacent? You don't
20 have to go up the road a ways?
- 21 A. I don't know how far it would extend. But it
22 certainly would extend -- if those scars and
23 sloughs and scarps extend from 31 onto 30 and
24 32, that should at least be acknowledged and
25 say, this is extending beyond the boundaries of

1 The Cliffs, that there is a problem here and
2 that it extends at least to the two adjacent
3 lots.

4 Q. But not beyond that.

5 A. I didn't say that. I said --

6 Q. Well, I'm trying to -- are they negligent if
7 they don't look at 33 and 34 and 35 and 36?
8 where does it end?

9 A. They're negligent, because at 31, they were
10 retained to give an opinion on 31. You cannot
11 look at 31 without saying that this extends into
12 the adjacent lots, which has to affect your
13 opinion that this is a pretty big deal on 31,
14 because it goes into 30 and to 32.

15 Q. Okay. All right. The third bullet point. By
16 failing to provide timely warning to the
17 developers -- developer of these properties of
18 the existence of an active slope failure on the
19 site. And by the developer, you mean The
20 Cliffs?

21 A. I believe that The Cliffs was their client and
22 the developer at that time.

23 Q. Okay. You would agree --

24 MS. MCMILLAN:

25 Objection to the form.

1 recommended.

2 A. I believe --

3 MR. DUDLEY:

4 Object to the form of the question.

5 EXAMINATION RESUMED BY MS. BURTON:

6 Q. Right? A global stability analysis, putting in
7 inclinometers, doing more borings. Whatever the
8 recommendation would be.

9 A. I think that would have been an appropriate
10 recommendation.

11 Q. Okay. Do you have any other opinions we haven't
12 talked about?

13 A. I like this statement in here, Further, affiant
14 sayeth not.

15 Q. Is that a no, I don't have any other opinions?

16 A. Well, that's -- I think that's what that says.

17 Q. Well, I think that just says the affidavit's
18 done.

19 A. I have an opinion that I think Dr. Borden is
20 certainly an honest, forthright man. And he was
21 asked the question by Mr. Dudley -- and you'll
22 have to look at the transcript -- that if you
23 were asked to go out and look at a crack in one
24 corner of a slab and you see a crack in the
25 other corner of the slab, do you have an

1 obligation to comment on it. And his answer was
2 yes. And I thought that was a very truthful
3 opinion.

4 Q. Meaning what? What's the point?

5 A. That you can't be restricted to say, I'm only
6 going to look at one little portion. If your
7 client asks you to look at a little portion, you
8 have an obligation to -- if there are other
9 things that would affect that property or that
10 project, that you have an obligation to say so.

11 Q. So what's the point, with respect to S&ME?
12 You're obviously trying to make a point with
13 respect to my client. What is it?

14 A. That if they saw a problem on 31, they should
15 have told their client that they -- that problem
16 likely extends to 30 and to 32.

17 Q. Okay. Except they didn't find a problem on 31,
18 did they?

19 A. No. They didn't recognize it. Or if they
20 recognized it, they didn't acknowledge it.

21 Q. Any other opinions you have?

22 A. Sayeth not.

23 Q. No?

24 A. No.

25 Q. Have you asked to do any additional work?

1 paramount responsibility is to the health,
2 safety and welfare of the public.

3 MS. MCMILLAN:

4 sorry. I didn't hear that. Health. Say the
5 last part of your sentence. I couldn't hear it.

6 THE WITNESS:

7 Health, safety and welfare of the public.

8 MS. MCMILLAN:

9 of the public. Okay.

10 THE WITNESS:

11 So if we see an issue that we believe endangers
12 life, safety or property, even if we're not
13 contractually involved with an individual, we do
14 have a professional duty to bring that to
15 someone's attention. Apart from that, we have a
16 responsibility to perform for our clients in an
17 honest and ethical manner, according to the
18 contract that we signed with them, to provide
19 the services that we contract for.

20 EXAMINATION RESUMED BY MS. WRIGHT:

21 Q. Have you been consulted before, Dr. Borden,
22 concerning professional ethics in the
23 engineering field?

24 A. Not specifically regarding professional ethics.
25 I teach professional ethics, but I have not been

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Kevin McCarthy and Courtney E. McCarthy,))
Plaintiffs,)

C.A. No.: 2011-CP-23-6376

vs.)

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF ITS MOTION TO
AMEND**

Keowee Falls Investment Group, LLC, The)
Cliffs Communities, LLC d/b/a The Cliffs at)
Keowee Falls South, Cliffs Real Estate, Inc.,)
The Cliffs Golf and Country Club, Inc. and)
S&ME, Inc.,)

Defendants.)

FILED IN CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENBARGER
MAY -2 P 4:18

TO: ALL COUNSEL OF RECORD

Plaintiffs, Kevin McCarthy and Courtney McCarthy (collectively "McCarthy" or "Plaintiffs"), by their undersigned attorney, hereby submits this Memorandum in Support of their Motion to Amend the Complaint in the above entitled case.

Pursuant to Rule 15 SCRPC and the related case law, Plaintiffs are entitled to amend their pleadings. Rule 15 states that a party may amend his pleadings only by leave of Court and leave shall be freely given when justice so requires and does not prejudice any other party. In the matter at hand, no other party is prejudiced and justice requires.

I. DEFENDANTS NOT PREJUDICED

"The prejudice that the civil procedure rules envision, as would warrant denial of a motion to amend the pleadings, is lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Collins Entertainment, Inc. v. White*, 363 S.C.546, 611 S.E.2d 262 (Ct. App. 2005). Further, "[d]elay in seeking leave to amend pleadings, regardless of the length of delay, will not ordinarily be held to bar an amendment in the absence of find of prejudice."

Forrester v. Smith & Steele Builders, Inc. 295 S.C. 504, 369 S.E.2d 156 (Ct. App. 1988). In the matter at hand, the claims in which Plaintiffs are seeking to add are interrelated to Plaintiffs' current claims; accordingly, the facts and circumstances of all claims are the same and depositions would not have to be retaken. See *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004) (City was not prejudiced by dog owner's attempt to amend her §§ 1983 complaint to include state law claims for trespass and conversion, and therefore, owner was entitled to amend her complaint, even though motion to amend was made more than two years after the incident, where the facts giving rise to the §§ 1983 claim and depositions would not have to be retaken.)

II. PLAINTIFFS' NEW CLAIMS ARE NOT FUTILE

Defendant S&ME has asserted that Plaintiffs' claim for Negligent Misrepresentation for which it is seeking to amend its Complaint and bring is futile because S&ME did not make a false representation to Plaintiffs and, accordingly, Plaintiffs did not justifiably rely on any representation by S&ME.

Pursuant to *Landvest Associates v. Owens*, non-disclosure of a material fact which one is duty bound to disclose is equivalent to a false misrepresentation. *Landvest Associates v. Owens*, 276 S.C. 22, 274 S.E.2d 433 (1981) (It is true, as pointed out by respondents, that this case varies from *Jacobson* since it involves an express misrepresentation whereas *Jacobson* involved a constructive misrepresentation because of a failure to disclose. We find this distinction of no significance. The substance of the action is the respondents have been victims of a misrepresentation by the appellant. As far as the ability to pursue separate causes of action, it matters not whether the misrepresentation was constructive or express. Suppression of a material fact which one is duty bound to disclose is equivalent to a false misrepresentation.). As discussed in Plaintiffs' Reply Memorandum in Opposition to Defendant's Motion for Summary

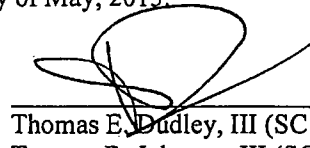
Judgment, Defendant S&ME had a duty to disclose and describe in detail the extent of the geotechnical investigation and factual results to its client", The Cliffs which extended to Plaintiffs under the particular facts and circumstances in and around the summer of 2005. See 4A Bruner & O'Connor Construction Law § 14:21 (citing Brierley, Subsurface Investigations and Geotechnical Report Preparation, in Subsurface Conditions 49 (1998)); See South Carolina Code Ann. § 40-22-20(14) (which defines "fraud" in the practice of engineering to be "to conceal, mislead or misrepresent the truth in a manner that others might take some action in reliance on or an act which provides incorrect, false or misleading information on which others might rely."); See South Carolina Code of Regulations § 49-303 (an engineer shall be completely objective and truthful in all professional reports; He shall include all relevant and pertinent information in such reports, statements or testimony); and See South Carolina Code of Regulations § 49-301 (an Engineer shall at all times recognize that his primary obligation is to protect the safety, health, property and welfare of the public and shall conduct his practice to fulfill this obligation. If the judgment of the engineer is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authority of the situation, as may be appropriate). Accordingly, since S&ME's duty to disclose extended to Plaintiffs, S&ME's failure to disclose is equivalent to a false misrepresentation. *Landvest Associates*, 276 S.C. 22, 274 S.E.2d 433.

Moreover, Plaintiffs have testified that Plaintiffs would not have purchased Lot 32 if they had known about the geological condition or about the need for major foundational work. (K. McCarthy deposition, p. 111). Accordingly, Plaintiffs relied on S&ME's false representation.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant their Motion to Amend as justice requires.

Respectfully submitted this 2nd day of May, 2013.



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Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kevin McCarthy and Courtney E.
McCarthy,)

Plaintiffs,)

vs.)

Keowee Falls Investment Group, LLC, The
Cliffs Communities, LLC d/b/a The Cliffs at
Keowee Falls South, Cliffs Real Estate, Inc.,
The Cliffs Golf and Country Club, Inc., and
S&ME, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

**DEFENDANT S&ME, INC.'S
MOTION TO STRIKE PORTIONS OF
PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO S&ME, INC.'S
MOTION FOR SUMMARY JUDGMENT**

C.A. No.: 2011-CP-23-6376

SA
#1

TO: THOMAS E. DUDLEY, III, ATTORNEYS FOR PLAINTIFFS AND ELIZABETH M. MCMILLAN, ATTORNEY FOR DEFENDANTS KEOWEE FALLS INVESTMENT GROUP, LLC AND THE CLIFFS COMMUNITIES, LLC D/B/A THE CLIFFS AT KEOWEE FALLS SOUTH, CLIFFS REAL ESTATE, INC., AND THE CLIFFS GOLF AND COUNTRY CLUB, INC.:

Defendant S&ME, Inc. ("S&ME") will move the Court, at such date and time as the Court shall direct, pursuant to Rules 7(b) and 56 of the South Carolina Rules of Civil Procedure, for an order striking portions of Plaintiffs' Memorandum in Opposition to Defendant S&ME, Inc.'s Motion for Summary Judgment and certain exhibits attached to Plaintiffs' Memorandum in Opposition to Defendant S&ME, Inc.'s Motion for Summary Judgment. This motion is based upon the following grounds:

1. On August 8, 2011, Jack R. Harrell, Jr. and Tina W. Harrell filed a civil action in the Greenville County Court of Common Pleas against The Cliffs Communities, LLC, Keowee Falls Investment Group, LLC, and S&ME, Inc, C.A. No. 2011-CP-23-5300 (the "Harrell" case).

2. On September 27, 2011, Plaintiffs filed the above-referenced civil action in the Greenville County Court of Common Pleas.
3. On October 24, 2012, Plaintiffs filed a Motion to Consolidate this case with the Harrell case.
4. This Court held a hearing on Plaintiffs' Motion to Consolidate Cases on December 13, 2013. At the hearing, the Court denied the motion. However, after that date, the parties agreed to consolidate the cases for purposes of upcoming depositions to be taken thereafter.
5. Plaintiffs have improperly filed excerpts from depositions taken in the Harrell case prior to December 13, 2012, in opposition to S&ME's Motion for Summary Judgment. These materials include:
 - a. Exhibit D, Cliffs 000728, June 3, 2003 emails between Scott Beville and Brandon Smith;
 - b. Exhibit F, June 22, 2005 Proposal from S&ME to The Cliffs Communities;
 - c. Exhibit G, Excerpts from deposition of Don Nickell taken on November 5, 2012;
 - d. Exhibit H, June 22, 2005 Agreement for Services between S&ME, Inc. and The Cliffs Communities, Inc.;
 - e. Exhibit Z, Excerpts from deposition of Walker Birdsong taken on November 26, 2012; and
 - f. Exhibit AA, Excerpts from deposition of Michael Revis taken on November 28, 2012.

Sub
#2

6. Plaintiffs have also improperly filed materials in connection with their opposition to S&ME's Motion for Summary Judgment that are not properly authenticated by affidavit, deposition testimony, or otherwise:

- a. Exhibit A, Satellite images
- b. Exhibit D, Cliffs 000732, 000726, 000728, 000723, 000716, 000717, June 2005 emails between Cliffs employees;
- c. Exhibit I, July 6, 2005 letter from Sandra Hyder to Plaintiffs;
- d. Exhibit K, Keowee Sales Contract Info folder;
- e. Exhibit M, August 8, 2005 letter from Sandra Hyder to Plaintiffs;
- f. Exhibit N, October 10, 2005 letter from Vickie Little to Kevin McCarthy; and
- g. Exhibit O, June 12 – June 16, 2008 emails between Cliffs employees.

Sub #3

7. These materials are not and cannot be part of the record in this case. Defendant S&ME is entitled to an order striking the materials and information identified above.
8. Defendant S&ME is also entitled to an order striking those portions of Plaintiffs' Memorandum in Opposition to S&ME, Inc.'s Motion for Summary Judgment that rely on the above-referenced exhibits, which are not properly part of the record. Specifically, S&ME is entitled to an order striking the following text from Plaintiffs' Memorandum in Opposition to S&ME's Motion for Summary Judgment:

Page 3:

The attached photos are Google earth photos of the Jasmine Cove point with the approximate location of the lots' property lines, as **Exhibit "A."**

Pages 4-5:

Cliffs Agrees To Trade Lot 31

- 06/03/05 **Cliffs 732** Tom Salisbury to Scott Beville, and Brad Childs. Rockwell (actual owner of Lot 31) hired engineer upon recommendation of surveyor Builder Larry Hutchinson mentioned to Jim Anthony who said "would buy it back or allow them to trade:" ...
- 06/03/05 **Cliffs 726** - (2:49pm) email from Scott Beville to Tom Salisbury, "I talked with Jim and we will trade Rockwell into another lot."

Cliffs Starts Looking At Jasmine Cove Lots

- 06/03/05 **Cliffs 728** - (2:57pm) email from Tom Salisbury to Scott Beville, "I think it might be a good idea to have someone check out the lots JC-31 and 32 and the Emerald Bay 35-39. They are falling into the lake pretty bad lately and represent a huge investment for Jim."
- 06/08/05 **Cliffs 723** Brandon Smith to Tom Salisbury, Scott Beville, "I'm going to have a crew on Lots 30, 32, 34, and 35."
- 05/14/05 **Cliffs 716** - 717 emails between Cheryl Miller, Cliffs and Dick Rockwell

-Asking for permission for Cliffs to have core samples of Lot 31.

Rockwell agrees but asks if engineering firms have differing opinions he wants option to trade.

(A copy of each of the above referenced Cliffs bates numbered documents are attached hereto as **Exhibit "D"**)

Pages 5-6

S&ME Proposes To Evaluate "3 Lakefront Lots"

- 6/22/05 S&ME proposal to The Cliffs Communities, Don Nickell, Jr. P.E. (a copy of the S&ME proposal is attached hereto as **Exhibit "F"**)

Nickell gives S&ME the AES report and asks them to evaluate Lot 31 (D. Nickell Deposition, pp. 33, 46) (a copy

of all excerpts referenced herein of D. Nickell's Deposition are attached hereto as **Exhibit "G"**)

-references evaluation of "3 lakefront properties"
-include:

- (1) exploration of subsurface condition
- (2) analysis
- (3) opinions regarding the cause of unusual features on properties
- (4) geotechnical engineers recommendation

-Based on initial walk of lots, S&ME notes "...it appears that about 3 sloughs have occurred..."

"These surface features are very unique"

-report will present finding...regarding the cause of subsurface features and grading and foundation recommendations

-Project - "three lots" - Cliffs at Keowee Falls South (a copy of the S&ME Agreement for Services is attached hereto as **Exhibit "H"**)

07/06/05

Cliffs letter to Kevin & Courtney congratulating on contract and enclosing fully executed contract. The letterhead says "The Cliffs" at bottom www.cliffscommunities.com, no reference to KFIG (a copy of said letter is attached hereto as **Exhibit "I"**)

Page 13

Walker Birdsong (S&ME): Agrees slope failure does not stop at property lines (Ex. Z, p. 42).

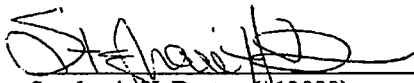
Pages 14-15

S&ME had worked for the Cliffs for fifteen plus years. (Ex. Z, p. 52; Ex. G, p. 32). Don Nickell of the Cliffs asked S&ME to look at the Alpha Environmental Sciences, Inc. ("AES") report and evaluate the lots (Ex. Z, p. 38; Ex. G, pp. 34, 53). The purpose of the report on Lot 31 in July 2005 was "to determine if the lot would be suitable to support a residential structure". (Ex. AA, p. 16, l. 4-6). Walker Birdsong of S&ME had a copy and reviewed the AES report when S&ME did their work on Lot 31 in 2005. (Ex. Z, p. 37; Ex. G, p. 46). Walker Birdsong was told by the Cliffs that a geological firm had looked at the lot (31) and was concerned and that owner was given another lot. (Ex. Z, p. 26).

Walker Birdsong visited the lots (Lots 30, 31 and 32) to generate a proposal. (Ex. Z, p. 43). Don Nickell assumed the S&ME proposal intended to look at Lots 30, 31 and 32 because they were the ones mentioned in the AES report. (Ex. G, pp. 46, 171, 173, 174). Walker Birdsong testified that he did not base the proposal on AES report. (Ex. Z, p. 42). Accordingly, it is clear that Birdsong's own walk of the property led to his proposal to evaluate the 3 lots. He at least initially recognized the condition spread across all 3 lots and that to do a thorough examination would require testing on all 3 lots. Yet in July, S&ME submitted a report to The Cliffs Communities only on Lot 31 and made zero reference to the conditions extending onto Lots 30 and 32; a clear violation of the statute and industry practice. Don Nickell could not explain why or how it went from 3 lots (Lots 30, 31, and 32) to one 1 (Lot 31). (Ex. G, pp. 173-174). After unsuccessfully trying to sell another person Lot 31 after disclosing the S&ME report, Jim Anthony of the Cliffs takes Lot 31 off the market because it had issues. (Ex. G, p. 57).

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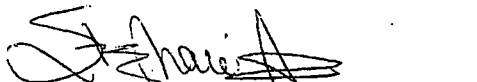
This motion is based upon the pleadings and motions filed in this action and upon applicable common and statutory law.


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Attorneys for Defendant S&ME, Inc.

May 3, 2013
Spartanburg, South Carolina

Defendant S&ME, Inc.'s counsel states that she has not consulted with Plaintiffs' counsel to resolve the matter contained in this motion because consultation would serve no useful purpose under the circumstances.


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May 3, 2012
Spartanburg, South Carolina

SAB
#7

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Jack R. Harrell, Jr. and Tina W. Harrell,)

Plaintiffs,)

vs.)

Keowee Falls Investment Group, LLC, The)
Cliffs Communities, LLC and S&ME, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-23-5300

**SUPPLEMENTAL BRIEF OF
DEFENDANT S&ME, INC.**

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Kevin McCarthy and Courtney E.)
McCarthy,)

Plaintiffs,)

vs.)

Keowee Falls Investment Group, LLC, The)
Cliffs Communities, LLC d/b/a The Cliffs at)
Keowee Falls South, Cliffs Real Estate, Inc.,)
The Cliffs Golf and Country Club, Inc., and)
S&ME, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-23-6376

INTRODUCTION

On May 3, 2013, this Court heard arguments on Defendant S&ME, Inc. ("S&ME")'s Motions for Summary Judgment in the above-captioned cases. At the conclusion of the hearing, the Court allowed the parties to submit supplemental memoranda addressing the applicability of the economic loss rule as articulated in Kennedy v. Columbia Lumber & Mfg. Co., Inc., 299 S.C.

335, 384 S.E.2d 730 (1989) and subsequent cases. Accordingly, Defendant S&ME submits this supplemental memorandum.

DISCUSSION

Economic Loss Rule

The economic loss rule is rooted in products liability law. In as early as 1965, the courts recognized that a plaintiff's failure to get the benefit of his bargain does not give rise to a tort claim. See Seely v. White Motor Co., 403 P.2d 145 (Cal. 1965). Accordingly, the economic loss rule bars a plaintiff from recovering in tort where he merely fails to receive the benefit of his bargain, or where his expectancy interests are frustrated. See Sapp v. Ford Motor Co., 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009). In Kennedy, the South Carolina Supreme Court stated this general rule as follows:

[T]here is no tort liability for a product defect if the damage suffered by the plaintiff is only to the product itself. In other words, tort liability only lies where the damage done is to other property or is personal injury.

Kennedy at 341, 384 S.E.2d at 734. The rule demarcates the line between recovery in tort and recovery in contract:

This rule exists to assist in determining whether contract or tort theories are applicable to a given case. Where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses. Conversely, where a purchaser buys a product which is defective and physically harms him, his remedy is in either tort or contract. This is so, the analysis provides, because his losses are more than merely 'economic.'

Id. at 345, 384 S.E.2d at 736.

South Carolina's courts have adopted two narrow exceptions to this rule. First, a plaintiff may pursue tort remedies for purely economic losses against a residential home builder who breaches a legal duty in constructing a home. Kennedy, at 345-46, 384 S.E.2d at 737. This

exception is strictly limited to the narrow context of residential home building. Sapp v. Ford Motor Co., 386 S.C. 143, 150, 687 S.E.2d 47, 51 (2009) (finding that the framework adopted by Kennedy “is a narrow one,” and is “applicable only in the residential real estate construction context”).

Second, in certain circumstances, where a non-contracting third party shares a “special relationship” with the alleged tortfeasor which gives rise to a distinct extra-contractual legal duty, he may recover in tort for the breach of such duty. Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 463 S.E.2d 85 (1995). Whether such a “special relationship” giving rise to an actionable tort claim exists depends upon “the facts and circumstances of each case.” Tommy L. Griffin, at 55-56, 463 S.E.2d at 89. In design and construction cases, South Carolina’s courts have found such a “special relationship” where there is either a close working relationship between the parties, or where the third party foreseeably relies upon the services of the professional in taking some action. See Tommy L. Griffin, at 55-56, 463 S.E.2d at 89; Cullum Mechanical Constr., Inc. v. South Carolina Baptist Hosp., 344 S.C. 426, 544 S.E.2d 838 (2001); South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986).

Neither exception is applicable here. S&ME is not a residential home builder and did not construct a defective home. Moreover, S&ME did not share a “special relationship” with Plaintiffs. No Plaintiff entered into a contract with S&ME but instead Plaintiffs seek to pin liability upon contracts to which they were not parties and which expressly disclaim any benefit to third parties. Additionally, Plaintiffs do not claim any personal injury or property damage and merely seek to recover the purchase price of their properties and with respect to the Harrells, the

entire cost of building their home. Accordingly, Plaintiffs' claims against Defendant S&ME are barred by the economic loss rule.

Residential Homebuilder Exception

The residential homebuilder exception was first articulated in Kennedy, where the South Carolina Supreme Court held that "the modern new home buyer" requires heightened protection and that the traditional framework of the economic loss rule does not apply in actions against residential home builders. Kennedy, at 345-46, 384 S.E.2d at 737.

In so ruling, the court considered the evolution of new home purchasing over the last two centuries and concluded that the law "has necessarily evolved to keep pace with the changing mechanics of an ordinary new home purchase." Id. at 342-44, 384 S.E.2d at 735-36. "In the early 1800's," the doctrine of caveat emptor – buyer beware – prevailed because the typical purchaser "bought an empty lot" and hired an architect and contractor to design and build a house. Id. at 342, 384 S.E.2d at 735. In that situation, the court concluded that caveat emptor was appropriate because the buyer could supervise construction and, should problems in the design or construction arise, recover directly from the architect or contractor. Id.

By the mid-twentieth century, the practice of purchasing pre-built new homes had become common and the law evolved to reflect the new realities of this practice. Id. at 342-43, 384 S.E.2d at 735. The court emphasized that a new home buyer typically does not supervise construction and is "normally in an unequal bargaining position as against the seller." Id. at 343, 384 S.E.2d at 735-36. Additionally, the court concluded that caveat emptor is not appropriate in actions against home builders because "it would be intolerable to allow builders to place defective and inferior construction into the stream of commerce." Id. at 344, 384 S.E.2d at 736.

Accordingly, “[t]he practical difficulties facing today’s new home buyer mandate that we allow a buyer to ordinarily proceed against both the builder and seller, or either of them.” Id.

Because of this change in modern home purchasing, the court modified the economic loss rule but only in the context of residential home building. Id. at 345-46, 384 S.E.2d at 737. The court posed the following hypothetical to illustrate the inequitable results produced by the traditional rule in the home building context:

Builder “A” and Builder “B” can be equally blameworthy, and build equally shoddy housing, but because Builder “A”’s negligence happened to be discovered early enough, no one was harmed. It hardly seems fair that Builder “A” should profit from a diligent buyer’s discovery, or because he was fortunate.

Id. at 345, 384 S.E.2d at 737.

Accordingly, the court found that the relevant inquiry in the residential home building context should “focus[] on activity, not consequence.” Id. at 345-46, 384 S.E.2d at 737. To shift the focus toward activity, the court held that the source of the duties the builder owes to the home buyer distinguishes between contract and tort recovery: “[i]f a builder performs construction in such a way that he violates a contractual duty only, then his liability is only contractual. If he acts in a way as to violate a legal duty, however, his liability is both in contract and in tort.” Id. No matter the type of resulting damage, the court held that a residential home builder violates a “legal duty” for which he can be held liable in tort when he: (1) violates a building code, or (2) “constructs housing that he knows or should know will pose serious risk of physical harm.”¹ Id. at 346, 384 S.E.2d at 737. However, the court emphasized that “where

¹ Kennedy also recognized a third basis for liability – violation of industry standards. However, that portion of the decision was overruled in Colleton Academy v. Hoover Universal, 379 S.C. 181, 190, 666 S.E.2d 247, 253 (2008), overruled on other grounds by Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47 (2009) (“Industry standards are probative in *defining* the standard or duty of care; however, industry standards do not *determine* if the prerequisite duty of care is owed.”) (emphasis in original).

duties are created solely by contract,” the traditional economic loss rule applies. Id. at 347, 384 S.E.2d at 737.

The South Carolina Supreme Court revisited the economic loss doctrine but declined to address its applicability outside the residential home builder context in Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990), which involved a products liability action against a manufacturer of asbestos-containing ceiling materials. There, the court noted that Kennedy had “partially rejected the [economic loss] rule in the residential home building context.” Id. at 393, 396 S.E.2d at 371. The court noted that it had “not yet been presented with the question of whether the rule should be so rejected in all contexts, including the commercial arena.” Id. The court declined to address the issue, however, by finding that there was damage in that case to “other property,” thus taking it outside of the economic loss rule. Id.

The Supreme Court addressed Kennedy’s analysis of the economic loss rule in Beachwalk Villas Condo. Ass’n, Inc. v. Martin, 305 S.C. 144, 406 S.E.2d 372 (1992). There, a condominium association asserted claims for negligence and breach of implied warranty against an architect who had been hired by the builder to provide land planning and architectural design. Id. at 145, 406 S.E.2d at 373. The trial court granted summary judgment in favor of the architect. Id.

On appeal, the court reversed and extended Kennedy’s holding to architects as “a logical expansion of our law to provide protection for homebuyers.” Id. at 146, 406 S.E.2d at 374. In so ruling, the court echoed the Kennedy court’s concern for the “practical difficulties facing today’s new home buyer.” Id. at 146-47, 406 S.E.2d at 374 (quoting Kennedy at 344, 384 S.E.2d at 736). Accordingly, the Court held that “architects may be held liable to homebuyers for

negligence in connection with home construction projects and breach of implied warranty where no contractual privity exists between the architect and the homebuyer.” Id. at 147, 406 S.E.2d at 374 (emphasis added).

The court subsequently applied the Kennedy framework in Colleton Academy v. Hoover Universal, 379 S.C. 181, 666 S.E.2d 247 (2008), *overruled in part by* Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47 (2009). In that case, the court considered “whether the legal duties found in Kennedy are applicable outside of the residential home building area generally.” Id. at 189, 666 S.E.2d at 251. The court acknowledged that “[t]he same policy considerations noted in Kennedy are arguably not present in the commercial construction arena.” Id. at 190, 666 S.E.2d at 252. However, the court found that Kennedy’s focus on determining whether the actor violated a non-contractual duty to have “universal” application. Id.

One year later, the South Carolina Supreme Court reversed its holding in Colleton “to the extent that it expands the narrow exception to the economic loss rule beyond the residential builder context.” Sapp v. Ford Motor Co., 386 S.C. 143, 149, 687 S.E.2d 47, 50 (2009). In that case, the court reiterated the unique difficulties faced by the modern home buyer cited by Kennedy that warrant rejection of the economic loss rule in that context:

A home is typically an individual’s single largest investment and is a completely different type of manufactured good than any other type of product that a consumer will buy. Moreover, courts have recognized that the transaction between a builder and a buyer for the sale of a home largely involves inherently unequal bargaining power. **For these reasons, we created this narrow exception to the economic loss rule to apply solely in the residential home context.**

Id. at 148, 687 S.E.2d at 49 (emphasis added).

Moreover, the court noted, “[a]t the time of our decision in Kennedy, we had no intention of the exception extending beyond residential real estate construction and into commercial real

estate construction.” Id. at 150, 687 S.E.2d at 51. Accordingly, the Court overruled Colleton and held that the framework adopted by Kennedy “is a narrow one,” and is “applicable only in the residential real estate construction context.” Id.

Cases subsequent to Sapp have reiterated its holding that the Kennedy analysis is limited to the residential home building context. In the recent case of Gladden v. Boykin, No. 27236 (S.C. Sup. Ct. Mar. 27, 2013), the South Carolina Supreme Court rejected an opportunity to “expand our judicially crafted public policy affording heightened protection to home purchasers.” In that case, the plaintiff contracted with a home inspection service to provide an inspection prior to her purchase of the home. Id. After the plaintiff purchased the home and discovered defective conditions, she brought an action against the inspection service for failing to conduct the inspection in a workmanlike manner and to report defective conditions in the home. Id.

In upholding a limitation of liability clause in the contract between the plaintiff and the inspection service, the Court declined to expand protections afforded to new home buyers:

It is one thing to impose greater demands on the builder of a new home, who is in a position to know of the home’s defects, and another to impose a similar standard on an inspector who makes only a brief survey of the home with the buyer’s full knowledge of the limited service the inspector is offering.

Id. (citing Sapp, 386 S.C. at 148, 687 S.E.2d at 49). See also McGee v. Thornton, No. 2012-208046 (S.C. Ct. App. Apr. 17, 2013) (unpublished) (citing Sapp and finding that economic loss rule barred negligence claim brought by contractor against subcontractor because contractor was not a home buyer and because the only damages alleged were for the cost of repairs to the home).

This exception is clearly inapplicable to these cases. S&ME is not a residential home builder and it did not build a house and place it into the stream of commerce. Instead, S&ME is a geotechnical engineering firm which performed professional engineering services.

Importantly here, the standard of care is included in S&ME's contract. Both S&ME's 2005 contract with The Cliffs Communities, Inc. and its 2009 contract with Resort Custom Homes contain the following provision defining the standard of care:

STANDARD OF CARE AND WARRANTY DISCLAIMER: Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. [...] **THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND NO WARRANTY OR GUARANTEE, EITHER EXPRESS OR IMPLIED IS MADE OR INTENDED BY THIS AGREEMENT or by any report, opinion, or other Instrument of Service provided pursuant to this Agreement.**

(J. Harrell Dep. Exh. 30, §4); (McCarthy Memo. Opp. Exh. H, §4). Breach of that standard is therefore the basis for a claim for breach of contract but not for a claim sounding in tort.

Additionally, none of the policy considerations cited by Kennedy are implicated here. Unlike a home buyer who must rely upon the builder to construct adequate housing, here, Plaintiffs admit they did not even see any S&ME reports prior to purchase. (J. Harrell Dep. p. 157-160); (K. McCarthy Dep. p. 89). See State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986) (finding that a consultant who negligently prepares a report only owes a duty to non-contracting parties who actually rely on the report).

The Special Relationship Exception

The second exception to the economic loss rule that South Carolina's courts have recognized is where the injured party and the defendant share a "special relationship" which is found rise to a legal duty separate and distinct from any contractual duties. Review of the cases

reveals that the courts have found a special relationship where there is a close working relationship between construction project participants or where a non-contracting third party actually relies on a report in taking some action.

The “special relationship” exception was first articulated in Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 463 S.E.2d 85 (1995). In that case, a subcontractor brought an action against an engineering firm that served as the design engineer and supervised the project. Id. at 51-52, 463 S.E.2d at 86-87. The subcontractor alleged that the engineer wrongfully closed the job for a month, made extra-contractual demands, wrote a disparaging letter to the bonding company, and incorrectly interpreted the terms of the contractor’s contract with Charleston County. Id. After the project was allegedly delayed by engineer’s redesign, the subcontractor asserted claims for breach of implied warranty and tortious interference with contract. Id. at 52, 463 S.E.2d at 87. The trial court granted summary judgment in favor of the engineering firm.

On appeal, the court reversed, holding that the economic loss rule does not apply to “actions against design professionals when there is a ‘special relationship’ between the design professional and the contractor.” Id. at 53, 463 S.E.2d at 87. In so ruling, the court reaffirmed the Kennedy distinction between contractual and legal duties. “A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie. A breach of a duty arising independently of any contract duties between the parties, however, may support a tort action.” Id. at 54-55, 463 S.E.2d at 88. A “special relationship” between a tortfeasor and an injured party arising separate and distinct from any contractual relationship may give rise to such legal duties the violation of which warrant recovery in tort. Id. at 55, 463 S.E.2d at 88. The Court stated, however, that whether this

“special relationship” exists will “depend on the facts and circumstances of each case.” Id. at 55-56, 463 S.E.2d at 89.

In that case, the court found that the subcontractor could recover in tort for economic loss because the engineer had a “special relationship” with the subcontractor and thus owed a duty that arose independently to not negligently design or supervise the project. Id. at 56, 463 S.E.2d at 89. In determining that a “special relationship” existed in that case, the court emphasized the degree of control and supervision the engineer exerted over the construction project:

Engineer designed the project specifically for the County of Charleston. Engineer supervised the construction. Engineer had the right, among other rights, to inspect the construction and to halt construction. Under these facts, Engineer owed a duty to the contractor not to negligently design or negligently supervise the project.

Id. at 56, 463 S.E.2d at 89. This degree of supervision and control over the project created a close working relationship between the engineer and the subcontractor, both project participants, giving rise to a tort duty independent of the contract.

Similarly, the court addressed whether there was a “special relationship” between an architect and a subcontractor in Cullum Mechanical Constr., Inc. v. South Carolina Baptist Hosp., 344 S.C. 426, 432, 544 S.E.2d 838, 842 (2001). In that case, a project architect allegedly approved payment applications submitted by the general contractor even though it knew that the general contractor was not paying its subcontractors. Id. at 430-31, 544 S.E.2d at 840-41. The architect’s responsibilities under its contract with the owner included reviewing the general contractor’s payment applications and certifying the amounts due. Id. at 429-30, 544 S.E.2d at 840. Under the contract, the architect also had the ability to withhold the certification of payments if the general contractor failed to properly pay subcontractors. Id.

The subcontractor alleged that the architect breached its duty to the subcontractor when it failed to ensure that proper payment was made on the project. Id. The trial court found that no special relationship existed and granted summary judgment in favor of the architect. Id. at 432, 544 S.E.2d at 841. Reversing on appeal, the Supreme Court found that a factual issue existed whether the contract documents created a "special relationship."

Generally, an architect does not have a duty to assure payment to subcontractors; however, special conditions in these contract documents may have given rise to a special relationship with subcontractors, and therefore a duty of care. We find it is a factual issue whether these circumstances give rise to a special relationship between Architect and Cullum, which would give rise to a duty on the part of Architect.

Id. at 432, 544 S.E.2d at 842. Accordingly, because the architect and the subcontractor had a close working relationship as reflected in the contract between the architect and the owner, the court found that a special relationship might exist.

In a case pre-dating Tommy L. Griffin, the court similarly found that a relationship existed giving rise to a tort duty between property owners and the architect they contracted with to provide design services. Gilliland v. Elmwood Properties, 301 S.C. 295, 391 S.E.2d 577 (1990). In that case, Elmwood Properties contracted with Gilliland, an architect, to provide design services on a construction project. Id. at 298, 391 S.E.2d at 578. When Gilliland brought suit against Elmwood for breach of contract after he was denied payment, Elmwood counterclaimed for breach of contract and negligent misrepresentation. Id. In upholding Elmwood's claim for negligent misrepresentation, despite privity between the parties, the court found that a relationship existed between the parties sufficient to create a tort duty:

Elmwood's counterclaim contained allegations that ... Gilliland was negligent in making certain representations which induced Elmwood to contract, and that Gilliland negligently designed the project, negligently estimated construction costs, and negligently failed to obtain certain necessary governmental approvals. We disagree with the Court of Appeals' holding that Elmwood has

failed to plead and/or demonstrate facts showing a tort duty existing independent of the contract.

Id. at 300, 391 S.E.2d at 580. Again, as in Tommy L. Griffin and in Cullum, the close working relationship between the parties created a "special relationship" giving rise to a legal duty independent of the contract.

Where such a close working association is lacking, courts do not find a special relationship between parties giving rise to tort duties. McCullough v. Goodrich & Pennington Mortgage Fund, Inc., 373 S.C. 43, 644 S.E.2d 43 (2007). In McCullough, the court addressed whether a mortgage servicer, Advanta, owed any duty to a lender who held a security interest in the borrower's contractual right to receive payments from Advanta. Id. at 46-47, 644 S.E.2d at 45-46. Rejecting the argument that the lender and the mortgage servicer shared a "special relationship," the court refused to "analogize[] a secured creditor's interest in collateral to the special circumstances in which this Court has recognized a legal duty to a third party." Id. at 52, 644 S.E.2d at 48 (citing Tommy L. Griffin). To rule otherwise, the court stated, would represent a "considerable extension of this Court's jurisprudence in recognizing a non-contractual basis for a duty in tort to a third party." Id.

The court emphasized that the lender had "identified no basis for [] a professional duty running from a third party to a secured creditor." Id. The court refused to create one, finding that the unique policy considerations that warranted expanded protection in Kennedy were not present in the context of secured transactions. Id. at 53, 644 S.E.2d at 49. Accordingly, the ruling in McCullough demonstrates that the mere fact that performance of a contract may have some effect on third parties is insufficient, absent some close working relationship, to create independent tort duties.

In addition to circumstances in which the parties share a close working relationship, courts have also found that tort duties are created where a third party relies upon a report prepared by a professional in taking some action. South Carolina State Ports Authority v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986). In that case, which predates Tommy L. Griffin, the Georgia Ports Authority contracted with Booz-Allen, a consulting firm, to prepare a report comparing the merits of the Savannah, Georgia port with the Charleston, South Carolina port in terms of commercial traffic. Booz-Allen, at 375, 346 S.E.2d at 325. After the completed report compared the Charleston port unfavorably with the Savannah port, the Charleston Ports Authority filed an action against Booz-Allen alleging negligence in preparing the report.

The Ports Authority argued that Booz-Allen owed it a duty of care because it was foreseeable that the report would have a direct economic impact on them. The court rejected that argument, holding that "foreseeability of injury, in the absence of a duty to prevent that injury, is an insufficient basis on which to rest liability." Id. at 376, 346 S.E.2d at 325. Rather, the court held that the consultant in that case owed a duty to "non-contracting parties who have reasonably relied on their reports in taking some action." Id.

In the Harrell matter, S&ME had no obligation to conduct any geotechnical investigation of lot 31 absent its contracts with The Cliffs Communities, Inc. and Resort Custom Homes. S&ME had no obligation – contractual or otherwise – to conduct any geological investigation of lot 32. Unlike the engineer in Tommy L. Griffin and the architects in Cullum and Gilliland, S&ME did not have a close working relationship with any of the Plaintiffs. Similarly, S&ME did not assume any duty to any of the Plaintiffs in its contracts but instead expressly disclaimed it:

REPORTS: In connection with the performance of the Services, Consultant shall deliver to Client one or more reports or other written documents reflecting Services provided and the results of such Services. All reports and written documents delivered to Client are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. **Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and Client's agents and employees for the Project and are not to be used or relied upon by third parties or in connection with other projects. [...].**

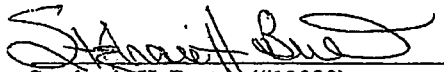
(J. Harrell Dep. Exh. 30, § 7); (McCarthy Memo. Opp. Exh. H, § 7). Accordingly, S&ME did not have a "special relationship" with any of the Plaintiffs sufficient to give rise to a tort action.

Additionally, Plaintiffs do not and cannot assert a claim for personal injury or property damage. In the McCarthy case, Plaintiffs seek to recover the purchase price of lot 32 and their golf course membership and dues. They do not seek damages for either personal injury or damage to other property.

Similarly, although they bought their lot before S&ME prepared its 2009 report, The Harrell Plaintiffs also seek recovery of the entire price paid for lot 31. In addition, they seek recovery of the entire price paid to Resort Custom Homes to build their house. Accordingly, they do not seek damages for personal injury nor do they seek damages to other property. The claims of both sets of Plaintiffs are barred by the economic loss rule.

CONCLUSION

Neither of the two limited exceptions to the economic loss rule recognized by South Carolina's courts applies to these cases. S&ME is not a residential home builder nor did it have a special relationship with the McCarthys or the Harrells. Neither set of Plaintiffs ever read S&ME's geotechnical reports and relied upon them in taking any action. Accordingly, Plaintiffs' claims against Defendant S&ME in both cases are barred by the economic loss rule.



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- Attorneys for Defendant S&ME, Inc.

May 24 2013
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF GRENVILLE)
Kevin McCarthy and Courtney R. McCarthy,)
Plaintiffs,)
vs.)
The Cliffs Communities, LLC d/b/a The Cliffs at Keowee Falls South; Keowee Falls Investment Group; LLC; Cliffs Real Estate, Inc.; The Cliffs Golf and Country Club, Inc.; and S&ME, Inc.;)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2011-CP-23-6376

**PLAINTIFFS' SUPPLEMENTAL
MEMORANDUM CONCERNING THE
"ECONOMIC LOSS RULE"**

FILED-CLERK OF COURT
GRENVILLE CO. S.C.
PAUL B. WILKINSON
JUN 13 A 8 17

I. INTRODUCTION

Plaintiffs, Kevin McCarthy and Courtney R. McCarthy ("McCarthys" or "Plaintiffs"), respectfully submit this Supplemental Memorandum in response to the Supplemental Memorandum of Defendant S&ME, Inc. ("S&ME"). As set forth below, the "Economic Loss Rule" does not bar Plaintiffs' claims for professional negligence against S&ME for its failure to properly investigate and identify the active slope failure on Lot 32, Cliffs at Keowee Falls South ("Lot 32").¹

In its Supplemental Memorandum, S&ME asserts that the products liability-doctrine known as the "Economic Loss Rule" bars it from liability for professional negligence to Plaintiffs for their damages caused by its failure to determine that Lots 30, 31 and 32 were subject to an active slope failure which rendered Lot 32 unsuitable for construction of a residence. According to S&ME, none of the exceptions to the "Economic Loss Rule"

¹ With appreciation, Plaintiffs acknowledge counsel for the Harrells allowing them to use substantial portions of their supplemental memorandum.

promulgated in *Kennedy v. Columbia Lumber* and in related and subsequent cases apply in this residential case.

This is not a products liability case, but a case involving professional negligence brought pursuant to S.C Code Ann. § 15-26-100. For this and other reasons, the “Economic Loss Rule” does not apply. The “exceptions” to the rule in cases related to residential real estate recognized by the Supreme Court in *Kennedy v. Columbia Lumber, supra*, apply with equal force to this case.

II. FACTS ESTABLISHING S&ME’S PROFESSIONAL NEGLIGENCE

First and foremost, the McCarthy lot has suffered **physical damage** because the lot is moving as a result of an active slope failure. The property is simply unfit for residential construction and arguably worthless. (Plaintiffs’ Memorandum, Exhibit C ²).

S&ME knew of the Alpha Environmental Sciences, Inc. (“AES”) report implicating lot 32. (Plaintiffs’ Memorandum, Exhibit G). S&ME recognized the condition extending onto lot 32 in its proposal and contract with the Cliffs to investigate lot 32. (Plaintiffs’ Memorandum, Exhibit H). The failure to ever mention the AES report or the conditions extending onto lot 32 by S&ME evidences only one of two possible conclusions: that S&ME’s performance of engineering services was, at best grossly negligent or at worst conspiratorial and fraudulent.

S&ME simply has no answer for the following evidence. First, AES was engaged by the builder for the original purchasers of Lot 31. (Plaintiffs’ Memorandum, Exhibit C). AES concluded in 2005, “we strongly recommend that the building lot not be utilized for residential construction. A strong potential exists that further movement may occur along the original slope failure plane.” (Plaintiffs’ Memorandum, Exhibit C, Id.) AES’s engineer, Roger Moore did not

² Exhibit references are to the exhibits included in Plaintiffs’ Memorandum in Opposition to Defendants’ Motions for Summary Judgment.

back away from this opinion some seven years later when he was deposed. Most importantly, inclinometer readings taken by the other independent engineer, Bill Matthews of Bunnell Lammons Engineering ("BLE") beginning in 2010 through January of this year support AES's conclusion. (Plaintiffs' Memorandum, Exhibits Q, R, S, T and U). It is undisputed thru AES's report resulted in the rescission of the original purchase of Lot 31 in 2005. (Plaintiffs' Memorandum, Exhibit D).

S&ME working for Defendant KFIG was given the AES report and instructed to make its own determination. (Plaintiffs Exhibit G). Of course, Cliffs and KFIG had no interest in any engineering report which would reach the same conclusion as AES and leave it stuck with one and possibly more unmarketable prime lakefront lots. But Cliffs and KFIG are not in the business of taking losses caused by taking lakefront property out of its sale inventory, like the property it had just contracted to sell to the McCarthys for \$1.1 million dollars, and having just lost a potential sale of a lot in having to trade out lot 31. The last thing Cliffs and KFIG wanted was an objective opinion. Based entirely on S&ME's 2005 investigation and finding that AES was wrong and the lot was suitable for a residence, S&ME eliminated any reference to lots 30 and 32 so as to not lose the sale to the McCarthys. (Plaintiffs Exhibit J).

S&ME's 2005 report is more noteworthy for what it fails to address than for what it does. Nothing in the report explains the physical conditions on the site as it said it would in its proposal. (Plaintiffs' Memorandum, Exhibits H and J). S&ME makes no mention of the AES report, or the observations in the proposal of the conditions on lot 31 extending onto lots 30 and 32. This glaring omission is a violation of statute and industry practices, as pointed out on pages 11 through 13 of Plaintiffs' Memorandum in Opposition.

III. ARGUMENT AND AUTHORITIES

A. THE "ECONOMIC LOSS RULE" DOES NOT BAR PLAINTIFFS' CLAIMS FOR PROFESSIONAL NEGLIGENCE.

Despite S&ME'S lengthy brief, it fails to address one simple truth about this case: this case is one involving evidence of professional negligence against S&ME. Even assuming, *arguendo*, that Plaintiffs' damages are purely "economic", our courts have long recognized that professionals may be held liable to third-parties. In *Tommy L. Griffin Plumbing & Heating C. v. Jordan, Jones & Goulding*, 320 S.C. 49, 463 S.E.2d (1995), the Supreme Court stated:

Applying these concepts to professional liability, we have long held lawyers and accountants liable in tort for malpractice. *See, e.g., Lloyd v. Walters*, 276 S.C. 223, 277 S.E.2d 888 (1981) (attorney liable for economic loss to corporate shareholder when attorney breached duty to corporation); *Georganne Apparel v. Todd*, 303 S.C. 87, 399 S.E.2d 16 (Ct.App.1991) (accountant malpractice dismissed for failure to prosecute). In many cases, the lawyer or the accountant will be in privity of contract with the plaintiff. These professionals, however, owe a duty to the client and sometimes to third parties which arises separate and distinct from the contract for services. *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill.2d 137, 201 Ill.Dec. 71, 636 N.E.2d 503 (1994). We see no logical reason to insulate design professionals from liability when the relationship between the design professional and the plaintiff is such that the design professional owes a professional duty to the plaintiff arising separate and distinct from any contractual duties between the parties or with third parties. *See, e.g., Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990) (tort action brought by owners against architect); *State Ports Autho. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986) (tort action maintainable by third party against professional when duty exists). Whether such a duty exists will depend *56 on the facts and circumstances of each case.

320 S.C. 49, 55, 463 S.E. 2d 85,89

In *Beachwalk Villas Condominium Ass'n v. Martin* 305 S.C. 144, 406 S.E.2d 372 (1991), the Supreme Court recognized this proposition in holding that an architect could be held liable to a property owners association for, "failing to properly design the project" in spite of a lack of privity. *Supra* at 145, 373. The court held that the duty to the association from the obligation to furnish proper plans and specifications. *Supra* at 146, 374.

Plaintiffs submit that the holding in *Beachwalk Villas* applies here. First, like the negligent architect in *Beachwalk Villas*, S&ME opined as to the buildability of the lot and furnished foundation recommendation to the Cliffs in 2005. (Plaintiffs' Memorandum, Exhibit J).

The position of the McCarthys as owners is no different from that of the property owners association in *Beachwalk Villas*. Furthermore, just as the architect in that case owed a legal duty to the property owners association to provide a proper design, S&ME owed the same duty to the McCarthys in the present case despite the absence of privity. Moreover, the relationship meets the requirements of a "special relationship" as established in *Tommy L. Griffin Plumbing & Heating, Supra* and discussed more fully below.

S&ME also relies on the products liability case of *Sapp v. Ford Motor Company*, 388 S.C. 143, 687 S.E.2d 47 (2009) to support its defense that the "Economic Loss Rule" bars Plaintiffs' claims against S&ME. S&ME's reliance on *Sapp* is misplaced. First, unlike the Plaintiffs' claims here, *Sapp* was a products liability case involving alleged manufacturing defects in two Ford F-150 pick-up trucks, not residential development and construction. *Id.* In *Sapp*, the court observed, "Accordingly, where a product damages only itself, tort law provides no remedy and the action lies in contract; but when personal injury or other property damage

occurs, a tort remedy may be appropriate.” *Supra* at 174, 149. As noted before, this matter does not involve products liability but rather claims of professional negligence arising from the performance of services related to residential construction and development. Finally, the court in *Sapp* took note that the exception to the economic loss rule in *Kennedy* still applied in the context of “residential real estate construction” which is precisely the context of the present matter. *Id.*

B. A SPECIAL RELATIONSHIP EXISTS BETWEEN PLAINTIFFS AND S&ME

S&ME claims that there is no “special relationship” between the McCarthys and S&ME. Because the existence of such a relationship depends on the “facts and circumstances of each case”, summary judgment is not appropriate.

In order to recover in a negligence action, the plaintiff must show a duty of care owed by the defendant to the plaintiff. *Crolley v. Hutchins*, 330 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). Whether the law recognizes a particular duty is an issue of law to be decided by the court. *Ellis by Ellis v. Niles*, 324 S.C. 223, 479, S.E.2d 47 (1996). Pursuant to South Carolina law, “an affirmative duty to act exists only if created by statute, contract, relationship, status, property interest or other special circumstance”. *Carson v. Adgar*, 326 S.C. 212 (1997). Whether a duty based on special circumstance exists, however, “depend[s] on the facts and circumstances of each case”. *Tommy L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 89 (1995) and *Cullum Mechancial Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C. 426, 433, 544 S.E.2d 838, 842 (2001).

In the matter at hand, there is no question that S&ME had a duty to “disclose and “describe in detail the extent of the geotechnical investigation and factual results” to the Harrells. See 4A Bruner & O’Connor Construction Law § 14:21 (citing Brierley, Subsurface

S.C. 373, 346 S.E.2d 324 (1986) (consultant owed duty to non-contracting parties who reasonably relied on their reports in taking some action); *Georgetown Steel Corp v. Law Engineering Testing Co.*, 7 F.3rd 223 (4th Cir. 1993) (engineer owed a duty to 3rd party without privity based on discussion with 3rd party). The South Carolina courts have further recognized that in the residential home building context, parties are entitled to additional protections as compared to commercial construction. *Terlinde v. Neely*, 275 S.C. 395, 398, 271 S.E.2d 768, 769 (1980); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (carving out an exception to the economic loss rule for homeowners); *Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 386 S.C. 143 (S.C. 2009) (recognizing the long line of South Carolina cases directed toward protecting consumers only in the residential home building context); *Ross Dress For Less, Inc. v. Lauth Construction Group, LLC* (unreported) 2012 WL 2572042 (D.S.C 2012) (recognizing the special relationships created in the residential construction context and distinguishing the case since it involved commercial property).

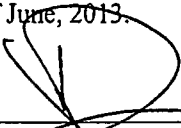
In *Terlinde, id.*, the Court determined that a homebuilder had a duty to future homeowners because it was “clearly foreseeable that more than the original purchaser [would] seek to enjoy the fruits of the builder's efforts.” *Terlinde*, 271 S.E.2d at 770. The Court reasoned, therefore, that “[t]he plaintiffs, being a member of the class for which the home was constructed, are entitled to a duty of care in construction commensurate with industry standards”. *Id.* Similarly, in *Kennedy, supra* the Court focused on foreseeability: “building a house which one knows or should know will later be sold by a party to an innocent buyer is an act adequate to constitute placing that house into the stream of commerce. Any builder who violates such a duty should justly be held accountable for the losses that his breach caused, whether they be physical harm or the diminution in the value of the house”. *Kennedy*, 384 S.E.2d at 737. Accordingly,

S&ME's reliance on *Booz-Allen & Hamilton, Inc.*, *Tommy L. Griffin Plumbing and Heating Co.*, *Cullum Mechanical Construction, Inc.*, and *Ross Dress For Less, Inc.* to support its position that S&ME does not owe a duty to the Harrells is misguided, since all of those cases address duties that arise in the commercial context, while in the residential context, the foreseeability of a party is a much greater factor in giving rise to a duty. *Id.* and *Terlinde*, 271 S.E.2d at 770. Furthermore, *Tommy L. Griffin Plumbing and Heating Co.* and *Cullum Mechanical Construction, Inc.* actually find that a duty does exist to parties not in privity based on their own facts and circumstances and *Booz-Allen & Hamilton, Inc.* also holds that a duty existed if the Ports Authority had relied on the report. *Tommy L. Griffin Plumbing and Heating Co.*, 463 S.E.2d 85, *Cullum Mechanical Construction, Inc.*, 544 S.E.2d 838, *Booz-Allen & Hamilton, Inc.*, 346 S.E.2d 324.

CONCLUSION

The "Economic Loss Rule" does not bar Plaintiffs' claims against S&ME.

Respectfully submitted this 10 day of June, 2013.



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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Kevin McCarthy and Courtney E.
McCarthy,

Plaintiffs,

v.

Keowee Falls Investment Group, LLC,
The Cliffs Communities, LLC d/b/a The
Cliffs at Keowee Falls South, Cliffs Real
Estate, Inc., The Cliffs Golf and Country
Club, Inc. and S&ME,

Defendants.

FILED-CLERK OF COURT
GREENVILLE, SOUTH CAROLINA
PAUL B. WICKENSIMER

2013 AUG - 2 P 3:39

THIRTEENTH JUDICIAL CIRCUIT

C. A. No. 2011-CP-23-6376

**PLAINTIFFS' MOTION
TO ALTER OR AMEND JUDGMENT**

TO: STEPHANIE H. BURTON, ATTORNEY FOR DEFENDANT S&ME

YOU WILL PLEASE TAKE NOTICE that the plaintiffs, Kevin McCarthy and Courtney E. McCarthy ("Plaintiffs"), by and through its undersigned counsel, will move before the Honorable Clifton Newman, Circuit Court Judge, or other presiding Judge, at such time and place as is convenient to the Court and counsel, for an Order pursuant to South Carolina Rules of Civil Procedure Rule 59(e) altering or amending the Order granting S&ME's Motion for Summary Judgment filed July 22, 2013 (hereinafter "Order"), on the following grounds:

GENUINE ISSUES OF MATERIAL FACT

The Court's Order erroneously decides three issues of material fact in dispute in its Findings of Fact and omits certain other material facts. The material facts still in dispute and omitted are as follows:

1. Paragraph 6 of the Order states that S&ME sent a proposal to Don Nickell of The Cliffs to perform a geotechnical evaluation of “three unidentified lots”. In the matter at hand questions of fact clearly exist as to whether the Plaintiffs’ lot, lot 32, was one of those lots and viewing the evidence in a light most favorable to Plaintiffs, Plaintiffs’ lot, lot 32, must be included. Don Nickell testified that the three lots were lots 30, 31, and 32 (individually hereinafter “Lot 30”, “Lot 31”, and “Lot 32” respectively) because Alpha Environmental Services, Inc.’s report (hereinafter “Alpha Report”), which Nickell had given to S&ME, “focused on [L]ot 31”, but also said something about the lots on “either side”; including Lot 32 and Lot 30. *See Plaintiff’s Memorandum in Opposition to Defendant S&ME’s Motion for Summary Judgment* (hereinafter “Memo in Opposition”); **Exhibit G: Deposition of Don Nickell**, pg. 46 *and See Id.*; **Exhibit C: Alpha Report**. Walter Birdsong, of S&ME, also testified he had received the Alpha Report and discussed it with Don Nickell in connection with the geotechnical work on Lot 31. *Id.*; **Exhibit Z: Deposition of Walter Birdsong**, pgs. 37 and 38.

2. Paragraph 7 of the Order states that “S&ME never investigated geotechnical conditions at Lot 32”. In the matter at hand questions of fact clearly exist as to whether S&ME ever investigated geotechnical conditions at Lot 32. In the aforementioned letter proposal to Don Nickell, S&ME states: “It appears that about three sloughs have occurred at the property, approximately paralleling the water surface and the contour of the lots. These surface features are very unique”. *Id.*; **Exhibit F: S&ME’s June 22, 2005 Letter Proposal No. 05471**. As stated above, viewing the evidence in a light most favorable to Plaintiffs, Lot 32 must be included in the three lots where these very unique surface features, the “three sloughs”, occurred. Accordingly,

viewing the evidence in a light most favorable to Plaintiffs, S&ME performed some sort of an investigation of the geotechnical conditions on Lot 32.

3. Paragraph 8 of the Order states that “On June 27, 2005, Don Nickell executed an Agreement for Services for S&ME’s services to be performed at Lot 31”. The S&ME’s scope of work under the Agreement for Services was for everything included in Proposal No. 05471, which was unequivocally the three lots, not just Lot 31. *Id.*; **Exhibit H: Executed copy of contract between S&ME and The Cliffs regarding Proposal No. 05471.** As stated above, viewing the evidence in a light most favorable to Plaintiffs, Lot 32 must be included in the three lots where these very unique surface features, the “three sloughs”, occurred. Accordingly, viewing the evidence in a light most favorable to Plaintiffs, S&ME agreed to perform a full investigation of the geotechnical conditions on Lot 32.

4. The aforementioned investigation, in which S&ME determined there were “three sloughs” on the three lots, including Lot 32, occurred on or before June 22, 2005 and Plaintiffs closed on Lot 32 on August 5, 2005. *Id. and Id.*; **Exhibit K: McCarthy Closing Documents.**

5. S&ME’s July 18, 2005 report (hereinafter “S&ME Report”) failed to mention the Alpha Report or the conditions it noted in regard the “three sloughs” on the “three lots”, including Lot 32 in its June 22, 2005 letter proposal to Don Nickell. *Id.*; **Exhibit J: S&ME Report.**

6. S&ME’s Report did not identify an active slope failure on Lot 31 and did not address anything in regard to Lot 32 as the Alpha Report did. *Id.*

7. Kevin McCarthy testified that had he known of the problems raised by the Alpha Report or what S&ME observed and recommended, he would not have bought Lot 32. *Id.*; **Exhibit L: Deposition of K. McCarthy**, pg. 111.

8. The Cliffs at Keowee Falls South, the community in which Lot 32 is located, is a residential subdivision and the only use for Lot 32 is residential construction. *Id.*; **Exhibit B: Cliff's HUD Disclosure**.

ERRORS OF LAW

The Court's Order erroneously determines that S&ME owes no duty of care to Plaintiffs, that Plaintiffs' claims are barred by the economic loss rule, and that S&ME's alleged negligence did not proximately cause Plaintiffs' damages.

S&ME's Duty of Care

In order to recover in a negligence action, the plaintiff must show a duty of care owed by the defendant to the plaintiff. *Crolley v. Hutchins*, 300 S.C. 355, 387 S.E.2d 716 (Ct. App. 1989). Whether the law recognizes a particular duty is an issue of law to be decided by the court. *Ellis by Ellis v. Niles*, 324 S.C. 223, 479 S.E.2d 47 (1996). Pursuant to South Carolina law, "an affirmative duty to act exists only if created by statute, contract, relationship, status, property interest or other special circumstance". *Carson v. Adgar*, 326 SC 212 (1997). Whether a duty based on special circumstance exists, however, "depend[s] on the facts and circumstances of each case". *Tommy L. Griffin Plumbing and Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 89 (1995) and *Cullum Mechanical Construction, Inc. v. South Carolina Baptist Hospital*, 344 S.C.426, 433, 544 S.E.2d 838, 842 (2001).

As discussed in Plaintiff's Memo in Opposition, there is no question that S&ME had a duty to "disclose and describe in detail the extent of the geotechnical investigation and factual results to its client", The Cliffs, in the matter at hand. As also discussed in Plaintiffs' Memo in Opposition, the industry standard further requires that professional engineers disclose all relevant information and acknowledge the full extent of the geological condition they observe even if it goes onto adjacent property, as testified to by every engineer or geologist engaged in this matter as stated below:

Roger Moore (Alpha): Practice to fully describe conditions regardless of property lines. *Id.*; **Exhibit CC: Deposition of R. Moore**, pgs. 33-34. On two occasions, Moore's report mentions conditions extending beyond Lot 31; says it is a part of his practice and that it is a practice in the industry. *Id.*

Bill Matthews (BLE): When offering an opinion as to a geological condition, you describe the full extent of the condition observed - don't limit description to property line. *Id.*; **Exhibit DD: Deposition of B. Matthews**, pg. 106. Industry standard to describe geological conditions to the fullest extent capable. *Id. at 107-108.* Believes it is professional obligation when engaged to fully identify the conditions he is offering an opinion on. *Id. at 109.*

Doug Chappell (Wurster Engineering - Defendant's Damages Expert): Admits geological conditions do not respect property lines. *Id.*; **Exhibit W: Deposition of Doug Chappell**, pg. 41. An Engineer has to account for adjacent lots. *Id.*

Carroll Crowther (Plaintiffs' Expert): S&ME would at least have to acknowledge that what it saw on Lot 31 extended into Lot 32 and Lot 30. **Exhibit EE: Deposition of Carroll Crowther**, pg. 96. Even if just S&ME hired to look at Lot 31, it

cannot look at Lot 31 without saying what it observed extending into adjacent lots. *Id. at* 98. “I have an opinion that I think Dr. Borden is certainly an honest, forthright man. And he was asked the question by Mr. Dudley – and you’ll have to take a look at the transcript – that if you were asked to go out and look at a crack in one corner of a slab and you see a crack in the other corner of the slab, do you have an obligation to comment on it. And his answer was yes. And I thought that was a very truthful opinion. [QUESTION] Meaning what? What’s the point? [ANSWER] That you can’t be restricted to say, I’m only going to look at one little portion. If your client ask you to look at a little portion, you have an obligation to – if there are other things that would affect that property or that project, that you have an obligation to say so. [QUESTION] So what’s the point, with respect to S&ME? You’re obviously trying to make a point with respect to my client. What is it? [ANSWER] That if they saw a problem on [Lot] 31, they should have told their client that they – that problem likely extends to [Lot] 30 and [Lot] 32.” *Id. at 101, line 19 to p. 102, line 16.*

Dr. Roy Borden (S&ME’s liability expert): Dr. Borden admitted that if an engineer sees a condition that “we believe endanger life, safety or property even if we are not contractually involved with an individual we do have a professional duty to bring that to someone’s attention”. *Id.*; **Exhibit FF: Deposition of R. Borden**, pg. 33.

Walker Birdsong (S&ME): Agrees slope failure does not stop at property lines. *Id.*; **Exhibit Z**, p. 42.

The Order, however, fails to address the testimony of these experts, including Defendant S&ME’s own experts, opining that S&ME had a duty to disclose and describe in detail the extent of the geotechnical investigation and factual results in this matter to

The Cliffs and also fails to address that S&ME failed to comply with this industry practice and its statutory obligation when it issued its report only Lot 31 and failed to reference the condition it observed in preparing its proposal extending into Lot 30 and Lot 32; especially since The Cliffs, S&ME's client, actually owned Lot 32 and Lot 30 and not Lot 31, the subject of the report and The Cliffs contract with S&ME included Lot 32.

The basis for the S&ME's duty extending to the Plaintiffs is based on the specific circumstances of and events surrounding S&ME's investigation, as discussed in Plaintiff's Memo in Opposition and summarized below. The summarized specific circumstances and events are as follows:

- 1) S&ME's duty to disclose and describe in detail the extent of the geotechnical investigation and factual results even if the condition goes onto adjacent property as all engineers testified and agreed that S&ME had;
- 2) S&ME's knowledge, as of June 22, 2005, that the geological condition extended to Lots 30 and 32 from the Alpha Report, S&ME's walk through, S&ME's Letter Proposal and S&ME's contract with The Cliffs;
- 3) S&ME's opinion, as of July 18, 2005, in regard to Lot 31, that that major foundational work needed to be done in order to make it buildable and design recommendations about the type of foundation for a house;
- 4) S&ME's failure to disclose and describe the full extent of the geotechnical condition and not reporting the conditions extending into Lot 32 that it actually observed as noted in its Letter Proposal and contract with The Cliffs;
- 5) S&ME's pecuniary interest in maintaining its relationship with The Cliffs;
- 6) S&ME's knowledge that The Cliffs would sell or attempt to Lot 32;
- 7) Plaintiffs' June 20, 2005 contract to purchase Lot 32;
- 8) Plaintiffs' August 5, 2005 closing on Lot 32 without ever being aware of: 1) the geological condition; 2) that just a couple days after they signed their contract to purchase Lot 32, S&ME had proposed and contracted to do an evaluation of their lot;

or 3) that just a couple weeks before closing S&ME had determined that major foundational work needed to be done to Lot 31 in order to make it buildable; and

- 9) That Plaintiffs' would not have bought Lot 32 if S&ME properly diagnosed the lot because The Cliffs would have taken it off the market like they did with Lot 31.

Viewing this evidence in a light most favorable to Plaintiffs, as required, S&ME limited its scope of review to Lot 31 when The Cliffs informed S&ME that The Cliffs had already entered into a contract to sell Lot 32, S&ME knew that such information was material to the Plaintiffs' purchase of 32, and knew that reporting the geological condition in regard to Lot 32 may lead to the Plaintiffs voiding their contract to purchase Lot 32.

As further discussed in Plaintiff's Memo in Opposition, the South Carolina Courts have recognized that under certain facts and circumstances a "special relationship" may exists between professionals and third parties with whom they are not in privity of contract which creates a legal duty separate and distinct from any contractual duties. *Tommy L. Griffin Plumbing and Heating Co.*, 463 S.E.2d 85 (engineer owed a duty to contractor without privity based on working relationship between the parties); *Cullum Mechanical Construction, Inc.*, 544 S.E.2d 838, 842) (architect owed a duty to subcontractors without privity based on architect's contractual obligation to supervise payments); *Beachwalk Villas Condominium Assoc., Inc. v. Martin*, 305 S.C. 144, 406 S.E.2d 372 (1991) (architect owed a duty to homeowners without privity); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (builders owed a duty to home owner without privity based on future owners being foreseeable); *State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 346 S.E.2d 324 (1986) (consultant owed duty to foreseeable non-contracting parties who reasonably relied on their reports in taking some action); *Georgetown Steel Corp v. Law Engineering Testing*

Co., 7 F.3rd 223 (4th Cir. 1993) (engineer owed a duty to 3rd party without privity based on discussion with 3rd party). The South Carolina Courts have further stated that “[t]his relationship may arise out of the tort-feasor’s relationship with a third party” *Booz-Allen & Hamilton, Inc.*, 346 S.E.2d at 326.

Moreover, the South Carolina Courts have recognized that in the residential home building context, parties are entitled to additional protections as compared to commercial construction. *Terlinde v. Neely*, 275 S.C. 395, 398, 271 S.E.2d 768, 769 (1980); *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989) (holding that a homebuilder may be liable in tort to future homeowners for both physical and/or economic harm where the builder violates an applicable building code, deviates from industry standards, or constructs a house that he knows or should know will pose serious risks of physical harm); *Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 386 S.C. 143 (S.C. 2009) (recognizing the long line of South Carolina cases directed toward protecting consumers only in the residential home building context); *Ross Dress For Less, Inc. v. Lauth Construction Group, LLC* (unreported) 2012 WL 2572042 (D.S.C 2012) (recognizing the special relationships created in the residential construction context and distinguishing the case since it involved commercial property).

In *Terlinde*, the Court determined that a homebuilder had a duty to future homeowners because it was “clearly foreseeable that more than the original purchaser [would] seek to enjoy the fruits of the builder’s efforts. *Terlinde*, 271 S.E.2d at 770. The Court reasoned, therefore, that “[t]he plaintiffs, being a member of the class for which the home was constructed, are entitled to a duty of care in construction commensurate with industry standards”. *Id.* Similarly, in *Kennedy*, the Court focused on foreseeability:

“building a house which one knows or should know will later be sold by a party to an innocent buyer is an act adequate to constitute placing that house into the stream of commerce. Any builder who violates such a duty should justly be held accountable for the losses that his breach caused, whether they be physical harm or the diminution in the value of the house”. *Kennedy*, 384 S.E.2d at 737.

Accordingly, the Order’s reliance on Sapp and Kennedy, in Paragraph 38 of the Order, to support that the home builder exception is inapplicable is erroneous. The facts and circumstances of this case are squarely within the “residential real estate construction context”, as it is undisputed that the only use for the lot in question, Lot 32, is residential construction, and both Sapp and Kennedy, along with Terlinde and Beachwalk Villas Condominium Assoc., Inc., support the finding that the residential home builder exception is applicable since purchasers of Lot 32 were foreseeable to S&ME. *Sapp*, 687 S.E.2d at 51, *Kennedy*, 384 S.E.2d at 737, *Terlinde*, 271 S.E.2d at 770, *Beachwalk Villas Condominium Assoc., Inc.* 406 S.E.2d at 373 (“We find that extension of the holding in *Kennedy* to architects is a logical expansion of our law to provide protection for homebuyers”). Furthermore, the Order’s reliance on Booz-Allen & Hamilton, Inc., Tommy L. Griffin Plumbing and Heating Co., Cullum Mechanical Construction, Inc., and Ross Dress For Less, Inc. to rule that S&ME does not owe a duty to the Plaintiffs is erroneous, since: 1) all of those cases address duties that arise in the commercial context, not the residential context, as this case involves, where the foreseeability of a party is a much greater factor in giving rise to a duty; and 2) even in the commercial context, the Court in Tommy L. Griffin Plumbing and Heating Co., Cullum Mechanical Construction, Inc., and Booz-Allen & Hamilton, Inc. actually finds that a duty does exist to parties not

in privity based on their own facts and circumstances and the foreseeability of the injured parties. *Tommy L. Griffin Plumbing and Heating Co.*, 463 S.E.2d 85, *Cullum Mechanical Construction, Inc.*, 544 S.E.2d 838, *Booz-Allen & Hamilton, Inc.*, 346 S.E.2d 324.

Furthermore, as discussed above, there is a genuine issue of material fact as to whether S&ME provided any professional services on Lot 32 and whether Plaintiffs would have purchased Lot 32 if they had known about the geological condition or about the need for major foundational work. Accordingly, the Order's reliance on S&ME not having provided any professional services, as stated in Paragraph 41, is error and the Order's reliance on Plaintiffs not demonstrating any reliance on S&ME's report, as stated in Paragraph 42, is also in error since their purchase is demonstrative evidence that they did in fact rely on the non-existence of S&ME's report on Lot 32.

In summary, viewing the evidence in a light most favorable to Plaintiffs, the facts and circumstances of the matter at hand are:

- 1) S&ME performs an initial investigation of Lots 30, 31, and 32 and discovers "very unique surface features", the "three sloughs", on the lots;
- 2) S&ME proposes to perform a more in depth investigation of Lots 30, 31, and 32;
- 3) The Cliffs contracts S&ME to perform a more in depth investigation of Lots 30, 31, and 32;
- 4) At some time between June 27, the date The Cliffs executed the contract, and July 18, 2005, S&ME's scope of work was limited to just Lot 31, presumably because of the existence of Plaintiff's contract on Lot 32;
- 5) Despite actually knowing that the very unique surface features were present on Lot 32 and, potentially knowing that Lot 32 was under contract, S&ME issues a report on just Lot 31 that fails to disclose and describe in detail the extent of the geotechnical investigation and factual results as it related to Lot 32;
- 6) Plaintiffs' closed on Lot 32 on August 5, 2005 without ever being aware of: 1) the geological condition; 2) that just a couple days after they signed their contract to purchase Lot 32, S&ME had proposed and contracted to do an evaluation of their lot;

or 3) that just a couple weeks before closing S&ME had determined that major foundational work needed to be done to Lot 31 in order to make it buildable; and

- 7) That Plaintiffs' would not have bought Lot 32 if S&ME properly diagnosed the lot because The Cliffs would have taken it off the market like they did with Lot 31.

Under these facts and circumstances, a special relationship between the Plaintiffs and S&ME clearly exists and the Court's finding that S&ME had no duty to Plaintiffs was erroneous and summary judgment was not proper.

Economic Loss Rule

As discussed in Plaintiff's Memo in Opposition and Plaintiffs' Supplemental Memorandum concerning the "Economic Loss Rule", Kennedy, supra, was the culmination of the shift from caveat emptor to caveat venditor determined that in the residential context "a cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage. The "economic loss" rule will still apply where duties are created solely by contract. In that situation, no cause of action in negligence will lie". Kennedy, 384 S.E.2d at 735, 737. Thereafter, in Beachwalk Villas, the Supreme Court expanded the holding in Kennedy, regarding the economic loss rule to also apply to architects in the residential construction area. Beachwalk Villas Condominium Assoc., Inc. 406 S.E.2d at 373 ("We find that extension of the holding in Kennedy to architects is a logical expansion of our law to provide protection for homebuyers"). It is equally logical that the Court would apply Kennedy, supra, to engineers regarding the evaluation of lots for residential construction, as well as in making recommendations for foundations for residential construction. Accordingly, the Court's ruling that Plaintiffs' claims are barred by the economic loss rule, as stated in Paragraph 43 of the Order, is erroneous.

Proximate Cause

“Ordinarily, the question of proximate cause is one of fact for the jury. The trial court’s sole function regarding the issue is to determine whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” *Bailey v. Segars*, 550 S.E.2d 910, 914, 346 S.C. 359 (S.C.App. 2001) (*internal citations omitted*). In the matter at hand, the question of proximate cause is one of fact for the jury as a reasonable inference can be made that Plaintiffs’ relied on the non-existence of S&ME’s report on Lot 32. Accordingly, Paragraphs 48 through 54 are erroneous.

CONCLUSION

Based on the foregoing, the Plaintiffs respectfully request the Court alter or amend the Order filed July 22, 2013 by:

- 1) Amending the Findings of Fact to delete the factual matters that remain in dispute;
- 2) Adding the material facts which were omitted;
- 3) Addressing the conclusions of all the experts, including S&ME’s own expert, that S&ME would have a duty to disclose and describe in detail the extent of the geotechnical investigation and factual results in this matter to The Cliffs;
- 4) Addressing the conclusions of all the experts, including S&ME’s own expert, that S&ME failed to comply with this industry practice and its statutory obligation when it issued its report only Lot 31 and failed to reference the condition it observed in preparing its proposal extending into Lot 30 and Lot 32
- 5) Amending the finding that S&ME did not owe Plaintiffs a duty of care;
- 6) Amending the finding that Plaintiffs’ claims are barred by the economic loss rule;
- 7) Amending the finding that Plaintiffs’ damages were not proximately caused by non-existence of S&ME’s report on Lot 32; and
- 8) Denying Defendant S&ME’s Motion for Summary Judgment.

Respectfully submitted this 2nd day of August, 2013,

A handwritten signature in cursive script, appearing to read "Thomas E. Dudley III", followed by a horizontal line and a small mark.

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