

1 Q Okay. Well let me ask you about the facts that
2 are on there.

3 A Sure.

4 Q Okay. It says -- this appears to be -- dates in
5 one column, correct?

6 A Yeah.

7 Q And it appears to be amounts of money in another
8 column?

9 A I see that.

10 Q Okay. And this appears to be who's paying. Is
11 that accurate?

12 A Yeah. It says, you know, 5,000 to Stantec from
13 Winn; 2500 to Stantec from EH; 10,000 to Stantec
14 from Fox. Yeah.

15 Q That would be consistent with your understanding
16 of the various parties involved in this deal
17 paying?

18 A Sure.

19 Q So EH, does that stand for Eagle Harbor?

20 A It does.

21 Q So they contributed as well?

22 A Well, probably to the Eagle Harbor part, which is
23 the front part. We still own that property.

24 Q Okay. Let me show you this other document and see
25 if you recognize it.

1 (Whereupon, Plaintiffs' Exhibit No. 33,
2 Payment Information, was marked for
3 identification.)

4
5 (Whereupon, Plaintiffs' Exhibit No. 34,
6 Total Expenses, was received into
7 evidence.)

8
9 MR. JACKSON: Okay. Let's go ahead and mark
10 this. I'm gonna show you . . . (Brief pause.)
11 Give a copy to the Court. Mark that for
12 identification.

13
14 Q Let me show you and see if you recognize this
15 document.

16 A Definitely my handwriting. And -- yeah.

17 Q What is that document?

18 A It says it's an application for a subdivision
19 approval.

20 Q Okay. With who? What bureau?

21 A DHEC.

22 Q Okay. Would that be a septic tank application?

23 A No.

24 Q Okay. Is it approval for the plat? The plans?

25 A It's an application for approval for the various

1 there was another parcel that was available that
2 was adjacent to the Eagle Harbor property. And
3 then we found out at the same time another piece
4 was available. So there's two additional pieces.
5 They were all adjacent. And Troy Winn bought one
6 and the Foxes bought one. And then we were going
7 to do the same thing that we did on the first
8 phase, just subdivide it and sell it for Troy.
9 Troy was to give two lots, which are across the
10 street from the Prices. It was a big empty pit.
11 And it wasn't worth any money, but Troy was going
12 to give that to the boys home. And we were going
13 to fill that pit up with dirt that was dug from
14 the lake. And then in addition to those two lots
15 and -- you know, we reclaimed those two lots with
16 dirt from the lake. There was an additional lot.
17 Lot 11 was to given to the boys home for a
18 director's house. That was the deal with Troy.
19 The deal with Gerry and Belinda was, hey, you
20 know, this went real quick to the allotment. You
21 know, phase one went real well. We want to help
22 the boys home. So, you know, I'll pay the
23 expenses. When they're all paid then we'll split
24 the money. You can do with the money, basically,
25 what you want. You know, 50/50.

1 our job or our goal was to find, you know, 20 or
2 30 septic systems.

3 Q Let's go back because you mentioned it earlier,
4 but the judge may or may not be aware. But what
5 was the grand plan, in general, with Eagle Harbor
6 as it -- you mentioned the boys home. But what's
7 the overall master plan if there is one for Eagle
8 Harbor Subdivision?

9 A Well, it's a unique thing. We were nominated for
10 a social entrepreneurship award because we took
11 raw land, developed raw land, made money, and
12 created a nonprofit. So that was a goal to -- and
13 something that could be duplicated. So people
14 could go into, you know, into the country to buy
15 land, subdivide it, sell it, and take the profits
16 or the proceeds and start a charity, which is what
17 we did. We had nothing. We had -- we had
18 nothing.

19 Q And the Eagle Harbor Boys Home, if you could tell
20 the Court what that is, in general.

21 A Can I do a little history first? Is it okay?

22 Q Sure.

23 A So, you know, like Ron, I was, you know, I was a
24 SPAWAR contractor. So did that for 13 or 14
25 years. And I was involved with, you know, my

1 nonprofit. So we got our nonprofit approved
2 June 1999. And then Troy Winn told me, well,
3 you're looking for --

4

5 MR. JACKSON: Objection about what a third
6 party said. Hearsay.

7

8 Q Yeah, and without --

9 A Troy showed me some property in the country that
10 him and his wife had looked at, but it really
11 wasn't fitting for them. And it was -- basically,
12 it was ideal for us. It was, you know, in an area
13 that was kind of bad so we could get it at a good
14 price, you know. So didn't know how to get it.
15 And through church, I met Gerry and Belinda. And,
16 you know, we hit it off. I shared my vision. I
17 shared our hope, what we wanted to do. And
18 somehow we created a plan.

19 Q And you started -- you mentioned Eagle Harbor,
20 501(c)(3) nonprofit.

21 A Yes, sir.

22 Q With the secretary of state, 1999?

23 A Yes, sir.

24 Q And then when did you become a licensed builder in
25 South Carolina?

1 Exhibit No. 35, when you've given the State of
2 South Carolina DHEC --

3 A Right.

4 Q -- Department of Health and Environmental
5 Control --

6 A Do you want to know why we named it?

7 Q No, no. Well, I'm just asking real quick. This
8 application is the start of the subdivision for
9 Eagle Harbor? And that's my question.

10 A Yeah. Absolutely.

11 Q Yeah. And so, why did you call it Eagle Harbor?

12 A Because with kids that are in foster care, there's
13 a stigma on where they live or what they drive in,
14 what they ride in. When we lived in Alabama, you
15 know, there was a big ol' ranch on the side of the
16 bus, and we didn't want that. So now we got a
17 subdivision that there's people -- you know,
18 there's 300,000 to 1.4 million-dollar homes in the
19 neighborhood. And where do they live at? They
20 live at Eagle Harbor. They live in the same place
21 that a kid that lives in a children's home lives
22 at. There's no stigma whatsoever. And it, you
23 know, it tears that wall down.

24 Q And that Eagle Harbor, it's still a going concern
25 and it's still an ongoing business and nonprofit

1 professional engineers, would assist you and Eagle
2 Harbor with all of the engineering and
3 governmental approvals necessary to get the
4 neighborhood developed?

5 A Absolutely.

6 Q From a legal standard, meaning where you could
7 take what phase two was, 62 acres, and a one-chunk
8 TMS and divide that up into how many ever lots so
9 that you could sell them?

10 A Sure.

11 Q And I'll ask you since you're on the stand,
12 Mr. Price testified earlier today, and maybe you
13 can clarify this. Did you at the time that the
14 Prices purchased Lot 20, had you had
15 communications with DHEC about the septic system
16 for Lot 20 having a preliminary approval?

17 A Yes.

18 Q And that was your understanding at the time that
19 you spoke with the Prices?

20 A Yeah. Plus, I knew that -- I had walked their lot
21 with Mike Parker, the soils consultant. And we
22 couldn't find a drain field. And that's why the
23 lot was so big. Because it would be more
24 advantageous to the investors if they were all
25 small lots and they would make a lot more money.

1 sellable.

2 Q Is it not true, Danny, that ultimately Eagle
3 Harbor, as the developer, you were able to obtain
4 permission from DHEC to get this plat which is
5 Exhibit No. 1 approved with the idea or with the
6 approval of DHEC even implicitly that the drain
7 field would be off-site for Lot 20 over to Lot 21?

8 A Yeah. Yeah, I think so. Lot 21 is being the one
9 on Leisure?

10 Q Yes.

11 A Yeah. Absolutely. And there was three other
12 additional drain fields over there. And there
13 were multiple that were crossing the road going to
14 different lots and stuff. But, yeah, that's true.

15 Q And, Mr. Gilbert, taking a look, because I'm not a
16 developer, at the plat which is Defendants'
17 Exhibit No. 1, and we look at these little dotted
18 lines on Lot 20 that show easements. Are those
19 dotted lines on Lot 20 the easements for the
20 septic system for Lot 20?

21 A Yeah. There's two sets of dotted lines on Lot 20.
22 One is for Lot 19 and the other one is for 20.
23 Those easements are like 11-feet wide specifically
24 for the width of a backhoe so that they can dig
25 and repair or put in the septic system pipe going

1 to construct?

2 A I'm sure they're ready right away. I think that
3 we did what we could without a permit to the point
4 where we got a permit then we could start. So
5 that's what we did.

6 Q Okay.

7 A Clearing the lot. We had a backhoe over there. I
8 think I even lent the backhoe out to Ron, you
9 know, to let him use it to mess with his lot.

10 Q Okay. The gentleman that just came in and
11 testified from Berkeley County about inspecting
12 the footing and --

13 A Mr. Jackson.

14 Q Mr. Jackson, yeah. That gentleman did an
15 inspection for work that your company did,
16 Heritage Classic Homes?

17 A Sure. Pre-inspection to pouring the slab.

18 Q Right. And that doesn't involve Gerry or Belinda
19 Fox, correct?

20 A No. I don't think so.

21 Q Okay. And isn't it common whenever you're getting
22 an inspection for a slab, for a footing, footing
23 inspection, that an inspector may have a comment
24 that the ground is too soft or that rock needs to
25 be added or something needs to be done before an

1 Redi-Mix to be poured into the slab and to the
2 footing, correct?

3 A Yeah. We would've had a reinspection.
4 Absolutely, yeah.

5 Q Right. So, obviously, Mr. Jackson came and
6 testified. But do you recall satisfying his
7 objections at the time so that you could pour the
8 concrete slab?

9 A I don't recall it, but we would've done that. I
10 mean, it was 14 years ago..

11 Q You wouldn't have poured the concrete slab without
12 having approval --

13 A No, sir.

14 Q -- from Berkeley County?

15 A No, sir. No, sir. We would've went to -- bought
16 the plastic.

17 Q Okay. The Prices -- or Mr. Price testified
18 earlier today about sending some certified mail to
19 you. You're not aware of any certified letters
20 you might've received that were directed to Gerry
21 or Belinda Fox in connection with Lot 20?

22 A No. No, sir.

23 Q Yeah. If you would have received something from
24 the Prices regarding the Foxes and Lot 20, you
25 would've forwarded that on to Belinda or Gerry?

1 MR. JACKSON: Schweickhardt, okay. Thank
2 you.

3 THE COURT: Come on up here.

4
5 (Whereupon, the witness, ALAN JOHN
6 SCHWEICKHARDT, was duly sworn.)

7
8 THE COURT: Have a seat there. Give your
9 name, spell your last name for the court reporter,
10 please.

11 THE WITNESS: Alan, A-L-A-N, John, J-O-H-N,
12 Schweickhardt, S-C-H-W-E-I-C-K-H-A-R-D-T.

13 THE COURT: Mr. Jackson.

14 - - - - -

15 DIRECT EXAMINATION

16 BY MR. JACKSON:

17 Q What's your occupation, Mr. Schweickhardt?

18 A I'm a licensed professional engineer, licensed
19 structural engineer.

20 Q Okay. And how long have you done that?

21 A Became a licensed professional engineer in 1994
22 when I was working for Davis and Floyd.

23 Q Okay.

24 A So that's 20 -- 24 years.

25 Q Okay. And what's your educational background?

1 MR. FERRARA: Your Honor, if I might just be
2 able to do a very brief question about the
3 structural engineering designation. That's kind
4 of a broad designation.

5 THE COURT: Any requests to qualify him as an
6 expert in structural engineering? Is that
7 correct?

8 MR. JACKSON: Yeah. Yes. And masonry
9 construction, building code standards.

10 THE COURT: And masonry construction and
11 building code standards.

12 MR. JACKSON: Yes.

13 THE COURT: All right. Mr. Ferrara, if you
14 wish.

15 MR. FERRARA: Okay. Very briefly, Your
16 Honor.

17 - - - - -

18 VOIR DIRE EXAMINATION

19 BY MR. FERRARA:

20 Q Let's see. I was looking over your document. I
21 apologize, sir, is it okay if I call you Alan?

22 A Sure. Al.

23 Q Al? Okay, Al. Al, you can call me Paul.

24 A All right.

25 Q I apologize, and you might have testified to this

1

- - - - -

2

DIRECT EXAMINATION

3

BY MR. JACKSON (Continuing):

4

Q Mr. Schweickhardt, can I call you Al, too? That
5 would be sort of simple.

6

A That would be fine. Sure.

7

Q Thank you. Were you employed by the Prices to
8 inspect their foundation?

9

A In 2004, yes.

10

Q Okay.

11

A But the foundation walls, yes. And the concrete
12 slab on grade as stated in the report.

13

Q Okay. And let me show you a copy of that report
14 and ask if you can identify that as being the
15 report and your signature and your seal?

16

A Yes, that is it.

17

Q Okay.

18

19

MR. JACKSON: I'd offer this as plaintiff's
20 next exhibit.

21

THE COURT: 36.

22

MR. JACKSON: 36.

23

THE COURT: Any objection to 36?

24

MR. FERRARA: No objection, Your Honor.

25

THE COURT: Admitted without objection.

1 Q Okay.

2 A That would cause, possibly, water to accumulate.
3 Other items with the CMU walls and piers, there
4 was some vertical rebar that exceeded the 4-foot
5 spacing. There was evidence of lacking vertical
6 rebar at some of the corners, the major wall
7 corners, I think in the report. I list the
8 northwest and southwest corners, and the second
9 opening from the right side on the front
10 elevation, that's page 3. These locations, rebar
11 was not observed at spacings of 4 foot or less.

12 Q Why is rebar required? Was does it do?

13 A The rebar is required for when the building is
14 subjected to wind loads, earthquake loads. When
15 it shakes back and forth, that rebar will help
16 keep the CMU walls and piers upright.

17 Then you've got also some evidence of some
18 poor workmanship there at the bottom of page 3.
19 At one location of the northeast corner where the
20 water was not properly struck off from the inside
21 surfaces, CMU wall, and some mortar protrusions
22 greater than one-half inch were observed in the
23 cells where there was vertical rebar dowels.
24 Again, from the best of my recollection, the CMU
25 wall piers were constructed out of 8-inch block

1 piers, hadn't been braced. Other piers and walls
2 I could push by hand. And the bond at the bottom
3 of the mortar bed could be broken. So although it
4 was still under construction, the walls and piers
5 where in -- at least one pier had fallen and the
6 other walls and piers were in danger of falling.
7 And I did not verify it. There's random cracking
8 in the concrete slab on grade. Random cracking
9 will occur in slabs on grade. And I don't know if
10 somebody came in after me to determine if there
11 was welded wire mesh or fiber mesh in the slab. I
12 couldn't detect that. But I just pointed out in
13 my report that, at the time, Berkeley County
14 required that in the slab.

15 Q Okay. Now, did you take photographs of your
16 observations?

17 A Yes.

18 Q And is that a copy of the photographs that you've
19 taken?

20 A Right.

21 Q While Mr. Hubbard is looking at those, so it is
22 fair to say then that you discovered multiple
23 violations of the building code in your
24 observations?

25 A Yes.

1 existing CMU walls and piers.

2 Q Okay.

3

4 MR. JACKSON: Please answer any questions
5 counsel may have.

6 THE WITNESS: Yes.

7

8 CROSS-EXAMINATION

9 BY MR. HUBBARD:

10 Q Mr. Schweickhardt, I'm Carl Hubbard. I represent
11 Heritage Classic Homes and Danny Gilbert. You
12 were there, I think you said, on April 19, 2004?

13 A Yes, to the best of my recollection.

14 Q Was there anyone else there? Was there a
15 contractor on-site or anybody with you?

16 A Mr. Price was present and a contractor, Mr. John
17 Kahler.

18 Q Okay. All right. The items you went through, you
19 indicated it looked like poor workmanship, but you
20 did agree -- did agree it was under construction
21 at the time?

22 A Yes.

23 Q And the things you mentioned regarding the rebar
24 and blocks could have been fixed. Is that a
25 proper assessment?

1 be here by 2:15. It's not quite that time yet.
2 We can take a brief recess.

3 THE COURT: That is fine. We'll take a break
4 and recess until 2:15. If the person shows up
5 earlier and y'all are ready to go before that --

6 MR. JACKSON: Yeah, we'll come straight back
7 in.

8 THE COURT: Otherwise, we'll stand at ease
9 until 2:15.

10 MR. JACKSON: Thank you, Your Honor.

11 THE COURT: Okay. Thank you.

12

13 (A brief recess was taken from 1:52 p.m.
14 until 1:55 p.m.)

15

16 THE COURT: All right. Y'all go ahead and
17 have a seat. Thank you. Do we have the next
18 witness ready to go? Is that right?

19 MR. JACKSON: That's correct, Your Honor.
20 Walked outside, he was standing right there.

21 THE COURT: Excellent. Okay. If you would
22 like to call him, you can.

23 MR. JACKSON: The plaintiff calls Ed Carter
24 to the stand.

25 THE COURT: Mr. Carter, come on up.

1 years. You have to bill so many experience
2 points, pass so many tests to be licensed by the
3 state.

4 Q Okay. Now, I see a bunch of fancy initials after
5 your name: MSA, MFLA, MRA. Can you explain --

6 A Those are professional designations.

7 Q Okay. And are you familiar with appraising lots
8 in residential subdivisions?

9 A Yes.

10 Q Okay.

11

12 MR. JACKSON: I would move that Mr. Carter be
13 qualified as an expert in appraisals, residential
14 appraisals.

15 THE COURT: Any objection, gentlemen?

16 MR. FERRARA: No objection, Your Honor.

17 MR. HUBBARD: No, Your Honor.

18 THE COURT: Admitted without -- identified as
19 an expert, qualified as an expert, without
20 objection.

21

22 Q Now, were you retained by a Warren Parker to do an
23 appraisal or answer certain questions for the
24 Prices' attorney?

25 A GW Parker, yes. He retained me to do some

1 THE COURT: Okay. Any other objections,
2 Mr. Hubbard?

3 MR. HUBBARD: No, Your Honor. No objections.

4 THE COURT: Plaintiffs' Exhibit No. 38
5 without objection.

6
7 (Whereupon, Plaintiffs' Exhibit No. 38,
8 Appraisal Report, was received into
9 evidence.)

10

11 Q Mr. Carter, what was the scope of your engagement
12 with Mr. Parker?

13 A This scope of work was to analyze the previous
14 sales in Eagle Harbor. Look at those by year and
15 then answer certain hypothetical questions, which
16 he posed in a letter, which is attached to the
17 appraisal.

18 Q And is that on page 61 and 62 of your appraisal?

19 A Yes. That is correct.

20 Q Okay. How did you go about answering -- well,
21 first of all, can we publish each of those
22 questions? Those six questions.

23 A The first series of questions was number one:
24 "Using the comparable sales approach, what would
25 the value of the entire 7.86-acre track as of

1 available and land is otherwise incapable of
2 supporting a septic system for more than one
3 single-family residence; B, approximately
4 one-third to one-half the 7.86-acre tract is
5 located in an area designated as protected
6 wetlands and is thus incapable of being subdivided
7 or further improved for residential and/or
8 agricultural purposes; C, the property is located
9 in a subdivision that is not gated and the roads
10 contained in that subdivision are private and
11 likely not to be accepted by the County in the
12 foreseeable future for public maintenance; D, no
13 valid homeowner's association exists so as to aid
14 in the preservation and maintenance of the private
15 roads and common areas located in the subdivision;
16 E, no enforceable restrictive covenants are in
17 place that would otherwise contain those usual
18 restrictions deemed necessary and proper to
19 preserve and protect the value and continued
20 integrity of the properties comprising the
21 subdivision."

22 Q Okay. How did you go about trying to answer those
23 questions?

24 A Pulled all the sales from Eagle Harbor subdivision
25 going back, I believe, to 2001 up to, at the time,

1 values as requested in the attached scope of work.
2 One, what is the value of the entire 7.86-acre
3 tract as of December 3, 2003, if in fact this
4 property had been properly subdividable into three
5 separate residential lots with each estimated
6 two-acre tract being fully capable of use as a
7 single-family residence? Okay, in order to
8 address this question -- and you got to know this
9 12 years ago. This is 12 years old. I have a
10 hard time remembering what I did last week much
11 less 12 years ago. In order to address this
12 question, we need to find a sale of approximately
13 two acres of highland. A comparable sale would
14 be, going back to the different sales we
15 identified, Comps 1, 2, 4, 13, 18, 24, and 25, all
16 of which are highlands only. And they're
17 generally the same acreage, approximately, as the
18 subject.

19 Q Okay. And so what was the total value you
20 concluded and answered in question one?

21 A Well, Comp 1 gave us 18,670. Each comp gave a
22 slightly different, so we came up with Comps 18,
23 25 were outside the statistical mean, and an acre
24 value of 18,500 would be considered reasonable.
25 Multiplying that by the acreage comes up with

1 43, I think you list the straight-line increase?

2 A That would be correct. The average yearly
3 percentage increase and the price per acre of a
4 typical lot in the Eagle Harbor subdivision from
5 December of '03 to present -- present being that
6 time -- 21.6 percent straight line, 1.8 percent
7 per month.

8 Q Okay. What about for question four? How did you
9 go about determining the answer to that question?

10 A Again, the approach is the same as it was on the
11 other. You've got your hypothetical questions.
12 You have to address each one differently based on
13 the comps, previously identified sales, that best
14 fit that situation.

15 Q And just the value for December 3, 2003, what did
16 you determine based on your analysis?

17 A December 9th?

18 Q I'm sorry. December 3rd on page 44.

19 A Oh, okay. The retrospective value of the
20 7.86-acre tract in Eagle Harbor on the following
21 dates: December 3, 2003, 62,880.

22 Q Okay. So if I understand these value conclusions
23 correctly, value one said -- assumed that it was
24 probably subdividable, three separate residential
25 lots, with estimated two-acre tract being fully

1 met. But I'm representing Belinda and Gerry Fox
2 in this action that the Prices are litigating
3 against them. Are you familiar with any of the
4 background information about this case?

5 A Absolutely not.

6 Q No? Okay. You mentioned earlier that Mr. Parker
7 of Chellis and Frampton initially contacted you
8 and hired you to perform this appraisal?

9 A To answer hypotheticals based on previous sales in
10 Eagle Harbor.

11 Q Okay. And --

12 A It was more of a consulting job than it was an
13 appraisal.

14 Q Okay. And you testified about the assumptions
15 that Mr. Parker asked you to make when performing
16 these calculations, correct?

17 A He asked for a value given that set of
18 circumstances that are hypotheticals.

19 Q Right. Now, I'll ask you this: Wouldn't your
20 opinion and your report change if your
21 hypothetical or the basics -- your basic
22 understanding and the hypothetical were to change?
23 Meaning if Lot 20 in this case were capable of
24 subdivision, would your opinion be different than
25 what you testified to?

1 Q They said we don't know?

2 A Sure.

3 Q Do you remember who you spoke with at Zoning and
4 Planning?

5 A I do not.

6 Q Okay. But I guess my question is, Ed, would your
7 opinion that you've offered today, would it change
8 if in fact Zoning and Planning did say in 2018 the
9 lot would be subdividable? Is that a fair
10 statement?

11 A Back in 2006 you mean? When it was done.

12 Q Right. I'm saying today as we're sitting here and
13 testifying in court, if Zoning and Planning said
14 that the lot is subdividable today, your opinion
15 would change, correct?

16 A I don't understand because this was done 12 years
17 ago. Why would I be looking at it currently?

18 Q Sure. If they testified that 12 years ago it
19 could be subdividable, would your opinion change
20 about the values?

21 A I would have to sit down with them and see where
22 they're coming from, how they say it's dividable,
23 then -- quite honestly, the letter from the Corps
24 of Engineers defines the wetlands in it. All of
25 that would have to be relooked at.

- 1 A Yes.
- 2 Q Okay.
- 3 A You have to make assumptions.
- 4 Q Sure. Sure. And I haven't seen it. Because
- 5 you're qualified as an expert, I'm asking you
- 6 these questions, Ed. Are you aware in this case
- 7 if a jurisdiction determination, a final
- 8 jurisdictional determination, by the Army Corps of
- 9 Engineers was ever done for Lot 20?
- 10 A I do not.
- 11 Q Okay. You testified -- thank you -- earlier about
- 12 you understood the Army Corps' letter to direct
- 13 the Prices to actually accomplish that if they
- 14 wanted to figure out the location and the
- 15 preciseness of wetlands?
- 16 A Well, my understanding is what they did was an
- 17 estimate based on FEMA maps, and whatnot, and
- 18 their knowledge. And they said if you need to
- 19 know exactly what it is, then you need a wetlands
- 20 delineation.
- 21 Q Right. Ed, have you ever assisted clients or
- 22 generally aware of that process?
- 23 A Wetlands delineation?
- 24 Q Yes, sir.
- 25 A I know several surveyors and engineers that do

1 the Prices had two acres of wetlands, assume that
2 to be a fact, that they still owned on Lot 20,
3 would it be your opinion that the loss that they
4 would incur would be the value of a two-acre tract
5 of land in the neighborhood, meaning \$37,000?

6 A Let me see if I got this right. You're saying
7 that two-acre -- the two acres of wetland would be
8 valued the same as two acres of highland?

9 Q Well, I'm asking you. Is it?

10 A No.

11 Q It's not? Okay. You did a determination about
12 wetland versus upland in your report. Do you
13 remember that?

14 A Yes. We discussed that.

15 Q So if you could help the Court understand, and
16 I'll ask you this question: Can you just give us
17 the answer on what two acres of wetland would be
18 worth in 2003? In December of 2003.

19 A I don't know. That wasn't one of questions.

20 Q So two acres of non-wetlands are worth 37,000?

21 A Correct.

22 Q You've already testified about that. Now, in your
23 report, you did make a note about the value of a
24 wetland acre versus an upland acre. Do you
25 remember that?

1 highland price and the lowland price?

2 A What split are you talking about?

3 Q Well, you've got here that on a one-acre parcel
4 nearby --

5 A It's half and half.

6 Q Half and half. And the sale price was 5,000.

7 A So are you trying to say that the value of
8 highland and the value of wetlands would be what?

9 Q Well, you're the expert. I know that -- I'm
10 assuming that the value of the wetlands is less
11 than the value of the highlands.

12 A It is. And when property is sold, property
13 doesn't sell wetlands, highlands.

14 Q Right.

15 A It's a blended rate. You know, if you sell
16 50 acres and ten acres of it is lowland, you don't
17 do a listing with MLS saying lowlands valued at
18 this, highlands valued at that. You're selling
19 the entire tract for X amount, and that is what is
20 known as a blended rate. It reflects highlands
21 and lowlands. And if you chart, like a scatter
22 analysis based on the amount of lowlands at
23 different sales, it will clearly break out for you
24 the fact that the more wetlands you have the less
25 per acre price sold.

1 restricted covenant community. There's no valid
2 covenants, there's no valid restrictions, correct?
3 That was what you were asked to assume, or did I
4 misread that?

5 A These are the comps going through. Then there's
6 the assumptions in the letter, and which
7 assumption would you be referring to?

8 Q All of the assumptions on Mr. Moore's letter in
9 paragraph 4, which is starting on 61 and on page
10 62 of your report. Basically, A through E, Ed,
11 there.

12 A So you're saying on page 62, B?

13 Q A, yeah. A -- and I was asking you specifically
14 about B. But A through E, I understood your
15 testimony just a minute ago, Ed, to be that you,
16 when calculating this report, were asked to assume
17 A through E and do this report. Maybe I'll
18 clarify, Ed. Specifically, let's look at question
19 four on page 61.

20 A Yep.

21 Q That's what -- I understood that to be the scope
22 of your report. That you were assuming that what
23 is the approximate appraised value of a
24 residential tract purchased by the Prices assuming
25 A through E.

1 A No.

2 Q No? Well, you've already testified that on page
3 40 -- 42 that your opinion is that a two-acre lot
4 in Eagle Harbor was worth \$37,000, correct?

5 A That's highland.

6 Q Highland.

7 A That was no wetlands, subdividable, that each one
8 could perk or have sewer available to it. Totally
9 different scenario.

10 Q If we take the Leisure Lane blended rate of
11 \$13,800 an acre, that yields about 27,600 bucks?

12 A Let's go back and look at Comp Leisure Lane. And
13 take it over -- okay, it's Comp 54. If we go over
14 to 42 -- if we look at Comp 54 on page 43 where
15 we're talking about A through E. On Comp 54 we
16 say it's 7.95 acres and sold June 14, 2005, for
17 18,836 per acre. It is on a publicly maintained
18 paved road which makes it superior to Eagle Harbor
19 which are private roads.

20 Q Okay. Okay. So --

21 A It was like the subject and all their
22 characteristics. The lot is comprised of
23 43 percent lowlands.

24 Q So the Eagle Harbor lot, in your professional
25 opinion, would be less valuable per acre than Comp

1 A Ask that again.

2 Q Two acres of wetlands in Eagle Harbor.

3 A Lot 20.

4 Q Yeah. Would be less than the 18,500 per acre that
5 you testified that a regular, typical two-acre
6 highland lot in Eagle Harbor would be worth?

7 A Of highlands?

8 Q Yes, sir.

9 A Yes. The lowlands, obviously, are worth less than
10 that.

11 Q So if the price per acre was less -- it's hard to
12 figure to an exact science. It's not 50 percent
13 less, is it?

14 A No. Again, like I said, when you sell, they're
15 always sold as a lump. You don't sell lowlands
16 and highlands separate at a different price.
17 They're always sold at a blended rate. What are
18 the lowlands worth? I don't know. There's a lot
19 of different opinions on that. You know, lowlands
20 don't have a lot of use other than maybe a
21 detention pond or for green space or those sorts
22 of things. But the value of wetlands versus
23 highlands is all over the place.

24 Q But we do know that the value of wetlands --

25 A Is less than highlands.

1 Engineers, when they do those, their estimate is
2 normally pretty right on.

3 Q Okay. And you mentioned the private roads, public
4 roads. If the entrance to Eagle Harbor was not up
5 to DOT standards, would that affect the value of
6 the lots in Eagle Harbor?

7 A We've run into this in several subdivisions where
8 the roads were tested -- to take them in for
9 public maintenance, they have to meet the DOT
10 standards. And when they didn't, normally what
11 happens is they get them up to standard so that
12 they can get them publicly maintained.

13 Q Right. But if they're not -- if the fact is that
14 the entrance is not up to DOT standards, would it
15 affect value of the lots in Eagle Harbor
16 negatively?

17 A You would think yes. But I can't definitively
18 prove that from the sales.

19 Q Okay.

20

21 MR. JACKSON: That's all I had, Your Honor.

22 THE COURT: All right. Thank you, sir. You
23 can step down.

24 MR. JACKSON: Your Honor, my next witness is
25 not scheduled to be here until 3:15. However, I

1 afternoon, Mr. Cox.

2 THE WITNESS: Good afternoon, sir. It's been
3 a while.

4 THE COURT: It has been.

5

6 (Whereupon, the witness, MERRILL COX,
7 was duly sworn.)

8

9 THE COURT: Thank you, sir. Have a seat.
10 Give your name, spell your last name for the court
11 reporter, please.

12 THE WITNESS: My name is Merrill Cox, C-O-X.
13 The first name is M-E-R-R-I-L-L.

14

- - - - -

15

DIRECT EXAMINATION

16 BY MR. JACKSON:

17 Q Mr. Cox, what's your occupation?

18 A I'm a retired attorney.

19 Q Okay. And where do you live?

20 A I live at 206 Foxborough Road, Goose Creek, South
21 Carolina.

22 Q Did you have a -- did you purchase property in
23 Eagle Harbor?

24 A My wife and I did, yes.

25 Q Okay?

1 Basically, it was to be a Christian environment.
2 You didn't have to be a Christian. No one ever
3 said that to buy there. So a lot of the people in
4 our church, Northwood Church, purchased land out
5 there. One of the pastures, purchased some land.
6 People that we know -- knew in the church, the
7 Evansons (ph) the Androsics (ph). It was kind of
8 a community centered around Northwood Assembly,
9 but it wasn't limited to that. But many people in
10 Northwood -- many of the people there were
11 associated in one way or another with Northwood
12 Assembly.

13 Q Okay. And did you engage in any kind of contract
14 or agreement with Mr. Gilbert?

15 A Signed a contract, yes -- no. Actually, we did
16 not. The contract -- we purchased our land from
17 Sarah Winn.

18 Q Okay.

19 A Mr. Gilbert -- Sarah Winn purchased her land,
20 which was several lots, from another party. I
21 never purchased anything from Danny Gilbert or
22 Eagle Harbor.

23 Q Was he involved in the sales process at all?

24 A Oh, absolutely.

25 Q How was he involved?

1 land. And I looked at the drainage ditch and
2 there was the sewer pipe. It was still laying out
3 in the bottom of the ditch. He hadn't covered
4 that up.

5 Q Okay. Did you ever hire Danny to do anything for
6 you specifically?

7 A Danny was supposed to do the architectural
8 drawings for the house. And I don't know if
9 you've ever gone through this process, but we must
10 have looked -- and I'm not kidding you -- we must
11 have looked at a hundred different set of house
12 plans and books and things before we finally found
13 the set of plans that suited us. So we engaged
14 Danny Gilbert to draw these -- because I thought
15 he was able to do that. And --

16 Q And why do you say -- why do you say that you
17 thought?

18 A He presented himself as an architect. And I don't
19 know. I'm not sure that he was ever registered,
20 but that's beside the point. The point is I paid
21 him \$5,000 for a set of house plans.

22 Q Okay.

23 A And the first of house plans that we got from him
24 were nothing, not even remotely similar, to what
25 we gave him.

1 A We gave him -- I call them book plans. Somebody
2 somewhere produced plans in a book of
3 architectural drawings for houses. We had settled
4 on this and we wanted different changes made to
5 it, but we gave him all of that. And, eventually,
6 he produced a set of plans that was nowhere near.
7 I mean it was about as far away from what we asked
8 for as you can get. He was supposed to redo them,
9 and we didn't get them, and we didn't get them.
10 And finally we started complaining about it. And
11 we were referred to his partner. I don't think
12 his partner existed because we went to where the
13 partner was supposed to have an office, and there
14 was no office there. There never had been an
15 office there for this guy. So we asked for the
16 money back. And he got unfriendly when we started
17 demanding our money back.

18 Q What do you mean by unfriendly?

19 A Well, you know, we were all good friendly church
20 folks; amen, brother, good to see ya, how ya
21 doing. And now, you know, you want your money
22 back because it's not produced. And it was hard
23 to get him on the phone or even talk to him. But
24 he was out there a lot, so I could find him when I
25 wanted to.

1 wire across, you know, a gate. I put poles in and
2 put a wire across it.

3 Q This was on your land --

4 A My land, yeah.

5 Q Okay.

6 A I put poles in. I put a steel wire across it.
7 Put the steel wires through PVC piping so it could
8 be seen. It wasn't, you know, something to trap
9 somebody. Came back and he had cut down the whole
10 back swath of timber off my land so he could have
11 a little road back through there.

12 Q Okay.

13 A You know, he just does what he wanted to do. He
14 didn't care. He never talked to me about it.

15 Q Okay. Did you ever have -- attend a meeting of
16 the homeowners where the restrictive covenants
17 were discussed?

18 A Yes. And it was the strangest thing. We went out
19 to Oscar's, I think it was, in Summerville. Danny
20 was there; Mr. and Mrs. Evans was there; a lot of
21 the people from the subdivision where there. And
22 in essence they were going over the covenants and
23 restrictions and answering. There were a lot of
24 complaints from different people about different
25 things and he was trying to handle that. But when

1 there.

2 Q Okay. Did you eventually sell the lot?

3 A I did.

4 Q Why did you sell?

5 A This was supposed to be land that we could
6 subdivide and put a house for my children. I had
7 three children. And we were going to try and make
8 kind of a family compound there. But when my
9 eldest daughter passed away, we just lost interest
10 in it. Well, for one thing, trying to do anything
11 with Mr. Gilbert was just a horrible situation.
12 We couldn't get anything accomplished and -- at
13 least I couldn't. And I just got tired of dealing
14 with him. I just didn't want to mess with him
15 anymore, so I sold it.

16 Q Okay. Was there any other instances that you
17 remember? And you mentioned the trespass and the
18 tree lines. Is there anything else that you can
19 remember?

20 A Well, the theory behind all of this was that it
21 was supposed to be a ranch where young men could
22 be raised as foster children, an institution-type
23 thing. The wife and I brought three horses that
24 we owned. Put them out there to -- she's an
25 instructor, 40-plus years of teaching horseback

1 when we got ready to cut the check, Mr. Gilbert
2 wanted it cut to him personally. That didn't
3 suit. And we discussed it. Danny, why wouldn't
4 you want us to pay for the fencing? We'll ship it
5 in. We'll help put it up. No, I want it to me,
6 personally. And that -- well, with the other
7 things that were going on, I wouldn't give him a
8 dime today.

9 Q And you said other things that were going on.
10 What are the other things?

11 A Well, I was an attorney. And it seems like --
12 still am. It seems like people I knew, friends
13 that I knew, would call up and have issues about
14 things that he did or didn't do. And it was a lot
15 of that kind of talk going on. That's what led up
16 to this meeting at Oscar's, frankly. I just
17 didn't feel comfortable that he was applying the
18 money that he was collecting for the boys ranch to
19 the boys ranch.

20 Q Were you familiar with Heritage Classic Homes?

21 A Is that -- that might be a manufacturing concern
22 for manufactured -- no.

23 Q No. That's okay.

24 A I don't know. No.

25 Q Okay. All right.

1 Q Right. So was your address, sir, or your lot on
2 Saddlehorn?

3 A Yes, it was.

4 Q Okay. Because I think the Winns purchased lots --
5 what would've been Lots 1 through 9 or so on that
6 side of the Saddlehorn. And so, do you know
7 Mr. and Mrs. Price?

8 A I do. In a general sense, we met them. We go out
9 in the evenings walking, walking around. And on
10 more than one occasion, we would be out there
11 walking and we'd see them working in the yard, go
12 over and talk to them. Just say hey.

13 Q When did you -- Mr. and Mrs. Price purchased their
14 lot in November of 2003. Did you and your wife
15 purchase your lot before or after that?

16 A We purchased ours March 21, 2003.

17 Q Okay. And before you purchased your lot on
18 Saddlehorn -- I think you made reference to this
19 earlier -- but did you -- as an attorney, did you
20 take a look at the recorded plat at Berkeley
21 County or look at the title work prior to --

22 A Which one? I mean, there were revisions on
23 revisions on revisions.

24 Q Sure. But did you look at the subdivision plat --

25 A Oh, yes. Absolutely.

- 1 A I did not.
- 2 Q You did not?
- 3 A I told him to get the line off my property.
- 4 Q Did he do it?
- 5 A You know, I think he did because we sold the land
6 and it was gone, I believe. I mean, working on a
7 little foggy memory there, but I believe he did
8 actually remove that. Or else Mr. Androsic did.
9 I think he was the owner of the land.
- 10 Q Let me see if I can hold that plat. Thanks.
11 What --
- 12 A It didn't show up on the plat when we sold the
13 land. So I'm gonna say yes.
- 14 Q Okay. Did you and your wife have any wetland
15 studies done or other studies done other than the
16 perk test you testified about?
- 17 A No. We bought highland. It was one of the
18 highest lots out there, which is why I bought it.
- 19 Q Sure. And that transaction, you said you bought
20 the property from the Winns. Was that lot
21 purchased an as-is transaction? If you recall.
- 22 A No.
- 23 Q No, it was not?
- 24 A No. I hired a lawyer. He did the title search,
25 gave me title insurance. We went through a whole

1 had intended to do on that lot?

2 A Well, there were no covenants and restriction,
3 first of all, at all, on it. I think it was -- I
4 think that was zoned single-family residential.
5 Although, it may have been flex zoned. I have --
6 I served for several -- four years on Berkeley
7 County Council. And, unfortunately, I was on duty
8 when we redid the whole zoning in the County
9 thing. So I didn't have any concerns that I'd be
10 able to put a few chickens out there. Pigs may
11 have been an issue, but chickens I think was okay.

12 Q I'm just representing Mr. and Mrs. Fox. And with
13 respect to your transaction with the Winns, you
14 didn't have any contact with Mr and Mrs. Fox,
15 Gerry or Belinda Fox, did you?

16 A Well, they went to the church I went to.

17 Q I mean with your lot transaction?

18 A No.. No. I knew them. My wife -- one of my
19 daughters would babysit for them. I'm familiar
20 with them. But they had -- they didn't own the
21 land. They're not in the chain of title.

22 Q And being an attorney, you understand this. The
23 Prices have brought a lawsuit here against my
24 clients and are claiming that they're potentially
25 participating in unfair trade practices by

1 covenants being recorded.

2 A Yes. Yes. And in fact, at some point, I even got
3 ahold of the covenant that is -- Danny was playing
4 around with. I'm not sure whether he gave it to
5 me or how it came around. But, yes, I went online
6 actually and read this.

7 Q And those covenants were recorded prior to you and
8 your wife purchasing your lot, correct?

9 A Let's see when they were recorded, 2/3/03. They
10 were, but Eagle Harbor didn't own the land.

11 Q Right.

12 A I mean, they could've put -- they could've put a
13 covenant -- covenants on the Cooper River Bridge,
14 but it wouldn't have been of anymore in effect
15 that is.

16 Q Now, do practice real estate law?

17 A I did.

18 Q You do. Okay. And if the Winns, for example,
19 with respect to you and your wife's lot, if the
20 Winns were developers of this property, being that
21 they subdivided and they were the declarants of
22 the property -- if the Winns were the developers
23 and the declarant, since they're in your chain of
24 title and they've agreed implicitly for their lot,
25 your particular lot, to be attached with these

1 in your opinion, wouldn't the covenants attach to
2 those lots if the owner of the lot agrees?

3 A You do realize that these things have to be in
4 writing? Issues touching real estate must be in
5 writing.

6 Q Sure. Yes, sir.

7 A So if you're asking me if the lot owner wrote a
8 document saying I agree to be bound by the
9 covenants and restrictions, dated, and in page
10 number so and so of the RMC office, and had it
11 properly notarized with two witnesses, then yes,
12 that would be absolutely right. But for somebody
13 to say, "Yeah, those are pretty good covenants.
14 I'll probably do that." Not a chance.

15 Q Right. And respectfully, sir, I agree with you
16 and the statute of frauds applies. But I was just
17 asking you that since you had the knowledge of the
18 neighborhood about whether -- you've already
19 testified your opinion is you don't believe these
20 covenants attached to your lot?

21 A But the thing is is that most of the people out
22 there did believe that. And I don't -- Danny and
23 I got to the point where we could barely speak to
24 each other. I mean, there were issues -- and it's
25 not relevant to this, but there were reasons why I

1 questions I have.

2 THE COURT: Mr. Hubbard?

3 MR. HUBBARD: Thank you, Judge.

4

- - - - -

5

CROSS-EXAMINATION

6 BY MR. HUBBARD:

7 Q Mr. Cox, I'm Carl Hubbard. I represent Heritage
8 Classic Homes and Eagle Harbor, Inc.

9 A Okay.

10 Q Danny Gilbert. Sorry. I'm gonna bring this plat
11 back up. I'm just gonna direct you right here.
12 If you could take a look at that and maybe publish
13 to the Court, if you could read that. That's
14 pretty small print.

15 A Document 000081023, Plat Cabinet P, page 281A.
16 Filed and recorded on 9/26/02.

17 Q Thank you.

18 A And this was signed by, oh, Eagle Harbor
19 Incorporated.

20 Q Thank you. I was not up here when -- did you ever
21 identify where your lot was on this plat? Is it
22 8?

23 A There's a little turnaround here.

24 Q Right down here at the end.

25 A Yeah.

1 Q Do you remember what you paid for the lot?

2 A \$37,800.

3 Q Do you remember what you sold it for?

4 A \$50,000.

5

6 MR. HUBBARD: I don't think I have any more
7 questions.

8 THE COURT: Any follow-up?

9 MR. JACKSON: Just real quick.

10

11 REDIRECT EXAMINATION

12 BY MR. JACKSON:

13 Q You've mentioned there was a no-sale order from
14 Berkeley County. Can you tell us more about that?

15 A Danny was having a great deal of issues with
16 Berkeley County Planning. And he didn't use me,
17 okay. But being a former county councilman and
18 knowing all these people and being an attorney
19 involved in land deals, I got on the phone to
20 Berkeley County because I had issues about how
21 things were being done. And I believe that there
22 is on the Internet a document that says he was, at
23 least for a time, Berkeley County issued -- it was
24 the Planning Department not the Court or anything
25 of that nature -- not sell any more lots. This

1 the court reporter, please.

2 THE WITNESS: My name is Diane A. Cox. C-O-X
3 is my last name.

4 THE COURT: Thank you, ma'am.

5 MR. FERRARA: Respectfully, Your Honor, same
6 objection, relevance. And if it's more of the
7 same of Mr. Cox's testimony, that it would be
8 cumulative.

9 MR. JACKSON: Your Honor, I'll try to avoid
10 any cumulative. And if it is cumulative, I don't
11 want to put it up. But I do think I'm entitled
12 under that unfair trade practices to show the
13 pattern of practice of activity.

14 THE COURT: I'll allow it. Your witness.

15 - - - - -

16 DIRECT EXAMINATION

17 BY MR. JACKSON:

18 Q Okay. Mrs. Cox, I don't want to rehash everything
19 that your husband has already testified. Do you
20 have any personal knowledge of any other issues or
21 problems involving the subdivision or Mr. Gilbert?

22 A I tried to stay out of it. My job was to help
23 establish a stable, bought my horses and
24 everything.

25 Q Okay.

1 hadn't -- he came up behind me one day. I was by
2 myself. I was in the pasture grooming my Marsh
3 Tacky mare, Honey. He came up to the fence and
4 started yelling at me. I turned around. I
5 continued grooming my mare. I totally ignored
6 him. And he yelled and he yelled and he yelled.
7 He had a huge explosive temper tantrum. If you
8 please --

9
10 MR. FERRARA: Respectfully, Your Honor, this
11 is a narrative that's being testified to. And I
12 respectfully request her to answer any questions
13 that counsel may have.

14 MR. JACKSON: Sure.

15
16 Q Can you tell me about any events involving the
17 horse pasture or the paddock?

18 A It was not in his grand plan that he had told
19 everybody. In other words, by the time that -- in
20 2003, we were supposed to have a barn. We were
21 supposed to have pastures. This was, this little
22 spot, the only place that was fenced in that you
23 could keep horses. All right. He did not keep
24 his word. He did not have a barn built. He did
25 not -- the fences, all the beautiful fences, they

1 left it to me because he didn't like horses.

2 Don't ask me why he had a ranch, but he said he
3 didn't like horses.

4 Q Were you ever able to use it to train the kids?

5 A No. What happened is I believe -- I either
6 started in 2001 or 2002 a group. They're called C
7 Groups (ph) where -- simple interests.

8 Q Okay.

9 A So I had a C Group called Horsing Around. The big
10 thing, the whole reason for it was to train adults
11 and -- instructor to know exactly what you do with
12 horses to keep them safe, to keep boys safe --
13 excuse me. Is there water?

14 Q I'll be glad to get it for you. Take a breath.
15 Take your time.

16 A Thank you.

17 Q Sure.

18 A All right. First we had to stay -- we had -- a
19 little cafe or my home. And, actually, I have all
20 the paperwork, everything. All the lessons that
21 we worked through and everything. I then -- I had
22 a mare at Black Bottom Stables. We went out there
23 so that I could give hands-on teaching so they
24 would have it. Believing Mr. Gilbert, I purchased
25 two more horses. I brought them out on -- let's

1 daughter and saying goodbye to my daughter, I sent
2 another horsewoman, Katie Dotty (ph) out to meet
3 with the man from Clemson. I can tell you that
4 honestly the reason why I sold my property was
5 because I wanted nothing to do with Mr. Gilbert.
6 To be screamed and yelled at church, after church,
7 to have this man run across the parking lot
8 screaming and yelling at us, have him come up
9 behind me and scream and yell at me.

10 The rows -- he had a little place to store
11 things for the horses. I went out one night to
12 this place, okay. I kept a bale of hay at my
13 home. And I kept grain that was specifically in
14 case I forgot to have everything. I went out to
15 feed my horses. You have to feed horses same time
16 morning, night, okay. He locked the place up.
17 There was no way to get -- in the rain or
18 anything. It was very fortunate for my horses
19 that I thought ahead of time and just for
20 emergencies and I had grain. So I drove home,
21 went got the grain, and came back. The road that
22 went to this storage area that he had, was a total
23 muddy mess. As in sliding on it, okay. I have
24 four-wheel drive. Even with my four-wheel drive I
25 almost slid off the road. Now that was

1 for permission. He did it because that is what he
2 does.

3 Q Okay. Let me ask you specifically what were some
4 of the representations made by Mr. Gilbert
5 relating to the property?

6 A The property -- okay. Originally, I looked at
7 some property up front, but going out after rain,
8 it was like total disaster. So I went ahead and
9 bought the highland in the back. His thing was,
10 you know, we're all kind of kumbaya kind of thing.
11 We're all gonna live together. We're gonna have
12 the boys ranch. This is wonderful. That's why I
13 stayed even after my daughter died and even after
14 his garbage. He did that -- an example is -- and
15 next thing you know we go out one day and there's
16 ATV tracks across our property. Now, our property
17 had been graded, okay. We went to Mr. Gilbert.
18 Well, okay, it will stop. It didn't stop. We had
19 neighbors -- and I have no idea what their name
20 was. It wasn't the Androsics. It was the ones
21 that -- okay -- said we've seen them there. I
22 came out and another time and we actually -- his
23 son and another boy were coming across our
24 property. In other words, there were no -- it
25 was -- with him and with the property, it's

1 that never happened at all at the time before we
2 left.

3 THE COURT: When you say amenities, tell me
4 what you mean.

5 THE WITNESS: Amenities would be, well,
6 having a lake stocked with fish, which was done
7 after we left. Having pastures for the various
8 horses and for horses that came later that we
9 would teach the boys with. They have to -- it's
10 basically an acre to a horse, okay. Everything
11 was supposed to be done to the fences.
12 Everything -- no, not done. He didn't go through
13 with it. I know, sir. It doesn't have anything
14 to do with the roads. But Mr. --

15 THE COURT: I wasn't asking just the roads.
16 Is there anything that y'all --

17 THE WITNESS: And the fact that he -- he put
18 it as a place that everything was going to fall in
19 sequence, one, two, three. And this was gonna be
20 done with phase one. This is phase two. This is
21 phase three. He didn't. He didn't have it on
22 time. He didn't do it. The road was laughable.
23 It was absolutely laughable.

24 THE COURT: What year did y'all sell it?

25 THE WITNESS: We sold it on January 3, 2005.

1 start her in the morning if that's possible rather
2 than to break that up.

3 THE COURT: Well, what do we have in store
4 for the defense? Who is going to testify and how
5 long do you think that's gonna take?

6 MR. FERRARA: Your Honor, I would prefer to
7 start Mrs. Price today because she has the most
8 knowledge. And I think there's gonna be several
9 hours of testimony just on the cross-examinations
10 side of it with respect to damages. And then to
11 answer the Court's question, Mr. Gilbert,
12 Mrs. Fox, and Mr. Ty Adley and potentially Mr.
13 Gerry Fox if necessary. So I just didn't want to,
14 you know, have us start tomorrow and then it
15 runs -- and we're at the same spot tomorrow with
16 two or three witnesses left.

17 THE COURT: I understand. We probably need
18 to go ahead and keep going forward.

19 MR. JACKSON: Yes, sir. I call Diana Price
20 to the stand.

21 Your Honor, I believe I already passed out
22 exhibits related to Mrs. Price. They would be the
23 ones starting with Exhibit No. 12. Do you have
24 those in the stack?

25 THE COURT: I believe I do. If not -- and we

- 1 A Human resources and business administration.
- 2 Q Okay. And what about -- did you have military
- 3 service?
- 4 A Yes. Twenty-two years.
- 5 Q And what was your final rank?
- 6 A Master sergeant.
- 7 Q In what branch?
- 8 A Air Force.
- 9 Q Okay. Now, going back to the time when you and
- 10 your husband first came to South Carolina, when
- 11 was that?
- 12 A To live or just to visit?
- 13 Q To look for a home?
- 14 A Well, the first time that I really remember
- 15 looking for a home was in May of 2003.
- 16 Q Okay. And what did you do on that visit?
- 17 A Well, we got in contact with a realtor. And she
- 18 had some ideas on some homes that we might be
- 19 interested in. We also looked around, drove
- 20 around, to see what we could find on our own. So
- 21 we spent quite a bit of time driving around and
- 22 talking to realtors about places that were up for
- 23 sale.
- 24 Q Okay. And what drew you to Eagle Harbor?
- 25 A Well, my husband told you about the Cottons. We

1 on that one.

2 Q Okay.

3 A And so, you know, we were not opposed except for
4 when we got to talking and looking, we told him we
5 didn't need this much space, you know, this much
6 acreage.

7 Q Okay. And how did he respond to that?

8 A Well, he jumped up and he quickly said, oh, you
9 can subdivide and sell off some of it. You know,
10 pay for the land, pay for your house. And I said,
11 wow, that's cool.

12 Q Okay. Did you ever discuss possibly having a
13 place for your children to build a house or
14 something?

15 A I don't think we did at that point. We were just,
16 like, you know, looking, and why would we need
17 this much space. And so, he offered an idea that
18 was very enticing. But, yes, my husband and I
19 talked about it later as a potential for at least
20 one of our children could maybe come out there and
21 live. If that didn't happen, we could still sell
22 off. Not necessarily within any particular time
23 frame, but that it was a good idea.

24 Q Okay. Did he make any other representations to
25 you at any of those meetings?

1 about this contract, if anything? Do you recall
2 discussing the provisions of that contract?

3 A Yes. I remember this, yes.

4 Q Okay. What did you discuss about the contract?

5 A Well, we didn't -- we didn't see this on that
6 first trip. It was our next trip before we
7 actually saw this.

8 Q Okay.

9 A We did communicate with him from the first trip.
10 It was sort of he wanted to keep us interested
11 and --

12 Q You say him, you're referring Danny Gilbert?

13 A Yes. Yes.

14 Q Okay.

15 A And so we kind of said, okay, we'll be back there
16 and we'll be looking seriously to make a purchase.

17 Q Okay.

18 A So that's when we saw this.

19 Q Okay.

20 A And, you know, we're not familiar with the normal
21 contracts in this area. We had never lived in
22 South Carolina. So we didn't look at it and say,
23 well, this is weird or this should be different
24 or, you know, anything quite like that. We just
25 looked at it and kind of made sure some things he

1 because I think that happens in a lot of
2 subdivisions.

3 Q Did you ask about Belinda Fox?

4 A Well, we -- I did. In fact, I particularly asked
5 him, you know, who is this and why is she on here?
6 Well, she's my partner.

7 Q Okay.

8 A We work together, you know. I'm her salesman.

9 Q Okay.

10 A And actually, down here at the bottom, you see his
11 name for her. So it just looked like he was
12 representing her like -- I guess like a sales
13 agent. We didn't ask him if he had a realtor's
14 license. We didn't get into any of that. We
15 didn't see that that was an issue. But once he
16 kind of explained it that way, it didn't seem like
17 a problem. So that was kind of the end of that
18 discussion.

19 Q Okay. Now, let me show you a few of these other
20 documents. We'll move through those quickly
21 because I don't want to replot old ground. Do you
22 recall the construction contract and agreement?

23 A Yes.

24 Q What do you recall about deciding to do that with
25 Mr. Gilbert?

1 process worked. So all the attachments were put
2 in by us.

3 Q Okay.

4 A And Mr. Cotton was there at the time that we
5 actually signed this, and that's the reason why
6 his name is on here.

7 Q Okay. Let me ask you about what has been marked
8 as Plaintiffs' Exhibit No. 9. And this is
9 actually like a combo e-mail, an e-mail from Danny
10 dated December 29th, and then you have a response
11 at the top. Can you tell why you -- what were
12 your concerns in that response?

13 A Well, my very first sentence says I'm concerned
14 about the time line.

15 Q And what's the date of your e-mail?

16 A The e-mail is the 30th of December.

17 Q Okay.

18 A He had written us an e-mail the day before.

19 Q Okay. Why were you concerned about the time line?

20 A Well, it didn't appear that there was much going
21 on. And we were now, like, six weeks after the
22 closing.

23 Q Okay.

24 A So we were concerned.

25 Q All right. Have that back. Let me show you

1 wanting this money. So he was giving us this idea
2 of how these were going to happen like in this
3 very short period of time. We just wanted to be
4 sure we had our ducks in line, T's crossed, I's
5 dotted because we weren't going to give anybody
6 any money until we knew things were done properly.

7 Q Okay. And let's move on to some of the exhibits
8 we had designated for you.

9
10 MR. JACKSON: Do you have your copy, Your
11 Honor? Starting -- because I have an extra copy,
12 I think.

13 THE COURT: Which one are we looking at?

14 MR. JACKSON: It starts January 22, 2004.

15 THE COURT: I do not have those.

16 MR. JACKSON: Pass this up to the Court.

17 THE COURT: Thank you. Are these already in?

18 MR. JACKSON: Yes. They are in. It looks
19 like these are the rest of those. I don't know
20 why they weren't -- these should go on the bottom
21 in that stack, Your Honor.

22 THE COURT: Okay. They are already in?

23 MR. JACKSON: Yes. We've already stipulated
24 to all of those exhibits.

25 THE COURT: All right. Now, if I can find

1 A And he was giving us some information which was
2 becoming pretty alarming. He was telling us,
3 like, for example, on the cost estimate, he said
4 the Boozer package is gonna be \$23,000. Now,
5 that's -- the plan of the house never changed.

6 Q Okay.

7 A And it was at that point in time it was now
8 55,000.

9 Q So what was it originally?

10 A 23,000.

11 Q Okay.

12 A And that was on the cost estimate. Now, if you do
13 the percentage on that, that's a 144 percent
14 increase from September to January.

15 Q Okay.

16 A Then he was telling us other things like the
17 builder's risk insurance and things like that.

18 Q Did he ever explain why the increase was so great?

19 A He just said materials were going up.

20 Q Okay.

21 A So all these things that are listed here are
22 basically taken with quotes that he had given us
23 and now giving us different figures.

24 Q Okay.

25 A And in fact, I think he had actually produced some

1 he had submitted which was also part of this, he
2 had neglected to mark the septic permit. He just
3 didn't mark it.

4 Q Okay.

5 A They didn't pay attention. They processed and
6 gave him a building permit.

7 Q Okay.

8 A And then she said, oh, we have to stop work. And
9 that's what this is. It's a stop work. He can't
10 do anything else. I'm sending this to him. And I
11 said can you give me a copy? I'll make a personal
12 delivery. And that became a part of this and
13 that's the reason why we did this. We actually
14 labeled it negligence.

15 Q Okay.

16 A And we told him you got to fix this stuff. We're
17 giving him an opportunity with this letter and
18 this information. How are you going to fix it?
19 We're not firing him yet. We're asking him how
20 are you going to fix it?

21 Q Okay.

22 A And at that point in time, he didn't have much to
23 say.

24 Q Okay.

25 A I've left it with him. We mailed it to him. So

1 MR. HUBBARD: I object to what somebody
2 might've said that you weren't privy to.

3 THE WITNESS: I'm sorry.

4 MR. HUBBARD: That's hearsay.

5 THE WITNESS: Oh, okay.

6 THE COURT: Yeah, don't tell us what other
7 folks told you, okay?

8 THE WITNESS: Okay.

9

10 A He called, though. He actually did call in front
11 of me, and he got off the phone. And that's when
12 I really found this out.

13 Q Okay.

14 A So I went and did this so we would have a septic
15 permit.

16 Q Did you ever get something as a result of your
17 application?

18 A Yes. Yes. We did get -- we did get a permit from
19 DHEC.

20 Q Okay.

21 A And it was not too long after this. It was pretty
22 quick.

23 Q Okay. Now, let me show you what's marked as
24 Plaintiffs' Exhibit No. 15 and ask if you
25 recognize or can identify it?

1 I've got a copy of that one. Let me see what
2 you're looking at.

3 MR. JACKSON: I'm sorry. It's a letter from
4 NCM mortgage.

5 THE COURT: Thank you. Go ahead.
6

7 Q So what's the penalty or what happens if you don't
8 close by May of 2004?

9 A She was telling us that if we didn't hit that
10 target date of 24 May, our interest on this
11 construction loan was going to double.

12 Q Okay.

13 A And there was no caveat to that.

14 Q Was there any way to change that, alter it, or do
15 anything?

16 A Not at that time. There was -- I mean, she didn't
17 say anything else besides give us this.

18 Q Okay.

19 A She said, basically, her hands were tired.

20 Q Were you able to meet that target date?

21 A No, we were not.

22 Q Were you charged a penalty interest rate?

23 A As far as we know, yes.

24 Q Okay. Now, going back to your negligence
25 January 22nd letter, did you ever get a response

1 going to threaten us into liening our property and
2 make us back off. But we didn't see that we had
3 an option except we had to terminate that
4 contract.

5 Q At that time, had one of the piers fell over?

6 A I don't think so. This was -- this was just soon
7 after those piers were actually up.

8 Q Okay. Let me ask you about this next letter and
9 ask -- this would be February 9, 2004, letter,
10 Plaintiffs' Exhibit No. 17. Ask you can you
11 identify it?

12 A And I think this was the next letter to Danny
13 Gilbert.

14 Q What happened -- what was the context of that
15 letter?

16 A Well, the first thing is we referenced the
17 discussion because Ron and I were there. We had a
18 discussion when we handed him this. And we had
19 basically kind of said, you know, we'll transfer
20 the permit over to us because we thought we could,
21 really. We thought the building permit could be
22 transferred. We found out -- in this letter, we
23 told him we can't transfer it because it's an
24 invalid permit.

25 Q Okay.

1 Danny.

2 Q Okay.

3 A So Danny took it upon itself to come back to us.
4 Your recent letter and notes from our past
5 conversation with acting homeowner's association
6 president Tonya Evans has been turned over to me.

7 Q Okay.

8 A So in this letter he's basically telling us that
9 oh, by the way, the arch fee that's in the CCRs
10 that I wasn't charging you before because I was
11 doing your building, I'm now charging you. You
12 owe us 500 -- you owe me \$500.

13 Q Okay. And did they expect you to still have some
14 kind of plans or something approved or anything
15 else? Or just pay the \$500 fee?

16 A Well, it says -- yeah. It says that our plans had
17 to be approved by his arch. And that is assuming
18 that approval was already in hand was incorrect.
19 We were now going to have to get the approval,
20 fill out the application, pay the \$500. And, oh,
21 by the way, if we didn't do it, he threatened us
22 with some articles in the CCRs about fines for
23 noncompliance with him.

24 Q Okay. All right. Show you what's marked as
25 Plaintiffs' Exhibit No. 19. It's a mechanics

1 But his attorney actually sent us an itemized list
2 that sort of backed up this figure.

3 Q Was it before or after that was filed?

4 A It was well after this.

5 Q Okay.

6 A Or well after the date of this.

7 Q Okay.

8 A I'm not exactly sure when we got it.

9 Q All right. Let me show you what is marked as
10 Plaintiffs' Exhibit No. 20 and what appears to be
11 surety bond.

12 A And this is the bond that we had to get --

13 Q Okay.

14 A -- to bond off that lien.

15 Q But did you incur cost and expense to pay for a
16 bond?

17 A Of course.

18 Q Okay. Show you the next letter and it's a letter
19 dated May 13, 2004, and it's Plaintiffs' Exhibit
20 No. 21. Do you recall what this letter relates
21 to?

22 A Yes. This is another letter to Mr. Gilbert
23 because he was holding our property hostage. And
24 he had willingly put in his little storage
25 building, before we started building -- and, in

1 our personal property. It has no bearing on your
2 claim of money that you say we owe you." And then
3 it's a notice that's basically saying by the -- as
4 required by the magistrate small claims court,
5 you're given a ten-day notice.

6 Q Okay.

7 A And we listed all the property that he had stored
8 in his warehouse.

9 Q Okay. Did you finally get your property back?

10 A We did.

11 Q Okay.

12 A Soon after. .Soon after this.

13 Q Okay. Let me show you what has been marked as
14 Plaintiffs' Exhibit No. 22. And it's dated
15 May 18, 2004, and it's a letter from DHEC. Do you
16 recall what that letter was?

17 A Yes. We got a copy of this through a Freedom of
18 Information request.

19 Q Okay.

20 A And it's written to Danny Gilbert. And it says
21 that the Department is in receipt of the final
22 recorded plat of Eagle Harbor, phase two, and the
23 recorded encroachment permit.

24 Q Okay.

25 A From the SCDOT.

1 left off.

2 MR. JACKSON: I'm sorry. Thirty --

3 COURT REPORTER: Thirty-eight I think?

4 MR. JACKSON: Yeah. These two.

5 COURT REPORTER: So 39 and 40.

6 MR. JACKSON: Yes.

7 THE COURT: Are both those 38?

8 MR. JACKSON: I think she said 39 and 40.

9 THE COURT: Thirty-nine and 40. So the one
10 to Ms. Price is 39 and the one to Mr. Gilbert is
11 40. Is that right?

12 MR. JACKSON: Yeah. I'll publish these to
13 the Court in just one second. Yeah. Because that
14 other one -- yeah, it's a little bit out of
15 sequence now.

16

17 BY MR. JACKSON (Continuing):

18 Q Let me show you first the one that has been marked
19 Exhibit No. 39. And this is the February 26,
20 2004, letter and ask if you recognize that? I
21 don't think -- yeah, that's different. That
22 should've been later.

23

24 (Whereupon, Plaintiffs' Exhibit No. 39,

25 DHEC Letter, was marked for

Thompson Court Reporting, Inc.
www.thompsonreporting.com

1 copy of that before?

2 A Yes.

3

4 (Whereupon, Plaintiffs' Exhibit No. 40,
5 DHEC Letter, was marked for
6 identification.)

7

8 Q Okay. What is that letter and who is it addressed
9 to?

10 A This is addressed to Mr. Gilbert.

11 Q Okay.

12 A Same day, February 26th.

13 Q Okay. And publish the letter.

14 A What it says is Mr. Gilbert on February 7, 2002,
15 you were sent a letter from the Trident District
16 on-site wastewater supervisor regarding a
17 preliminary evaluation of your proposed 20 lot
18 subdivision called Eagle Harbor, phase two. The
19 purpose of that evaluation was to determine if
20 each proposed lot contained a suitable site for an
21 on-site wastewater system in accordance with
22 SCDHEC. The letter outlined the findings of the
23 evaluations of each lot. These lots -- looks like
24 12, maybe, lots listed, 1, 2, 3, 4, 7, 8, 15, 16,
25 17, 18, 19, and 20, did not meet current minimum

1 things. We had to pay our household goods
2 storage. We had to pay personal storage. We had
3 to pay rent more often. We had to -- whatever
4 else is involved with just sitting and waiting.
5 Because we were in temporary hold status.

6 Q Okay. Now, did you track your rent, storage, and
7 interest damages by some method?

8 A Well, I created a spreadsheet at some point in
9 time. Of course, at that point in time, we
10 weren't really -- I mean, we weren't really
11 necessarily planning anything of any magnitude.
12 But later on we found that we have to have, you
13 know, documentation to back up -- according to the
14 contract, our construction contract, to back up
15 whatever costs are involved with building that
16 house.

17 Q Okay. I'm gonna show what has been marked as
18 Plaintiffs' Exhibit No. 24 and ask can you
19 identify that?

20 A This is a recent, pretty recent, update of a
21 spreadsheet I had done back in 2007.

22 Q Okay.

23 A Yeah.

24 Q All right. So tell me for right now how did you
25 go about preparing that spreadsheet?

1 when you got a credit card receipt or something,
2 you would transfer that information to your
3 spreadsheet?

4 A Well, yes, when I started putting it together.

5 Q Okay. Now, what items do you contend are delay
6 damages?

7 A Well, the things that, you know, that are --
8 you're having to pay every month that you weren't
9 going to pay because that house was gonna be
10 built, you know, back in February. So extra rent,
11 extra storage, extra interest. We're being
12 charged interest every month even through we're
13 not being able to build.

14 Q Okay.

15 A And then we ended up, of course, later on after we
16 did get built, we ended up refinancing because
17 National City Mortgage wanted to charge us an arm
18 and a leg for a permanent loan. So a lot of
19 things. We took money out of savings. We took
20 money out of retirement. We incurred a lot of
21 interest with these things that were going on. So
22 I tracked them on here the best I could.

23 Q Okay. Now, what time frame do you contend you're
24 entitled to for delayed damages? For what time
25 frame?

1 able to resume construction?

2 A Well, although DHEC said it's good to go in the
3 middle of May, we still had to actually get our
4 contractor in place. We had to get the PE hired
5 to inspect that structure. Mr. Kahler, we had
6 hired him actually in February because we thought
7 we were going to be build right away. So we gave
8 him money up front. We did a new contract. He
9 wanted more money in that contract. We had to
10 send National City Mortgage another \$20,000. And
11 Mr. Kahler said, well, that structure is not
12 sound. And really he was the one that kind of got
13 us thinking, you know, we're not doing anything
14 right. Now we might as well get a PE over here
15 and check that out. Because Mr. Kahler gave us an
16 estimate. He said here's how much it's gonna cost
17 you to fix that structure based on my opinion, and
18 here's how much it's going to cost you to start
19 over. So he was doing that at the same time the
20 PE was doing his inspection. So we got the
21 information together and we got this estimate from
22 Mr. Kahler. It was only gonna cost \$2500 to start
23 all over.

24 Q You mean to demolish the existing foundation?

25 A Right.

1 Q Okay.

2 A And then I kind of took -- I sort of color-coded
3 it a little bit. So the first thing you see is
4 basically what we acknowledge as the owners from
5 that SF agreement that we would pay for.

6 Q SF standing for what?

7 A The contract, the construction contract. So in
8 that agreement it said owners are paying for this
9 or this and this and this. So, you know, the
10 first part of this is what we acknowledge was our
11 responsibility.

12 Q So if it's coded in yellow, then that's the
13 owners' responsibility?

14 A Right. And I can't tell you that that's
15 everything we paid for, but that's a pretty good
16 picture.

17 Q Okay.

18 A The next part is basically what we consider
19 damages: delay, legal costs, the mechanics lien,
20 loan cost, survey, inspection, the PE inspection
21 that we had to do. We had to do another
22 inspection to make sure the Boozer package was
23 sound.

24 Q Okay.

25 A Because by the time we got it and actually could

1 that's, you know, that's kind of a ballpark.

2 Q That's a combination of legal fees and delay
3 damages?

4 A Right. And other than like the PE report, the
5 demo. We put that in that column.

6 Q Now, you used the word ballpark. But those are
7 actual figures from actual receipts that you
8 plugged in there. Is that not right?

9 A Right. Right.

10 Q Okay. Now, did you also do a calculation about
11 the construction -- the difference between the
12 construction costs of your home by Mr. Seibel's
13 and as per Danny Gilbert?

14 A Well, actually, John Kahler, that's when the
15 construction -- the contract on the construction
16 went up.

17 Q Okay.

18 A But it wasn't -- it wasn't -- Mr. Kahler did work
19 for us for about six weeks when he actually did
20 get to work. But Mr. Seibel took over for him and
21 he didn't change the amount.

22 Q Okay. So how much did the Kahler contract
23 increase by?

24 A Almost 20,000.

25 Q Why did it increase? Why was it more?

1 A Now, all those calculations are labeled.

2 Q Okay. Now, on your spreadsheet where it says
3 "Contractor," and it's in white, what does that
4 mean?

5 A That's a construction.

6 Q So all those total up to the construction amount
7 that you have for the new contract? The actual
8 extra construction. Is that what those figures
9 are?

10 A It all totals up to \$309,000. And then you take
11 the stipulated sum of 185 from that figure and you
12 get -- the difference is 97,000.

13 Q Okay. Let's move on from the spreadsheet for the
14 time being. So it's your understanding then
15 you're claiming for damages is 97,000 as being the
16 difference between what you had to pay for the
17 construction of your home versus what the
18 stipulated sum was?

19 A Right.

20 Q Okay. Now, let me show you what has been marked
21 as Exhibit No. 25.

22

23 MR. JACKSON: Which one of these were you
24 objecting to or did you say? One of these I think
25 you had objections to. You want to show me which

1 Q Okay.

2 A And so we did.

3 Q Okay.

4 A It sounded like a good idea.

5 Q Okay. And so you fill that out and where did you
6 send it?

7 A Well, my husband actually filled it out.

8 Q Okay.

9 A So there's an address at the top. It went to the
10 Army Corps of Engineers.

11 Q Okay.

12

13 MR. JACKSON: Now, Mr. Ferrara has an
14 objection to these next two exhibits, Plaintiffs'
15 Exhibit No. 26 and Plaintiffs' Exhibit No. 27.
16 Plaintiffs' Exhibit No. 26 is a letter addressed
17 from the Department of Army to Ronald Price. And
18 Plaintiffs' Exhibit No. 27 is the delineation by
19 the Army Corps of Engineers for the Prices.

20 So you want to state your objection?

21 THE COURT: What's the nature of the
22 objection?

23 MR. FERRARA: Hearsay, Your Honor.

24 MR. JACKSON: They can identify that this was
25 a result in the letter that they requested and

1 And I would just ask that one of those be
2 substituted for it. They're identical.

3 THE COURT: Any objection with that?

4 MR. FERRARA: No objection, Your Honor.

5 MR. JACKSON: Is there any other ones that I
6 did not have in there?

7 COURT REPORTER: No. That's the only one I
8 don't have is 38.

9 MR. JACKSON: All right. If we can mark that
10 as a substitute.

11 THE COURT: All right. So we will start
12 again tomorrow at 9:00. All right. And we'll go
13 forward with Ms. Price. Mrs. Price, you are in an
14 uncomfortable position. You are under oath.
15 You're on the stand. You're really not supposed
16 to go and discuss this with your lawyer or your
17 husband.

18 THE WITNESS: Okay.

19 THE COURT: So that frees you up. You don't
20 have to talk about it tonight, okay. And then you
21 get to come back tomorrow and then we'll finish
22 up. After you get off the stand then you can talk
23 all you want. But don't talk to these folks while
24 you're on the stand, okay?

25 THE WITNESS: Okay.

1 THE COURT: All right. Are you all set?

2 Ready to go?

3 MR. JACKSON: I'm ready to proceed.

4 THE COURT: We got everybody? All right. So
5 where did we leave off?

6 MR. JACKSON: Your Honor, I believe we left
7 off, I was examining my client on Exhibits 25 and
8 forward. There was an objection to Exhibits 26
9 and 27 from Mr. Ferrara on a hearsay basis.

10 THE COURT: Twenty-six and 27?

11 MR. JACKSON: Yes, sir. And I'll show you
12 the copies. Those were the -- yeah, these were --
13 basically, they're the letters and delineation by
14 the Army Corps. And I would submit they're
15 admissible under 803(8), which specifically
16 provides for the admissibility to the hearsay
17 objection for reports and data compilations of
18 public agencies and their activities. And I think
19 it fits like a glove for that. And, specifically,
20 it says reports -- agency.

21 THE COURT: Mr. Ferrara, response?

22 MR. FERRARA: Yes, Your Honor. May it please
23 the Court? It's still the -- Court's indulgence
24 one moment. I just want to make sure of the
25 language of 803(8). (Brief pause.)

1 have a seal on them. They're authenticated as
2 original documents. And that's why those are not
3 hearsay. But Plaintiffs Exhibit No. 26 and
4 Exhibit No. 27, we don't have the original
5 document in our possession, and we don't even have
6 an affidavit from Tina or anyone from the Army
7 Corps of Engineers that explains that these
8 documents are regularly kept in the ordinary
9 course of business. There's not a seal on them.
10 I'm not calling into accounts -- I'm not
11 challenging the credibility of counsel's
12 representation that these are letters that were
13 purportedly received. But the cross-examination
14 component that's so vital to non-hearsay is
15 lacking for my client. The representations in
16 these letters I anticipate I cannot ask the Prices
17 about because I don't know that they're qualified
18 or have personal knowledge of the hearsay
19 statements by the Department of Army Corps of
20 Engineers. So I would just respectfully request
21 that these be excluded.

22 MR. JACKSON: Your Honor, if I may. If I can
23 publish for the Court 803(8), and it's pretty
24 clear. It says records, reports, statements, or
25 data compilations in any form of public office or

1 observed by police officers and other law
2 enforcement personnel provided, however, that
3 investigative notes, opinions, judgments, and
4 conclusions are not admissible." And then it
5 goes -- on it says a separate thing for accident
6 reports. So my -- that applies to police
7 officers, accident reports.

8 I'd also note, Your Honor, that in the
9 appraisal submitted by Mr. Carter, this exact
10 document is part of that appraisal, and
11 Mr. Ferrara cross-examined him on the difference
12 between a preliminary report and a final report.
13 So, you know, I think in fairness, it can come in
14 under that as well.

15 MR. FERRARA: Respectfully, Your Honor, he
16 was qualified, Mr. Carter was qualified as an
17 expert. He's allowed under the rules of evidence
18 to testify to matters not in evidence.

19 THE COURT: He's allowed to rely on those as
20 well.

21 MR. FERRARA: Yeah.

22 MR. JACKSON: But if he's cross-examined on
23 that specific report, that should open the door
24 especially under this 803(8) which provides for
25 the admissibility of public agency reports that

1 THE COURT: At this point, I'm going to
2 disallow them based on the 803(8), my reading as
3 to the -- it contains the opinions, judgments, and
4 conclusions that would not be allowed. And that's
5 as to 26 and 27.

6 MR. JACKSON: Okay, Your Honor.

7
8 (Whereupon, Plaintiffs' Exhibit No. 26,
9 Army Corps Letter, was marked for
10 identification.)

11
12 (Whereupon, Plaintiffs' Exhibit No. 27,
13 Army Corps Letter, was marked for
14 identification.)

15
16 THE COURT: We still have Mrs. Price?

17 MR. JACKSON: Yes, Your Honor.

18 THE COURT: Okay. Mrs. Price, come on back
19 up.

20
21 (Mrs. Price resumes the witness stand at
22 9:13 a.m.)

23
24 THE COURT: Mrs. Price, you are still under
25 oath, okay?

1 A Eagle Harbor, Incorporated.

2 Q Okay. And who executed the declaration?

3 A Eagle Harbor, Incorporated, or Mr. Gilbert.

4 Q Okay. Now, let's look at the --

5

6 THE COURT: Excuse me, Mr. Jackson. You
7 looking --

8 MR. JACKSON: I'm sorry, Your Honor. Yeah.
9 I'm looking at --

10 THE COURT: I'm having trouble keeping track.

11 MR. JACKSON: Yeah. I think it's 28, Your
12 Honor.

13 THE COURT: Okay. Just want to make sure.

14 MR. JACKSON: Yeah, it's 28.

15 THE COURT: I want it in front of me while
16 you're talking.

17 MR. JACKSON: Sure. Yeah. I'm sorry. It's
18 28.

19 THE COURT: All right. Hang on. Let me find
20 it. (Brief pause.)

21 I can't put my hands on it this second. Do
22 you have another one for me that I could possibly
23 use, please?

24 MR. JACKSON: I think I gave out all my
25 copies. See if there's another copy up here.

1 you what has been marked as Exhibit No. 29.

2

3 MR. JACKSON: And, Your Honor, Exhibit No. 29
4 is a copy of a plat, two-page copy of a plat,
5 recorded plat.

6 Q I think we actually have a better copy in one of
7 the other exhibits in the defendant's and ask that
8 you look at that. And I know it's in very tiny
9 print. Can you see that that matches up with the
10 description, the recording information? Let me
11 show you. It may help you.

12 A The plat cabinet?

13 Q Yeah. If you'd look right there, it's very tiny.

14 A Right.

15 Q It's recording information. And I think it
16 matches the Exhibit A plat cabinet. That's the
17 property they're talking about.

18 A I does appear to, yes.

19 Q And is your lot 20 among that?

20 A It is.

21 Q But at that time of recording, you already
22 purchased your property. Is that correct?

23 A Yes, sir.

24 Q Okay. And do you know if Eagle Harbor in your
25 chain of title ever had title to your property?

1 to Columbia and ask them.

2 Q Okay.

3 A For a reevaluation. So that's basically what we
4 did. And they came back and said no, that they
5 had been out to check and they found that the soil
6 would not -- it just didn't allow for that. So
7 there was no subdividing, no second -- no drain
8 field capability on the lot itself, and we
9 couldn't subdivide for any residential reason.

10 Q Okay. And you specifically asked them could you
11 subdivide for residential reasons?

12 A We did.

13 Q And they said that you could not?

14 A Could not, yes. And they did say that engineered
15 systems would not be suitable for the property as
16 well.

17 Q Did you ask them about the drainage and your drain
18 field for your existing property?

19 A We did. We thought perhaps our drain field would
20 work for a second residence. They said no.

21 Q Okay. Now let's get back to your spreadsheet and
22 your construction -- let's kind of zero in on that
23 a little bit.

24

25 MR. JACKSON: And these are Plaintiffs'

1 Q And you compared it to your existing stipulated
2 sum?

3 A And the amount difference was 87,836.83.

4 Q Okay. Now, let's look at your Exhibit No. 24 for
5 a minute.

6

7 MR. JACKSON: And I moved Exhibit No. 23 into
8 evidence. I guess it was stipulated to so it's
9 already in evidence.

10

11 Q Exhibit No. 24, let me ask you about some of these
12 specific costs on there. Now, as I understand it,
13 you broke it down by the purpose. You have who is
14 responsible, contractor, seller, and what type of
15 receipt or other thing it relates to. So lodging,
16 for example, does that fall under rent?

17 A Yes.

18 Q Okay. And why are you asking for rent?

19 A Because we had to pay more rent. We had to pay
20 rent longer.

21 Q That would be part of your delay damages?

22 A Correct.

23 Q Okay. Now, you have listed here -- I noticed you
24 had a closing refinancing charge. Why are you
25 asking for a refinancing charge?

1 Q Okay. And I think you just testified about having
2 to refinance. Okay. What about -- now, did you
3 have to demolish the previous foundation?

4 A We did do that, yes.

5 Q And how much did that cost?

6 A It was \$3,000.

7 Q Okay. And you did that based on the expert's
8 report saying it was faulty?

9 A We did. And based on also Mr. Kahler's estimate
10 of what it would cost if he attempted to repair
11 it.

12 Q Okay. Now, what is your understanding of what the
13 contract provides for recovery in the event of
14 termination for cause?

15 A Excuse me?

16 Q What is your understanding of your construction
17 contract for recovery in the event you terminate a
18 prior contractor for cause?

19 A That if you build a house at a higher cost than
20 the stipulated sum that that difference would be
21 owed back to by the contractor.

22 Q Okay. And that's provided in the general terms
23 and conditions of your contract?

24 A Yes, it is.

25 Q Show you that and ask that you publish the

1 MR. JACKSON: That's all the questions I have
2 of this witness.

3 THE COURT: Mr. Ferrara?

4 MR. FERRARA: Thank you, Your Honor. May it
5 please the Court?

6 - - - - -

7 CROSS-EXAMINATION

8 BY MR. FERRARA:

9 Q Good morning, Mrs. Price. I got a few questions
10 about the damages that you're claiming against my
11 clients Belinda and Gerry Fox. And before we get
12 to that, if you could, let's take a look at
13 Exhibit No. 2, the contract.

14

15 MR. FERRARA: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18

19 Q Ma'am. I'm handing you Plaintiffs' Exhibit No. 2.
20 And your husband testified, and I think you heard
21 his testimony yesterday, but I'll ask you the same
22 question. The agreement between you and your
23 husband and Belinda Fox to purchase lot 20 is
24 completely encapsulated in Plaintiffs' Exhibit
25 No. 2, is it not? The two-page document.

1 and I didn't want her to testify from notes or
2 something else she's marked up but rather just
3 answer the questions about the Court's admitted
4 exhibit.

5 THE COURT: I think she's entitled to refer
6 to her notes if she wants to. You're certainly
7 entitled to ask about the notes now.

8 MR. FERRARA: Sure.

9
10 Q Ma'am, did you bring some notes with you today?
11 A I did.
12 Q Would you mind if I take a look at those?
13 A Certainly. It's the same. So identical contract.
14 Q Sure. Okay. Well, looking at Plaintiffs'
15 Exhibit No. 2, paragraph 8A, the buyer is
16 purchasing property as is, correct?
17 A That's what it says.
18 Q Ma'am, you brought a lawsuit against my clients.
19 This is you and your husband's opportunity to
20 explain to the judge about your case. I'm just
21 asking you that in this two-page agreement, you
22 and your husband understood that Lot 20 was going
23 to be purchased from Belinda as is as it is stated
24 in the contract, correct?
25 A As is means by and accordance with subdivision

1 Q Okay. Great. Now, you're claiming some damages
2 here for Westlaw and other legal research that you
3 performed in Plaintiffs' Exhibit No. 23. Do you
4 recall that?

5 A I do.

6 Q Okay. Is that where you're getting your
7 information about the "as is" that you just
8 testified about?

9 A No. I'm not saying in total I got it there.

10 Q Why do you think that my clients need to pay you
11 and your husband for Westlaw research that you did
12 well after you purchased this lot?

13 A That research does not confirm, have anything
14 really to do with the "as is" clause in this
15 contract.

16 Q Agreed.

17 A We signed this contract in 2003. I did some
18 research when we became pro se in this case to
19 help myself to understand what was going on and
20 what was available. That is not where I got the
21 clarification of "as is." It doesn't mean that I
22 didn't get some information there. It simply
23 means that when you have a contract to buy land
24 that is in a development subdivision that is
25 subject to local, state, and federal law, those

1 Q What other lawsuits were you involved in between
2 2007 and 2008?

3 A We filed a title insurance complaint.

4 Q I mean beside -- we heard about that yesterday.
5 But I'm saying besides that title insurance
6 complaint and this lawsuit that we're here on
7 today, are there any other lawsuits?

8 A No.

9 Q That you did research on that you're claiming
10 damages for today?

11 A No.

12 Q Okay. So that \$1572, part of that is for this
13 lawsuit you contend and part of it is for the
14 Investors Title lawsuit?

15 A Well, not exactly. What was the end date on that?
16 April 2008?

17 Q December of 2008.

18 A December 2008?

19 Q Yes, ma'am.

20 A Well, we had started the Investors Title. So,
21 yes, there would've been a combination of the two
22 actions.

23 Q Okay. But let's go back to closing first and
24 we'll come back to that, ma'am. Exhibit No. 2
25 that you're looking at.

- 1 testimony?
- 2 A Did I say that?
- 3 Q You said it was a mistake. You said the
- 4 contract --
- 5 A I said that particular statement is incorrectly
- 6 stated because you get them from the seller.
- 7 Q Okay. Well, did you understand that the seller
- 8 was supposed to give those to you at the time that
- 9 you signed this contract with Mr. Gilbert and
- 10 Mrs. Fox?
- 11 A No. It doesn't say that.
- 12 Q Right. I know it doesn't.
- 13 A It says at the closing.
- 14 Q Right. The closing attorney.
- 15 A Which the seller should be at the closing.
- 16 Q Ma'am, if you could please just answer the
- 17 questions.
- 18 A I'm trying. I'm trying.
- 19 Q Let's go to page 2 then while we're still talking
- 20 about closing. The very bottom. You and your
- 21 husband or your husband negotiated this last
- 22 sentence below the signature block, did you not,
- 23 in this contract?
- 24 A Yes. I had that put in there.
- 25 Q You had that put in there which says upon

1 bargaining for this statement at the bottom that
2 you wanted to make sure that the contract that you
3 signed was "correct" and didn't include any
4 duplication of items.

5 A It did appear that when we were reading it, some
6 things were duplicated.

7 Q That's right.

8 A And said in different ways. But it didn't mean
9 that it was a problem. There's several errors on
10 this contract in all. So once you look at it in
11 total, there were numerous things that were not
12 done: buyer, the seller, the representer. I mean,
13 if you really look at the whole thing, there's a
14 whole lot of mistakes. We didn't take -- the
15 closing didn't happen and take possession by the
16 30th of October.

17 Q I understand your concern, ma'am. But I just want
18 you to ask -- answer these questions. True or
19 false: You had concerns about the correctness of
20 the contract --

21 A Of course. You always have concerns when you sign
22 a contract. That's not unusual.

23 Q Despite those concerns, you and your husband chose
24 not to contact Jeff Spell about this contract --

25 A That's right. We did try to call Mr. Spell.

1 on this contract by not seeking your own counsel
2 either through Mr. Spell or through another
3 attorney and proceeded forward with closing.
4 Isn't that true?

5 A No. We didn't roll the dice at all. There are
6 requirements --

7 Q When I say roll the dice, I mean figuratively.
8 You and your husband took a chance because you --
9 you didn't contact another attorney?

10 A No. We didn't really take a chance. When you
11 start looking at this very closely, there are
12 things just like my husband had asked Mr. Gilbert
13 about the soil test. He said, oh, that's done,
14 everything is fine. Well, those kinds of things
15 are all material to this.

16 Q Sure.

17 A And the seller has responsibility in this contract
18 to disclose things that are done. There was
19 already the seller's responsibility to handle
20 that, for example.

21 Q Do you know based upon your legal research or did
22 you learn what the law in South Carolina is with
23 respect to purchasing an empty piece -- a non -- a
24 residential piece of property without a home on it
25 in South Carolina? Are you familiar with that?

1 in here and testify that this contract that you
2 and your husband signed is null and void because
3 of these things you've just talked about,
4 subdivision and other things, that needed to be
5 done, correct?

6 A Why would I need an attorney to do that?

7 Q Because you're not an attorney. And you don't
8 know what the law in South Carolina is when you're
9 purchasing a lot, correct?

10 A I'm not any more responsible for that than the
11 seller would be.

12 Q Well, let's talk about that. You agree that you
13 and your husband are at least 50 percent
14 responsible for the actions in this contract. Yes
15 or no?

16 A Fifty percent?

17 Q Sure. I mean, do you bear any responsibility for
18 proceeding forward on an as is contract and not
19 doing a wetlands study and not checking the County
20 for recorded covenants and recorded plat?

21 A Well, since you brought up the wetland study, that
22 should have been done before the contract was
23 done.

24 Q Sure.

25 A It should've been done before the plat was filed.

1 A No. It was not our responsibility.

2 Q Even though the written contract in paragraph 10
3 says wetland study is buyer's expense and the
4 buyer shall have the privilege and responsibility
5 of performing that?

6 A It was not our responsibility because it was the
7 seller's responsibility before ever presenting the
8 contract.

9 Q You're saying that now to try to overcome the
10 language that's in the contract that you and your
11 husband signed?

12 A I'm saying that now because that's the way it is.
13 That's a fact.

14 Q You and your husband are suing Belinda and Gerry
15 Fox on Plaintiffs' Exhibit No. 2, this contract,
16 correct?

17 A Yes. There are things in this contract that the
18 seller did not do and did not -- or did do and did
19 not disclose. One or the other.

20 Q And you and your husband are claiming that Belinda
21 Fox as the seller did not give you a copy of the
22 covenants and restrictions, that she did not have
23 a final subdivision plat recorded, that she did
24 not check with the developer to allow subdivision
25 of property into two lots or three lots, correct?

1 A I'm sorry.

2 Q I'm sorry. You have no evidence -- you have no
3 evidence that the seller, Belinda Fox or Danny
4 Gilbert, had knowledge of any wetlands on Lot 20
5 prior to your closing, do you?

6 A I have knowledge of the fact that the plat itself
7 says that no wetlands studies were done.

8 Q And that would've given you and your husband an
9 inkling that you need to perform a wetland study
10 because you can't rely upon that?

11 A No. We didn't even have the plat at the time.
12 And the information on this agreement does not
13 refer to the plat that is actually recorded. So
14 they are inconsistent as well. We did not have
15 any information about the recorded plat. What we
16 had was the master plat -- plan that Mr. Gilbert
17 had given us. We had no reason to believe that
18 anything existed that would be contrary to that.
19 We later learned about the no wetlands -- the no
20 wetlands study. We later learned that as with all
21 those documents that started coming into our home
22 from the OCRM or Army Corps of Engineers
23 investigating the wetlands because there had not
24 been those studies that were required by law prior
25 to selling any of those properties in Eagle

- 1 A Right.
- 2 Q And it also shows Lot 20 on there, correct?
- 3 A It does.
- 4 Q And it shows Lot 20 being the same acreage of
- 5 7.861 acres as referenced in your contract?
- 6 A It does.
- 7 Q Now --
- 8 A But the TMS is wrong.
- 9 Q Right. Now, the TMS, do you --
- 10 A The Parent Track A subdivision TMS is incorrect.
- 11 Q Now, when you and your husband hired or agreed by
- 12 contract to have Jeff Spell do the closing,
- 13 correct?
- 14 A He's on there as the closing attorney. We did not
- 15 actually hire him.
- 16 Q Okay. Well, paragraph 6 says Jeff Spell is going
- 17 to be the closing attorney?
- 18 A It does because it was preprinted on the contract.
- 19 Q Okay. But you could've marked it out or added to
- 20 it, correct?
- 21 A Well, certainly. There's a lot of things on here
- 22 that could've been marked out.
- 23 Q Sure.
- 24 A Just like the seller could've marked out this part
- 25 down here about the wetlands studies or the soil

1 contract.

2 A Right.

3 Q In the contract you have -- there's 21 paragraphs
4 that are all important. And you and your husband
5 signed this. You testified about that. This
6 contract is wholly contingent upon a drain field
7 site soil test in paragraph 21, correct?

8 A That's what it says. But it doesn't say and, oh,
9 by the way, the soil test has already been done.

10 Q Right. And that's very important because it
11 doesn't say a soil test has been done in this
12 contract, does it?

13 A No. But as I said before, and you know as well as
14 I do, that is required to be disclosed and it was
15 not on this contract.

16 Q You're not asserting that the South Carolina
17 Residential Property Disclosure Act has anything
18 to do with this case, are you?

19 A I am asserting that by law a seller is required to
20 disclose to a buyer the conditions that they know
21 that exist with the property they're about to
22 sell.

23 Q Now --

24 A And like my husband said, he asked Mr. Gilbert.
25 Mr. Gilbert said all done.

1 present you with the soil test or a DHEC permit or
2 a septic approval. Do you agree?

3 A No, I don't. Because like I said, we had
4 absolutely no real reason to suspect anything was
5 wrong. The closing took place. Mrs. Fox did not
6 call us and say, by the way, we have some errors
7 in this contract. She did not let us know
8 anything like that. Mr. Gilbert did not either.
9 And even though he said, oh, this has already been
10 done, we didn't line it out. It didn't become an
11 issue to us. He represented that. And, yes, we
12 could've done that. He could've done that. It
13 didn't happen.

14 Q Right. If Mr. Gilbert did in fact represent that
15 to you, would it not be prudent for you and your
16 husband between the time of contract,
17 September 13th, and the time of closing,
18 November 26th, demand Mr. Gilbert, as you did
19 after the closing, show me a copy of the DHEC
20 septic permit? Show me a copy of the soil test?

21 A No. Even when we asked him for the DHEC septic
22 permit and he kept evading giving us that, we
23 didn't even really understand all that was going
24 on at that time. That came because of the draw.
25 The draw procedures required that that septic

1 Mr. Gilbert had in disclosing to us what had
2 happened already.

3 Q Yes, ma'am. Let's go to paragraph 11 of the
4 contract. And before I ask you this question, you
5 and your husband carefully read the contract
6 before you signed it, correct?

7 A We read it. I'm not sure I define that as
8 carefully. We did read it.

9 Q No dispute that page 2, Mrs. Price, has your
10 signature on it and your husband's signature on
11 the signature blocks, correct?

12 A It does.

13 Q Okay. Now, let's go back to paragraph 11 on
14 page 1. Paragraph 11 essentially says that the
15 entire agreement and all promises between the
16 buyer and seller are contained in this two-page
17 document. Do you see that?

18 A I see that written in there, yes.

19 Q Okay. That's really important, isn't it?

20 A Well, it's important in the fact that the seller
21 and/or Mr. Gilbert would've told you the truth
22 even before these words or you signed on to these
23 words.

24 Q Right.

25 A Yes. It's all important.

1 That would've been impossible to actually get
2 done. So there's several things in this contract
3 that are not applicable, shouldn't have been
4 there, should have been lined out by the seller
5 even before we were asked to sign it. Did we know
6 all that really at the time? No. Because if we
7 really had been very closely looking at it, we
8 would've said, well, you know, this inspection
9 thing is pretty important; 1 October, that's not
10 reasonable. But we didn't do that. We're just
11 like the average couple walking around looking at
12 property and trying to buy and build a house in a
13 new location we've never been in before. We
14 trusted Mr. Gilbert. We trusted when we saw
15 Mrs. Fox's name on here that she would be at the
16 closing. That if anything in this contract was
17 wrong or not disclosed, that she would have made
18 that known to us at least before the closing took
19 place.

20 Q Paragraph 18 that talks about default, you agree
21 that you and your husband, if you really did rely
22 upon statements that Danny made that were outside
23 of this contract and you thought that those
24 representations, for example, the soil test, were
25 false, between the time of contract and closing,

1 A We had no reason to believe that there was
2 anything wrong. We would not have proceeded with
3 closing had we thought that. We did not think
4 that. Just like I said and have said, numerous
5 things in this contract, after the fact, you can
6 look at it and see there's many things wrong.

7 Q Sure.

8 A But nobody made an issue of it then. We didn't
9 see that before the closing. And here again, it
10 still comes back to the biggest responsibility
11 goes to the seller selling you the property,
12 especially with this covenant and stipulation that
13 CCRs are on the property. That's a very
14 significant part of this.

15 Q Right. And I'm glad you mentioned that because
16 that's the next area I want to turn to.

17 A Okay.

18 Q You just testified and had you and your attorney
19 introduce covenants and restrictions from 2004,
20 correct?

21 A He did show me that, yes.

22 Q Those covenants from 2004 were after your closing
23 on Lot 20, correct?

24 A They were.

25 Q Okay. So those covenants don't apply unless you

1 you closed?

2 A Do I have an attorney showing up to say that?

3 Q Yes.

4 A Of course not.

5 Q Right. You know why? Do you have an attorney
6 that provided an opinion of that?

7 A We did, yes.

8 Q Okay. Well, did that attorney review with you the
9 fact that the declarant and others can add their
10 property to be subject to covenants of Eagle
11 Harbor?

12 A And others being who?

13 Q I'm just asking if the attorney advised you of
14 that.

15 A The attorney advised us of a new title abstract.
16 The new title abstract was done in 2005. That
17 title abstract said these are not in your chain of
18 title.

19 Q Okay. Well --

20

21 MR. FERRARA: I would respectfully request,
22 Your Honor, that that last bit of testimony be
23 stricken from the record as hearsay.

24 THE COURT: No. You ask her.

25 MR. FERRARA: Okay.

1 THE COURT: Yes, please.

2 Yes, ma'am. What were you looking at?

3

4 Q Yes, ma'am. If you read 2.2 1 of the covenants.

5 A 2.2 1?

6 Q 2.2 1 or 2.2.1.

7 A Okay. Additions by the declarant?

8 Q Yes, ma'am.

9 A "During the declarant control period which runs
10 through" what? What period was that?

11 Q I'm not sure.

12 A Okay. I see that.

13 Q I'm going to ask Mr. Gilbert. Go ahead.

14 A "The declarant should have the right without
15 further consent of the association or any owner to
16 bring within the plan an operation of this
17 declaration or to consent thereto the whole or any
18 portion of any property" -- you want me to go on?

19 Q You can stop there. And I'll ask you do you
20 understand that section to be that any owner can
21 consent to the covenants?

22 A Owner? Owner being one of the homeowner
23 association owners?

24 Q Any of the property owners?

25 A I guess I don't really understand that sentence.

1 Q Right. We're not in this lawsuit, ma'am,
2 respectfully, about lot 21. We're just talking
3 about Lot 20.

4 A Okay.

5 Q But I agree with you. Lot 21 is subject to the
6 covenants as well.

7 A Well, no. I'm not saying that I agree that
8 they're subject to the covenants. Because you
9 would have to accept these after. These were
10 recorded. But at the time they were recorded they
11 specifically say that Eagle Harbor, Incorporated,
12 owned that property which is not the case. Once
13 that property was sold to us, I agree, we could
14 accept these just as if we could accept the
15 October 2004. But that's not what we did. We
16 haven't done that yet.

17 Q In this lawsuit, aren't you and your husband
18 asserting that Belinda Fox was an agent of Eagle
19 Harbor and the declarant?

20 A An agent of Eagle Harbor?

21 Q Yes.

22 A No. I don't --

23 Q You're not?

24 A We're not asserting the fact that she was working
25 for Eagle Harbor.

1 THE WITNESS: Sir, may I -- I need to go to
2 the bathroom.

3 MR. FERRARA: Oh, sure.

4 THE COURT: Certainly. We'll take a break.
5 You can step down. We'll be in recess.

6 THE WITNESS: Thank you.

7

8 (A brief recess was taken from
9 10:16 a.m. until 10:21 a.m.)

10

11 THE COURT: All right. Come on back up here.

12

13 (Witness, Mrs. Price, resumes the stand
14 at 10:21 a.m.)

15

16 THE WITNESS: Thank you, sir. Can I get back
17 my notes or not?

18 THE COURT: Mr. Ferrara, do you have her
19 notes?

20 MR. FERRARA: One second, Your Honor, I may.
21 Yes. Yes, I do --

22 THE COURT: -- exhibits.

23 MR. FERRARA: -- yes. Yes, sir.

24 THE COURT: All right. You are still under
25 oath. Mr. Ferrara?

1 pulling the legal out from the total.

2 Q Okay.

3 A That's what I would guess.

4 Q Okay. So should we not -- so are you claiming
5 \$31,524.52 of legal or are you not?

6 A Well, that would be -- I'm pretty sure that's
7 about the total that's listed in that category.

8 Q Okay. Let's go to Exhibit No. 23, which you have
9 in your lap. And you have -- you know what? I
10 apologize. I don't think 23 will help. Let's go
11 back to 24 and let's just go to page -- the second
12 to the last page. The green section, ma'am. Yes,
13 ma'am. I think you broke out or maybe sorted the
14 legal expenses starting on line 226. Do you see
15 that?

16 A That item number is there, yes.

17 Q Okay. So let's go through these legal expenses.
18 \$150 on the 9/27 of '04 you paid Peterson and
19 Scott. Is that for the filing fee in this case?

20 A It sounds like it. I think so, yeah.

21 Q Okay. All right. Then we've got \$111.15 of
22 copying costs from 2011. Was that something you
23 paid to a law firm or something that you paid on
24 your own while you were representing yourself pro
25 se?

- 1 A I can't say.
- 2 Q Then you have another -- let's look at the next
- 3 line below, the line 388, ma'am. And \$150 for a
- 4 deposition transcript in 2008.
- 5 A 2008. What number?
- 6 Q Line 388.
- 7 A Yeah. We had -- we had to get a copy of the
- 8 transcripts.
- 9 Q For the Investors Title's case, correct?
- 10 A No. I don't -- No. I don't think so.
- 11 Q In this case?
- 12 A I think so, yeah. We didn't have any sealed
- 13 transcripts initially. I believe that was what
- 14 this was for. I could be mistaken.
- 15 Q Okay. Now, and we talked about this yesterday.
- 16 But isn't it true that you and your husband hired
- 17 Chellis and Frampton's office, specifically
- 18 Michael Moore, to represent you in 2015 or so on
- 19 this particular case?
- 20 A 2000 when?
- 21 Q '15?
- 22 A No.
- 23 Q No?
- 24 A That's not correct.
- 25 Q All right. Okay. Well, did you and your husband

1 A No, it is not.

2 Q It's not?

3 A No.

4 Q You paid Chellis and Frampton more than --

5 A No, no. That's a retainer. There was no title --

6 Investors Title incident at the time that we

7 retained them. We did discuss the possibility of

8 Investors Title, but they never filed a complaint

9 against Investors Title.

10 Q They never --

11 A They never did.

12 Q Ma'am, I'll mark this document for identification.

13 I think it's going to be Defendant Fox's Exhibit

14 No. 3. I'll hand you Defendants' Exhibit No. 3

15 which is marked for ID.

16

17 MR. FERRARA: Your Honor, I do have a copy

18 for the Court if you would like?

19 THE COURT: Yes, please.

20

21 Q Ma'am, that's a copy of a complaint that the

22 attorneys from Chellis and Frampton prepared for

23 you, correct?

24 A It appears to be. It's not signed on the back.

25 Q Okay. And you testified that your attorney filed

1 Q The \$1150, which line item is that, ma'am? You
2 mentioned \$1150?

3 A No. The case 1150 --

4 Q Oh, okay.

5 A -- and the case 1855. It was a combination of
6 those two cases that that retainer was for. And
7 then Mr. Moore --

8 Q The 1150 file case number meaning -- what was that
9 lawsuit again? I apologize.

10 A The construction case.

11 Q Construction?

12 A The Knight's mechanics lien.

13 Q Okay.

14 A That was the case that brought us into lawsuits.
15 The Knight's Redi-Mix people filed against us with
16 Mr. Gilbert.

17 Q Now, does Mr. Parker also work for Chellis and
18 Frampton?

19 A He did, yes.

20 Q Okay. And do you recall giving Mr. Parker the
21 authority to withdraw an action against amended
22 complaint, withdraw this amended complaint that I
23 just handed to you?

24 A I'm sure we must have. Can they do that without
25 your permission? We didn't really know what we

1 THE WITNESS: Well, as I --

2 MR. JACKSON: That's a stamp. It doesn't
3 have a clocked copy or recording information on
4 the exhibit -- it just certifies it as a true copy
5 which is probably attached to the motion to amend.

6 MR. FERRARA: At this time, Your Honor, I
7 would move to admit Defendant Fox's Exhibit No. 3
8 into evidence which is entitled Second Amended
9 Complaint in this action 2004-CP-08-1855.

10 MR. JACKSON: No objection, Your Honor.

11 THE COURT: All right. Without objection.

12

13 (Whereupon, Defendant Fox's Exhibit
14 No. 3, Second Amended Complaint, was
15 received into evidence.)

16

17 MR. JACKSON: No objection.

18 MR. FERRARA: Defendant Fox's Exhibit No.4,
19 Your Honor, has been marked. And I understand
20 there's no objection to its admissibility. I was
21 going to pass a copy up to the Court.

22

23 (Whereupon, Defendant Fox's Exhibit No.
24 4, Consent Order, was received into
25 evidence.)

1 action, correct?

2 A With that amended complaint, yes, they did.

3 Q And with -- was Joseph Ginn also working at
4 Chellis and Frampton?

5 A Nope. He was not.

6 Q No. Okay. And I apologize. What attorney helped
7 you with the Investors Title claim? What law
8 firm?

9 A He filed the complaint, Mr. Ginn.

10 Q Okay.

11 A He did file it.

12 Q And Mr. Ginn filed a complaint in the Investors
13 Title claim. And does he work for --

14 A He also quit after that.

15 Q Did he work at Chellis and Frampton?

16 A No, no.

17 Q Okay. I apologize. Where did he work?

18 A He's independent, I guess.

19 Q So line 377 on Plaintiffs' Exhibit No. 24, \$5,000
20 retainer to Mr. Ginn for attorney's fee rather.
21 Would that have been for the Investors Title?

22 A No. That was for the other two cases, 1150 and
23 1855. He filed that -- that complaint against
24 Investors but then he quit.

25 Q And that's when you and your husband handled that

1 A 226?

2 Q Yes, ma'am.

3 A Okay. I see it once. Oh, yeah. Yeah. That does
4 look -- well, wait a minute. Yes. That is a
5 duplicate. You're right. It's the same date,
6 isn't it? Same number?

7 Q Right.

8 A Right. That would be an error.

9 Q Okay. Now, I understand Mr. Jackson's
10 representing you in this action. But Mr. Jackson
11 also represented you in the Investors Title
12 action, correct?

13 A Yes.

14 Q Okay. Are any of his fees for the Investors Title
15 action in this green section here on Plaintiffs'
16 24 --

17 A No. They are not.

18 Q No. Okay. Let's look at line 389. You have
19 estimated legal to Toby Ward pending state --
20 maybe is that -- does that mean pending a
21 statement?

22 A I don't see pending a statement on here. Is that
23 written on here? Oh, yes, at the very end. Yeah,
24 we don't have a complete list of all that yet. It
25 includes costs that had been involved with this

1 Q You sure?

2 A Yes. They're all separate. We gave -- we hired
3 here Derrick on a separate retainer with separate
4 costs for that lawsuit.

5 Q Okay.

6 A But we did not get those reimbursed, no. That was
7 something that I don't exactly know why that
8 happened, but we did not get them.

9 Q Okay. Just to be clear, Investors Title didn't
10 pay the settlement in the case, though, correct?

11

12 MR. JACKSON: Objection. Talking about the
13 terms of the settlement for the same reason we
14 went over before, Your Honor.

15 THE COURT: I'll sustain that objection.

16 MR. FERRARA: Okay. Moving on.

17

18 Q Ma'am, line 378 in the green section as well,
19 legal training books. Do you see that?

20 A Right. That's when I started going to school.

21 Q Did you get any books on contracts?

22 A They're all part of the school books --

23 Q I mean any legal --

24 A -- subjects.

25 Q Any legal books on contracts?

- 1 A The VA paid for it.
- 2 Q All right. You've got another large charge here
3 in 2016 for ProLegal Copy. What was that for?
- 4 A I think subpoenaed documents.
- 5 Q Now, during this time in this case, Mr. Jackson is
6 representing you, correct?
- 7 A Right.
- 8 Q And he has -- and his firm have costs that they're
9 keeping track of for you and your husband in this
10 action, right?
- 11 A Most of them, yes. But some of them we have paid
12 independently.
- 13 Q Well, is this \$270 charge something Mr. Jackson
14 forwarded to you and you paid? Or is this
15 something that you and your husband incurred on
16 your own?
- 17 A We paid it. I'm not sure if he got the invoice
18 and forwarded it to us or if we got the invoice
19 directly. I couldn't tell you for sure.
- 20 Q Well then that leads me to my next question. Why
21 wouldn't that \$270 be included in line 389
22 estimated legal costs of \$7,000 which were --
- 23 A Because we did pay it directly. It didn't come --
24 it wasn't one of those things that would be
25 accounted for in Mr. Derrick's statement.

1 delay or other costs. The delay items are the
2 storage, the rent, what else? Interest. The
3 other items are what we would consider more
4 related in this case. Like a mechanics lien is
5 related to Mr. Gilbert's responsibility,
6 contractor.

7 Q Okay. So, just to be clear, I'm representing the
8 Foxes. So I'm asking you, and you can just help
9 me understand, the mechanics lien charges and the
10 storage charges and the interest charges, you and
11 your husband aren't claiming that Belinda Fox owes
12 your reimbursement for those, correct?

13 A Well, I don't know about -- I mean, the mechanics
14 lien, I agree. But the storage and the interest,
15 I can't agree on that because it's all related to
16 us not getting our septic, subdivision regulations
17 not being met which goes back to the buy of the
18 property. So I can't say for sure who would be
19 ultimately responsible. But when you go back to
20 the very beginning of the closing, both of these
21 things were happening. And in essence, they were
22 kind of happening as a -- they were happening as a
23 package --

24 Q Yes, ma'am. Let's flip to the last page of that
25 exhibit, if you don't mind, line 310.

1 split it up. I mean, I don't -- we're just trying
2 to give a picture of the cost, the delay and/or
3 the costs, that we should not really have ever had
4 to endure.

5 Q I mean, really, if you get a judgment for all of
6 these damages, you and your husband are going to
7 make out like bandits on this transaction. Do you
8 agree?

9 A I do not. This is 15 years later.

10 Q Sure.

11 A You do not -- are you suggesting that doesn't
12 matter?

13 Q No. I'm just saying that you and your husband are
14 claiming, you testified moments ago, that you're
15 claiming for \$368,000 of costs and fees in this
16 action.

17 A No. We're not claiming 368,000. 368,000 was the
18 total cost of all of this.

19 Q Okay. I apologize.

20 A It includes what we put into it out of our pocket,
21 which this doesn't even give you the entire list
22 of that. It includes this delay and other, and it
23 includes the stipulated sum, and it includes the
24 other amount above that.

25 Q Using round numbers, you're claiming 58,000 --

1 you know, there's way to really tell you exactly
2 how much was involved..

3 Q Moving on, ma'am, to the last page here at the
4 bottom of Plaintiffs' Exhibit No. 24. You've got
5 it nicely summarizes that you're seeking \$82,530
6 for the land value loss?

7 A That's based on what the appraiser -- the
8 appraiser that was in here yesterday, based on his
9 evaluation.

10 Q And I understand you relied upon him and you wrote
11 this sheet out. Now, you state here in the notes,
12 ma'am, that that dollar amount is seeking to
13 compensate you and your husband for loss of
14 property and no legal EH access, no DOT permit.
15 Is that correct?

16 A The appraisal does not incorporate the fact that
17 the entrance into Eagle Harbor had not been
18 permitted.

19 Q Okay.

20 A And not being permitted, it is a no legal access.
21 It's not legal access.

22 Q So every day that you and your husband drive in
23 and out of the neighborhood you think you're
24 driving into the neighborhood illegally?

25 A Of course not. The physical access is there. And

1 that \$8,000.

2 Q And you used that appraisal that Mr. Carter
3 testified about in the 2007 Investors Title case,
4 did you not?

5 A We had that, yes. We had paid for that so we did
6 use that.

7 Q You presented that as a measure of your damages in
8 that case in order to settle that case, did you
9 not?

10 A We did give you that as a source document, yes.

11 Q What else did you use as a source document in
12 order to resolve the 2007 case that you also used
13 in this case?

14 A For damages?

15 Q Yes, ma'am.

16 A I don't recall anything else really. I mean there
17 must have been -- there had to be other costs.
18 But as far as a source document, the only thing I
19 can tell you is that we had this appraisal and we
20 did use that.

21 Q And then the copies of covenants. You asserted in
22 the 2007 action that the covenants not being
23 properly recorded, that devalued your property,
24 correct?

25 A Well, that is incorporated in this 82,000.

1 (Off-record conversation unrelated to
2 proceedings.)
3

4 THE COURT: All right. So we'll take a short
5 recess. Shouldn't be more than 15 or 20 minutes.
6 Y'all are free to stay in here. You can step
7 down, if you wish, ma'am. Just a reminder that
8 you can't talk to these folks to the side other
9 than regular pleasantries. And we'll come back in
10 and get started. I apologize for the delay.
11

12 (A brief recess was taken from 11:02
13 a.m. until 11:16 a.m.)
14

15 THE COURT: All right. Sorry for the
16 interruptions, gentlemen. All right. Back to
17 you, Mrs. Price.

18 MR. FERRARA: May it please the Court, Your
19 Honor?
20

21 BY MR. FERRARA (Continuing):

22 Q Mrs. Price, do you still have Plaintiffs Exhibit
23 No. 24 handy on the stand? Let's see. And I'll
24 refer you to page 7.

25 A Well, they're not numbered.

- 1 Q Well, you prepared this and provided it to your
2 counsel for admission. And if we flip two pages
3 beyond page 7, so it would be page 8 -- page 9, we
4 look at line item 389 on page 9.
- 5 A 389.
- 6 Q And now that -- do you see it?
- 7 A No.
- 8 Q It's around halfway down page 9.
- 9 A Right. Right. That's what I put in, estimated
10 7,000.
- 11 Q Okay. You put in that. So you just manually
12 typed in that number?
- 13 A That was my estimate at that time based on the
14 information I had. But, apparently, this number
15 that you -- well, it's showing the same line
16 number.
- 17 Q So it's a duplication?
- 18 A But it's a duplication. That's basically what it
19 is.
- 20 Q It's not only a duplication, it's a duplication
21 and there's an additional \$500 slipped in
22 somewhere?
- 23 A No. There's a less 500.
- 24 Q Less 500.
- 25 A Because the other was 7,000. This one is 6500.

1 A So I would assume they are both in that total.
2 But I don't have an actual -- I can't really
3 actually look at this and say because, let's see,
4 if you look at the green -- if you look at the
5 green and the total of 58,000 underneath that,
6 that does not include the 6500. You see what I'm
7 saying?

8 Q Yes, ma'am.

9 A It does include the 7,000, but it doesn't have the
10 6500. Are you following me?

11 Q Yes, ma'am.

12 A Okay.

13 Q Okay. So let's look at Plaintiffs' Exhibit
14 No. 23. And you've got on page 2 and 3 a total on
15 Exhibit No. 23 of delay damages in green, correct?

16 A Okay. Are you talking about that at the bottom --
17 I mean, at the bottom of the green?

18 Q Yes, ma'am.

19 A Yes. I mean, that is -- I didn't put that in
20 there. But that would be -- that would be that
21 calculation storage, interest, and rent.

22 Q But above that word storage in the green section
23 on the third page, you've got a total of delay
24 damages you're claiming for seller and contractor
25 are \$54,074, correct?

1 a damage you're claiming against Mr. and Mrs. Fox
2 or is that what you're claiming against
3 Mr. Gilbert and Heritage Classic?

4 A That's not on here. It's not on this. So it's
5 not -- it's not in here as a damage. We had to
6 add that to the contract which means it comes into
7 that 97,000, the stipulated sum that you take away
8 from the total number for the construction. Are
9 you following me?

10 Q Yes, ma'am.

11 A Okay.

12 Q Just to be clear, that's a damage you're seeking
13 against Mr. Gilbert and Heritage Classic for --

14 A The construction?

15 Q Yes, ma'am.

16 A Yes.

17 Q Okay. You testified yesterday, ma'am, as well
18 that you and your husband believed you had an
19 interest rate increase associated with the delay.
20 Are you claiming that the interest rate increase
21 on the National City Mortgage -- is that included
22 in Exhibit No. 23 or 24?

23 A Yes. It's in here.

24 Q Okay. As part of the 54-, \$58,000 number,
25 whatever it is?

1 Q Right. So really you just put the blocks off of
2 what was going to be the porch?

3 A No. We took all the blocks off and all the
4 concrete was carried out.

5 Q Okay. And you got all that work done for 3,000?

6 A It was a deal. Yes.

7 Q Okay. Are there any damages in the 97- or \$98,000
8 cost differential on the cost to construct your
9 home on Lot 20 that you're claiming? Are any of
10 those damages concerning Mr. and Mrs. Fox from you
11 and your husband's perspective or those damages
12 only being sought by you and your husband against
13 Mr. Gilbert?

14 A As far as we're concerned, they're all about the
15 construction, about him being a contractor.

16 Q I'm just trying to be clear. The 97- or \$98,000
17 you testified against, you and your husband are
18 not seeking any of those damages against my
19 clients, correct?

20 A Yeah. No, we're not doing that.

21 Q Okay.

22

23 MR. FERRARA: Thank you, ma'am. That's all
24 the questions I have.

25 THE COURT: All right. Yes, sir.

1 and haul them off.

2 Q Thank you. Let's go back now. Take you back to
3 2003 and 2004, a little back. When you began
4 construction with Heritage Classic Homes -- and I
5 think -- I apologize. I'm looking for the
6 agreement with -- I'm not sure what number it is,
7 the agreement with Heritage Classic Homes. I
8 believe that's Plaintiffs' 5. Who was that
9 agreement between?

10 A It's between Danny Gilbert/Heritage Classic Homes
11 as the contractor and us, Ronald and Diana Price.

12 Q Okay. When this came to a head, I guess, anywhere
13 in January when you terminated -- your husband
14 testified that y'all terminated employment with
15 Heritage Classic Homes. Is that correct?

16 A We did an official termination letter, but he
17 actually said he was done.

18 Q Okay. And sometime subsequent to that is when you
19 hired Mr. Kahler?

20 A Mr. Kahler?

21 Q Right.

22 A Right.

23 Q Officially. Hired him on the 9th of February, I
24 think?

25 A Right.

1 him.

2 Q Before you terminated Mr. --

3 A I do not recall a conversation with Mr. Kahler.

4 Q Okay.

5 A Now, my husband may have. But I do not recall

6 one.

7 Q All right. I think I asked your husband this

8 yesterday. Your lawsuit was filed August 23,

9 2004. Does that sound right to you?

10 A It does.

11 Q Do you recall that anytime before that that you

12 officially sent to Heritage Classic Homes and/or

13 Mr. Gilbert or anyone associated with Heritage

14 Classic Homes any kind of letter, either certified

15 or personal service of the letter, that stated

16 that there was -- that you had found a

17 construction defect with work, explained what that

18 was, and provided a certain amount of time for him

19 to come and cure whatever defects you found?

20 A Defective work?

21 Q Construction work. You got a report that was

22 testified to yesterday that there was some

23 problems there?

24 A Right. But that happened in April.

25 Q I agree. Did you ever give Heritage Classic

1 He was demanding money. And so we gave him the
2 opportunity, yes. Fix this and we'll get on
3 track. I even said in the letter, this is not
4 personal, we just need to be sure that, you know,
5 you're doing for us the way you're obligated to do
6 for us. You know, without using those words in
7 particular but in summary. So, no, we didn't know
8 about the defects until the PE came out. We
9 suspected, of course, because I think a column had
10 already fallen over. So that's a big neon
11 flashing light. And Mr. Kahler, who we had hired
12 thinking we were going to be able to start
13 construction in February, he said I don't think
14 that's a sound structure.

15 Q Well, I object to whatever --

16 A But, no. After we found out all the legitimate
17 potential problems with that structure, he'd been
18 terminated for three months. Danny had already
19 been out of the picture for three months. So
20 terminating him all had to do with giving him the
21 letter, here's what we know of, fix it, let's get
22 on track. And then him saying to us, no, I'm not
23 doing anything. I'm done. And when he did that,
24 we still gave him a few more days and then gave
25 him the official termination letter. Does that

1 A Not to my knowledge. Mr. Scott is the one that
2 recommended we file a claim against Belinda Fox
3 and Danny Gilbert because he was her
4 representative on the agreement. That lawsuit was
5 about the property, that agreement to buy and
6 sell. The Heritage Classic Homes is all part of
7 the Knights' lawsuit against us. They filed
8 against us because of their contract with Danny,
9 but it was on our property. The concrete that
10 they said they delivered, they said consisted of
11 this when in fact the construction materials say
12 it's supposed to consist of something different or
13 include more.

14 Q Okay. You do have claims against Heritage Classic
15 Homes and Danny Gilbert for construction defects,
16 do you not?

17 A Yes.

18 Q That's why we're here, isn't it?

19 A Yeah. These two cases have been combined into one
20 case. So they all became 1855. So those things
21 that were in 1150 came over to 1155.

22 Q When is it --

23 A I mean to 1855.

24 Q Sorry. I didn't mean to interrupt you. When do
25 you think that your claims were filed for the

1 the suit, yes.

2 Q Okay.

3 A Not the other contracts.

4 Q I understand. I'm just simply asking -- I'm only
5 going to ask it one more time. I apologize. Did
6 you ever send a certified letter or hand deliver a
7 personal service a letter to your contractor,
8 Heritage Classic Homes, stating that there was a
9 construction defect in essence to offer -- to give
10 them a right to cure that defect? Did you ever do
11 that?

12 A I don't understand the question at all. Because
13 we had a lawyer once that mechanics lien got
14 filed. We had to hire a lawyer to submit a
15 counterclaim. We did -- we don't know how the
16 lawyer actually handled all the particulars at
17 that time. We were already building on the second
18 house. But that same lawyer around that same time
19 recommended the second complaint against Belinda
20 Fox. And then as I told you, several years later,
21 those two cases were consolidated. If there was a
22 service that was required, that would've been the
23 lawyer that would've done that, not us because we
24 had hired a lawyer at that time.

25 Q Okay. How much money to date have you paid

1 Gilbert a check. We found out that we cannot --
2 we could not get a draw, that the building
3 shouldn't have been happening. None of the
4 structure that he put up was legal because his
5 building permit was invalid. So, no, we were not
6 allowed by this very contract to give him any
7 money. We did ask him for assignment of
8 subcontractors when we terminated them according
9 to the same contract. He did not give us those.
10 And, ultimately, Knight's sued us. They would not
11 even talk to us. We tried to contact them when
12 this all came to head. And they wouldn't even
13 talk to us because they were employed by Danny.

14 Q Right.

15 A So, no, we did not give him any money. We could
16 not give him any money by this contract.

17 Q Okay. Your husband mentioned yesterday that, in
18 his opinion, very little was getting done after
19 the contract was signed. Maybe some land
20 clearing. But, in fact, the footings had been
21 when put in when he was terminated, correct?

22 A Sure. They were there.

23 Q Okay.

24

25 MR. HUBBARD: Pardon me, Judge.

1 questions, Judge.

2 THE COURT: All right.

3 MR. JACKSON: Your Honor, I have some
4 redirect.

5 THE COURT: All right, Mr. Jackson.

6 - - - - -

7 REDIRECT EXAMINATION

8 BY MR. JACKSON:

9 Q We've heard a lot of questions by Mr. Ferrara
10 about the second agreement and all the little
11 provisions of agreement to buy/sell. But you're
12 not suing them over the breach of contract, are
13 you? You're not suing them for breach of that
14 contract to sell?

15 A That's not a cause of action, right?

16 Q Right. You're suing them for negligent
17 misrepresentation. Is that not correct?

18 A Right.

19 Q Okay. Now, he also asked you about those 2003
20 covenants, which is I think is Defendant Fox
21 Exhibit No. 2 and asked you about some paragraph
22 about being able -- I think it was 2.2 -- about
23 declarant and others. And he asked you was
24 Ms. Fox part of Eagle Harbor, Inc. Isn't it true
25 that you're alleging that they're part of a

1 exactly. You're not referring to these specific
2 entries, are you? That you have support for,
3 right?

4

5 MR. FERRARA: Objection, Your Honor. He's
6 leading the witness.

7 MR. JACKSON: Okay. I think --

8 THE COURT: Yeah. Try not to --

9 MR. JACKSON: Yeah. I'll try not to lead,
10 Your Honor. I'm just trying to move this along.

11

12 Q Okay. Then to clarify, though, I think your point
13 was, and tell me if I'm wrong, that you didn't
14 include everything you possibly could have in
15 there. Is that correct?

16 A That's correct.

17 Q But what you did include is true and accurate?

18 A Yes. Except for those things that are duplicated.

19 Q Okay. There may have been a duplicate or
20 whatever, but --

21 A An error. An administrative error.

22 Q But to the best of your ability, using source
23 documents you had, you put everything down on that
24 spreadsheet?

25 A Yes, sir.

1 actually gave him that letter to terminate.

2 Q Okay. So you had back and forth with Mr. Gilbert
3 about what you were not happy with about his work
4 and what you were trying to get on the same page
5 with. So he had an opportunity to cure?

6 A Right. It says right here in the letter that in
7 the last couple of days, even before this letter,
8 we were trying to talk to him about things. And
9 then we found out about the stop work from the
10 County and that letter and gave that to him. And
11 then, even after that, we tried to talk to him.
12 We went in to see him. And he said I'm done. You
13 owe me money. I'm going to file on your property.
14 I'm gonna put a mechanics lien. Threatening us
15 terribly. We were terribly intimidated. But then
16 we saw no choice but to do the termination letter.

17 Q So before you even sent a letter of termination,
18 he told you he was done?

19 A Correct.

20 Q Okay. Now, did you pay -- Mr. Hubbard asked you
21 did you pay Mr. Gilbert anything. And I
22 believe --

23

24 MR. HUBBARD: -- asked if you paid Heritage.

25

- 1 A Okay. This would be the Exhibit A -- I mean 5.
2 And this is attachment 1 and it says first draw.
3 Q Okay.
4 A At the time of the first draw, the following items
5 must be submitted by the bar -- builder: Copy of
6 building permit --
7 Q Okay.
8 A Septic permit, the termite --
9 Q Let me stop you right there. Did he have a
10 building permit?
11 A Well, we hadn't seen it. Be he obviously had
12 been -- he had gotten one.
13 Q Okay. But was that revoked or stop work order
14 issued?
15 A It was invalidated.
16 Q Why was it invalidated?
17 A Because he had not -- when he applied for the
18 building permit, he did not disclose that he did
19 not have a septic permit.
20 Q Okay. And did he have a septic tank permit at
21 that time?
22 A No.
23 Q Okay.

24

25 MR. JACKSON: Court's indulgence one minute.

1

- - - - -

2

RECROSS-EXAMINATION

3

BY MR. FERRARA:

4

Q Mrs. Price, when Mr. Jackson was just asking you
5 about your receipts from Mr. Carter, you said that
6 you had not received an invoice from Mr. Carter
7 yet. Is that correct?

8

A No. I didn't say that exactly.

9

Q You didn't say that?

10

A Mr. Carter was paid through that retainer.

11

Q Okay. But you testified you're expecting
12 additional invoices from Mr. Carter. What? For
13 his trial testimony?

14

A Yes.

15

Q Okay. That's not in your claimed damages, though,
16 is it?

17

A No.

18

Q Now, you testified as well that Mr. Scott
19 recommended you -- represented you on the Knights'
20 case, correct?

21

A Initially, yes. Yes, he was --

22

Q Initially. Okay. Now, if we look at Plaintiffs'
23 Exhibit No. 24, you have a line item for
24 Mr. Scott's attorney's fees, correct?

25

A \$150.

1 mechanics lien, Knight's Redi-Mix case, correct?

2 A Well, maybe not. Maybe it wasn't because this is
3 9 and 27 which is after the complaint was filed
4 against Belinda Fox.

5 Q You're trying to look at the dates of this and
6 piece it together in your mind about whether --

7 A Right. I can't remember all of this. You know,
8 we gave him a retainer up front. And he billed us
9 later for this, this 150. We also got a billing
10 for \$25 that's listed in here. Other than those
11 two bills, I don't know of any other bills that we
12 got from him, but we might have. I just don't
13 have them.

14 Q And I applaud your memory. Moments ago you
15 testified about all the case numbers involved.
16 But it was very helpful to the Court in that the
17 original case that Mr. Scott represented you on
18 which was the defense of the mechanics lien.

19 A 1150.

20 Q 1150. Do you have the attorney's fee for
21 Mr. Scott in your source document for that case?

22 A No. He gave us back our money. It was a retainer
23 we paid him. We got it back from him. We're not
24 seeking reimbursement for something we got back.

25 Q So should we take that hundred and fifty more

1 lien action and the attorney fees that you and
2 your husband incurred with the lawsuit of Knight's
3 Redi-Mix is not appropriate to be seeking damages
4 in this case?

5 A I would agree. But I can't tell you for sure if
6 this 150 had to do with that or if it had to do
7 with the filing, which I think it probably was the
8 actual filing of the complaint against Belinda
9 Fox.

10 Q I don't want to take anything away from you or
11 your husband. But do you have the source document
12 in the book that you and your attorney referenced
13 moments ago that would help you answer that
14 question?

15 A I do. That invoice is in there. It does say
16 filing fee.

17 Q Would you --

18 A Would you do a filing fee on a -- if you're
19 countering? If you're doing a counter to a claim
20 against you, is a filing fee recorded? I mean,
21 would you pay a filing fee for that? It seems to
22 me like the filing fee is for the complaint that
23 you filed.

24 Q Right.

25 A Not for you called to respond to one --

1 have you and your husband hired in this action
2 that you're seeking damages for that? As you can
3 recall.

4 A Okay. Mr. Scott, Bill Scott, he gave us back our
5 money.

6 Q Except the 150?

7 A So it would include Chellis and Frampton, just
8 like what's listed on here.

9 Q Sure.

10 A Chellis and Frampton, Mr. Ward and Derrick. We
11 also have had Mr. Ginn. And then we had that
12 thousand-dollar review by that attorney. It looks
13 like -- I mean, that's --

14 Q So you also did hire Mr. Ginn and Chellis and
15 Frampton for the Investors Title or was that
16 separate?

17 A No. We hired both of them for 1150 in 1855.
18 Mr. Ginn did, in fact, just before quitting on us,
19 he did file a complaint against Investors.

20 Q Mr. Ginn did?

21 A But we didn't hire him for that.

22 Q Okay. So some of my questions could be answered,
23 you can actually -- you've done a great job of
24 cross-referencing the tabs. So, for example,
25 looking at Plaintiffs' Exhibit No. 24, you have

- 1 see that?
- 2 A Under him? Mr. Ginn.
- 3 Q On your Plaintiffs' 24.
- 4 A Okay. What item number?
- 5 Q Item number 377 that you have in your left hand,
- 6 that's Defendants' Exhibit No. 5.
- 7 A Oh, okay. I see. I see. Okay.
- 8 Q It's \$5,000?
- 9 A Yeah. That's the contract.
- 10 Q Right.
- 11 A That's the contract. It's the retainer and it
- 12 says right here he appeared for us in the Heritage
- 13 Classic case 1150. He doesn't have on here that
- 14 he appeared for the 1855, but he did.
- 15 Q Right.
- 16 A But it's written in the contract.
- 17 Q But when we look here at his cover letter --
- 18 A But it says it in the retainer agreement. He just
- 19 simply didn't mention it there.
- 20 Q So at a minimum the -- Mr. Ginn is representing
- 21 you on the Knight's Redi-Mix case and this case?
- 22 A Correct.
- 23 Q So some of his \$5,000 went to the Knight's
- 24 Redi-Mix case?
- 25 A Which become a part of this case. They then

1 Q -- are also part of that settlement, are they not?

2 A No. Because 1150 still consolidated into 1855.

3 So the only thing that we were dismissing was
4 anything related to the Knight's mechanics lien
5 itself which was the bond we had to buy, the
6 annual renewal of that bond. We were dismissing
7 any claim for any of that cost.

8

9 MR. FERRARA: This cover letter and
10 attorney's fee agreement with Mr. Ginn's office,
11 I'd move to have this admitted as Defendant Fox's
12 Exhibit 5.

13 THE COURT: Any objection?

14 MR. JACKSON: I don't have any objection.

15 THE COURT: Admitted without objection.

16 MR. FERRARA: Your Honor, may I pass this up?

17 THE COURT: Yes, please. Thank you.

18

19 (Whereupon, Defendant Fox's Exhibit No.
20 5, Agreement, was received into
21 evidence.)

22

23 A May I add a comment?

24 Q No, ma'am. Now, I apologize but we're on a tight
25 time schedule. I'm just gonna try to get through

1 thousand dollars because he wasn't done reviewing.

2 And my husband said no, we're not paying him

3 another thousand dollars. So we paid him a

4 thousand dollars to review both cases at the time.

5 Q Ma'am, I'm handing you Defendant Fox's Exhibit

6 No. 6 which is -- exhibit has been marked, or

7 actually document which has been marked as Fox 6.

8 That is a cover letter from the Simmons and

9 Keaveny, is it not?

10 A It is.

11 Q Okay. And you received that letter from the law

12 firm relating to their legal representation of

13 your and your husband?

14 A Right. It says Price versus Fox and related

15 matters.

16 Q And related matters, correct?

17 A Right. Well, both cases were going on at the same

18 time. He was reviewing both files. But he never

19 took the cases. I mean, he never became our

20 lawyer. He was simply reviewing. And he wanted

21 another thousand dollars to review and we said no.

22 We can't pay that for you to keep reviewing.

23 Q Okay. Now, is it your testimony that you did not

24 sign a fee agreement with Simmons and Keaveny and

25 provide them with a retainer?

1 THE COURT: Without objection.

2

3 (Whereupon, Defendant Fox's Exhibit No.

4 6, Letter, was received into evidence.)

5

6 Q Just to be clear, ma'am, and I'll move on. But
7 you had an initial meeting. You had Simmons and
8 Keaveny undertake some representation about the
9 Fox case and other related matters. And then as I
10 understand, they presented you with a bill and
11 asked you to replenish the retainer and the
12 exhibit.

13 A Well, it sounds like that might have been the
14 wording in there. But there was no actual
15 retainer because they never took representation.
16 He simply charged us to review the file. So
17 his -- I guess his paralegal wrote that letter.
18 It was a billing letter. But when we got that, we
19 said, no, we're not going to keep paying you to
20 review.

21 Q Right. You and your husband decided on your own
22 accord to not pay Simmons and Keaveny any more
23 money and to hire another attorney to represent
24 you, correct?

25 A We had to keep looking for somebody, yes.

1 one.

2 Q Ma'am, I'm handing you what's been marked as
3 Defendants' --

4

5 MR. JACKSON: Your Honor, I've been very
6 patient with this line of redirect. And this is
7 really well beyond my limited redirect of my
8 client -- recross. I only asked a couple of
9 questions. And we're just fishing through the
10 book. And I think, and . . .

11 THE COURT: Mr. Ferrara, certainly this could
12 have been addressed during the initial cross.

13 MR. FERRARA: Respectfully, Your Honor, on
14 redirect, Mrs. Price testified that she had her
15 book to substantiate all of her expenses. And
16 that was elicited by Mr. Jackson and Mrs. Price.
17 And that's why I decided to go down that road and
18 look at those expenses.

19 THE COURT: How much more do you got?

20 MR. FERRARA: We can take a break right now,
21 Your Honor, if you'd like, which will help me and
22 help the Court speed it along. If we take a lunch
23 break then I can take 15 minutes before we come
24 back, Your Honor, and --

25 THE COURT: How many different documents do

1 already in, those identify with some specifically,
2 don't they?

3 MR. FERRARA: They do, Your Honor.

4 THE COURT: Can that just be pointed out as
5 items that y'all would contend are not related to
6 this case, to the other cases without having to go
7 through all the additional information?

8 MR. FERRARA: Yes, Your Honor.

9 THE COURT: Or is that additional information
10 necessary?

11 MR. FERRARA: I agree with the Court. I
12 think we can stop it there. And I will just, with
13 the Court's indulgence, I will just look at those
14 items -- those 15 items carefully. If there's
15 anything that is -- if it is important, I would
16 just bring it up very briefly at that time. But
17 if not, if it's similar to what we've already
18 established or brought into evidence, I'll leave
19 it at what we have so far.

20 THE COURT: Okay. All right. Thank you.

21 MR. FERRARA: Thank you.

22 THE COURT: All right. Is there anything
23 further then?

24 MR. FERRARA: No, Your Honor. Or just
25 respect to -- just a quick caveat if Your Honor

1 THE COURT: You provided those --

2 MR. JACKSON: Those were served on opposing
3 counsel on Monday I believe.

4 THE COURT: You provided those designations.
5 And I saw that, I think, by way of an e-mail. But
6 attached to that document --

7 MR. JACKSON: Yeah. Attached to that
8 document are the actual excerpts from that thing.
9 Of course, they have the right to offer whatever
10 they want to. And if they have it in exhibit
11 form, they can do that. And I don't really object
12 if we end up submitting proposed orders if they
13 want to submit a document response, you know.

14 THE COURT: Is there any objections to any
15 portions of those that I need to address before we
16 make them part of the record?

17 MR. FERRARA: Respectfully, Your Honor, the
18 witnesses that the deposition excerpts contained,
19 the witnesses are present in the courtroom. And
20 in order to, I guess, expedite the matter, what I
21 would request, and it sounds like Mr. Jackson
22 would agree, that we present the complete
23 deposition excerpt for the Court to review if the
24 Court's going to review excerpts. Specifically,
25 I'm just referring to my clients, Gerry Fox and

1 earlier. Yes, sir.

2 THE COURT: And then either through argument,
3 separate designations, or through testimony, you
4 can point out or clarify things obviously which
5 is -- he's bringing up by way of their testimony.
6 Okay. All right.

7 MR. JACKSON: So I'll go ahead and mark this
8 as whatever the Plaintiffs' is subject to the full
9 depositions coming in.

10 COURT REPORTER: This is 41, just so you'll
11 know.

12 THE COURT: And you'll provide copies of
13 those depositions?

14 MR. JACKSON: Yeah. I have the original and
15 a couple of them here.

16 THE COURT: Okay.

17 MR. JACKSON: And I think -- I think I have
18 all of them actually.

19 THE COURT: Just make sure y'all get together
20 and whatever you giving me, y'all agree that's the
21 correct one.

22 MR. JACKSON: The second part would be --
23 this is the actual business record designation of
24 the DHEC letters. Most of it's already an
25 exhibit, but I just wanted to have this offered as

1 THE COURT: Once they're in, yeah. Certainly
2 would be able to --

3 MR. JACKSON: Yeah. Certainly no objection
4 to that.

5 MR. FERRARA: Sure.

6 THE COURT: So based on that digital
7 certification which you're going to print and
8 provide to the Court -- it's now coming in? Is
9 that right?

10 MR. JACKSON: Yes, sir.

11 THE COURT: Is that without objection in
12 light of all that information?

13 MR. FERRARA: Yes, sir.

14 THE COURT: Likewise, Mr. Hubbard?

15 MR. HUBBARD: Yes, sir.

16 THE COURT: All right. We're good. Thank
17 y'all for that.

18 MR. JACKSON: Yeah. With those in, whatever
19 redirect they have, that would be my case, Your
20 Honor.

21 THE COURT: Okay. All right. So is an hour
22 enough, or do y'all need more than that?

23 MR. JACKSON: That's fine.

24 MR. FERRARA: I think that's fine, Your
25 Honor.

1 what do we have to do as far as any additional
2 review of documents, questions to Mr. Price?

3 MR. FERRARA: Your Honor, I briefly looked
4 over Plaintiff's notebook. And I just have just
5 three documents that I would like to question the
6 witness about.

7 THE COURT: Okay. Mrs. Price, come on back
8 up.

9
10 (The witness, Mrs. Price, resumes the
11 stand.)

12
13 THE COURT: You're still under oath, okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you, ma'am. Mr. Ferrara?

16 MR. JACKSON: I don't have any objection
17 about these documents subject to redaction because
18 they include account information and checks.

19 MR. FERRARA: Sure. With that, Your Honor,
20 and to expedite the case, I would move to admit
21 Defendant Fox's Exhibit --

22 MR. JACKSON: Can I see -- there's something
23 written on the back I didn't see in this. Why
24 don't you ask her about it and then we'll talk
25 about it. I don't think I'll have any objection.

1 MR. FERRARA: Your Honor, at this time, I
2 would move Defendant Fox's Exhibit No. 8 into
3 evidence?

4 THE COURT: Any objection?

5 MR. JACKSON: I don't have an objection.

6 THE COURT: Without objection.

7 MR. FERRARA: Thank you, Your Honor.

8
9 (Whereupon, Defendant Fox's Exhibit No.
10 8, Legal Services Document, was
11 received into evidence.)
12

13 MR. FERRARA: Additionally, I understand
14 there's no objection to --

15 MR. JACKSON: Subject, of course, to
16 redaction.

17 MR. FERRARA: Defendants' Exhibit No. 9 and
18 Exhibit No. 10 subject to redaction.

19 THE COURT: No objection to 9 and 10. And
20 I'll leave it to y'all to redact that information.

21 MR. JACKSON: Yes, sir.

22 THE COURT: And provide that to the court
23 reporter for inclusion.
24

25 (Whereupon, Defendant Fox's Exhibit No.

1 in both of these cases at the time we hired them.

2 Q Well, you hired them for really for three or four
3 cases, correct?

4 A No.

5 Q Okay.

6 A Only the 1150 and 1855.

7 Q And then you also hired them to look into the
8 legal responsibility of Mr. Spell and Eagle Harbor
9 and Lowcountry Title, too, correct?

10 A Yes. But that was not a case. That was just part
11 of what he was looking at and I gave him before I
12 handed him the retainer. So we hired them because
13 we were in these two cases.

14 Q Okay. And Mr. Michael Moore is the attorney that
15 prepared the Investors Title second amended
16 complaint we talked about earlier today, correct?

17 A Oh, that amended complaint that got withdrawn?

18 Q Yes.

19 A Yes, he did. Just before he left the firm.

20 Q And so this \$8,000 -- some of this \$8,000 fee
21 would've went to that work, correct?

22 A Well, I don't know exactly. Because he filed it
23 but then they turned around and withdrew it. He
24 didn't give us -- he didn't send us a bill for
25 filing it.

1 Q Okay. In truth, the 74.90 is what you have proof
2 of in your book that corresponds with 396. And
3 you took the liberty of multiplying that number
4 times 21 months to come up to the 1590 -- 1572.90?

5 A There's receipts there for almost all of that if
6 not all. They were all attached to the same
7 document. There are several of those. There's
8 several canceled checks. They were all a part of
9 the same item.

10 Q Okay. Ma'am, turning now to line item 310, which
11 I believe is on the last page of Plaintiffs'
12 Exhibit No. 24, the 4,753 charge to USAA?

13 A Right. That's the refinance, the HUD statement.
14 There's a calculation -- no, that's not it. Oh,
15 let me see.

16 Q Ma'am, I'm handing your Defendants' Exhibit
17 No. 10, Defendant Fox's 10 which is in evidence.

18 A Right here, this calculation.

19 Q Sure. Right. You calculated the difference
20 between your old loan and your new loan and came
21 up to closing cost number 4,753.59?

22 A A loan -- yes. I think so. It sounds right. The
23 numbers are there, right?

24 Q Yes. And isn't it true that the interest on this
25 loan that you're seeking as part of your damages

1 Q Yesterday I recall your testimony being that
2 Mr. Hubbard asked you the National City letter
3 that threatened your interest rate to increase to
4 11.75 percent?

5 A Right.

6 Q You recall that testimony. And you said that you
7 believed that your interest rate did in fact
8 increase as a result of Mr. Gilbert's delay?

9 A Yes. We do believe that it did increase, yes.

10 Q But now when we look at this exhibit we know that
11 it actually went just to 5.375 not to the 11.75?

12 A During the construction loan?

13 Q Your new loan with USAA?

14 A Well, that was about the construction loan because
15 the construction loan was terminating in May. She
16 told us in that letter that if the work was not
17 done in May 2004 that we would be paying interest
18 at 11-point-something percent.

19 Q But you presented testimony yesterday to the Court
20 that you and your husband had to refinance the
21 loan because the interest rate was going to
22 increase substantially to over 11 percent, and
23 that it did increase over 11 percent. And as a
24 result, you and your husband had to refinance and
25 thus --

1 what the -- in fact, there's actually a source
2 document in that book that shows you the loan --
3 the permanent loan rate was going to be.

4 Q Let's just be clear with the Court, ma'am, and
5 Your Honor. You're seeking -- and Your Honor --
6 you're seeking damages for what you testified
7 about yesterday was an increase of interest. The
8 document that I just handed you establishes that
9 during the time of construction, your interest
10 rate on your construction loan was 5.25. And in
11 reality when you refinanced thereafter, you had an
12 interest rate of 5.375. Is that correct?

13 A Well, we might've had a five-point during -- but
14 we went based on what she said it was going to be.

15 Q Sure.

16 A As far as the history, if you go through that
17 whole document, you won't see that 5.25 anywhere
18 in the history on those charges for interest when
19 we couldn't build. They were charging us against
20 the money that had been paid on the land for all
21 those months when we could not build. So the
22 interest rate she told us it was going to be is
23 what we took would be happening during the
24 construction loan after May of 2004. So maybe
25 they made some changes in the bank. But I was

1

2 MR. FERRARA: Yes, sir.

3 THE COURT: Hand these all back. And these
4 include the ones that were initially excluded, 26
5 and 27, which are not in.

6 MR. FERRARA: Yes, sir.

7

8 A Are you going to give me the documents that were
9 attached to that Westlaw?

10 Q No, ma'am. I did -- we were on a time crunch and
11 I think you've answered all the questions that I
12 had concerning your damages. Thank you very much.

13

14 MR. FERRARA: That's all the questions I
15 have.

16 THE COURT: All right. Anything further?

17 MR. HUBBARD: No, Your Honor.

18 MR. JACKSON: Nothing from me, Your Honor.
19 That would close the plaintiff's case. I do
20 have -- I made copies at the lunch break of the
21 digital copy that I had, a certification. We can
22 put that with those two exhibits.

23 THE COURT: That will come in pursuant to
24 the -- thank you.

25 MR. JACKSON: That closes the plaintiff's

1 that there's been any testimony, Your Honor, that
2 my clients, either one of the Foxes, Belinda or
3 Gerry or the Partnership, entered into any
4 conduct, willful conduct, that would be capable of
5 repetition and meet the three elements that's
6 required for the plaintiff to meet her burden in
7 this case. And for that reason, I would
8 respectfully request you to dismiss the Unfair
9 Trade Practices Act cause of action as to those
10 defendants.

11 Additionally, Your Honor, with respect to the
12 negligent misrepresentation claim and breach of
13 fiduciary duty claim, I would respectfully request
14 Your Honor to hold that the plaintiff has failed
15 to meet her burden as well with respect to
16 damages. As the Court is very well aware,
17 plaintiff must establish their damages with
18 certainty. And, Your Honor, just to be clear,
19 this motion is just on behalf of those defendants
20 that I discussed earlier. But there was no
21 testimony that Belinda Fox or Gerry Fox
22 misrepresented anything to the Prices. And for
23 that reason, they should be dismissed from that
24 cause of action in their own individual capacity.
25 Arguably, I understand the additional testimony

1 parties as established by the contract.

2 So for those reasons, Your Honor, I
3 respectfully request you grant the directed verdict
4 just as to those parties at this time.

5 THE COURT: All right. Thank you. I'm going
6 to deny the motion. I think we've certainly got
7 some testimony to take in the like most favorable
8 the plaintiffs that sustain the unfair trade
9 practices claim for negligent misrepresentation.
10 There's some testimony of damages also as to the
11 breach of fiduciary duty and the individual
12 capacity. I think that's an issue of fact along
13 with the issue relative to the Partnership. So
14 I'll deny the motion. But thank you, sir.

15 MR. FERRARA: Thank you, Your Honor. My
16 office has contacted Ty Adley with Berkeley
17 County. May I step in the hall and see if he's
18 here, Your Honor?

19 THE COURT: Yes.

20 MR. HUBBARD: Your Honor, may I make a motion
21 as well?

22 THE COURT: I'm sorry. Yes.

23 MR. HUBBARD: I appreciate it. Shall I
24 proceed without Mr. Ferrara being here?

25 THE COURT: As you wish.

1 40-59-820 at sec., entitled the South Carolina
2 Notice and Opportunity To Cure Construction
3 Dwelling Defects Act. The testimony was clear
4 that neither the Prices nor anyone else on their
5 behalf delivered a letter or sent a certified
6 letter outlining the construction defects that
7 they alleged offering the contractor an
8 opportunity to cure those defects. It's quite an
9 ask, I understand. But I would ask the Court --
10 I'm happy to, if the Court would like to take it
11 under advisement, I'm happy to prepare an memo or
12 a memorandum of law or something over the weekend
13 and get that back to you. But I would direct the
14 Court's attention to that statute as well as the
15 Grazia case. And recently, there was a case that
16 former Chief Justice Toal heard in Charleston.
17 It's been recently heard and that's McIntyre
18 versus Seaquest Development Company. But the
19 Grazia versus South Carolina State Plastering is
20 the South Carolina case that I believe bears these
21 facts out.

22 THE COURT: As to that one and the right to
23 cure, my position at this point is gonna be that
24 for the motion purposes, I'll look at it further
25 and invite anything you want to add by way of

1 and the Partnership. So I'm going to deny it as
2 least at this point.

3 MR. HUBBARD: Thank you.

4 THE COURT: Thank you.

5 MR. FERRARA: Your Honor, may it please the
6 court? The defendants will call Mr. Ty Adley to
7 the stand.

8 THE COURT: Mr. Adley, come on up.

9
10 (Whereupon, the witness, TY ADLEY, was
11 duly sworn.)

12
13 THE COURT: Thank you, sir. Have a seat
14 right there. Give your name, spell your last name
15 and your address for the court reporter, please.

16 THE WITNESS: Ty Adley, T-Y, last name Adley,
17 A-D-L-E-Y, 2040 Ashley River Road, Charleston.

18 THE COURT: Mr. Ferrara?

19 MR. FERRARA: Thank you, Your Honor.

20 - - - - -

21 DIRECT EXAMINATION

22 BY MR. FERRARA:

23 Q Mr. Adley, can you tell the Court what your
24 current -- who your current employer is?

25 A Berkeley County Planning and Zoning Department.

1

2 Q Mr. Adley, are you familiar with the zoning for
3 Lot 20 in Eagle Harbor?

4 A I do have the zoning on hand.

5 Q Okay.

6 A And it tells me that it is indeed Flex 1. I just
7 wanted to make sure we were referring to the same
8 lot.

9 Q Yes. Okay. And if you can tell the Court, what
10 is Flex 1 zoning?

11 A Flex 1 is our agricultural zoning district for
12 Berkeley County, unincorporated.

13 Q Does Flex 1 zoning allow for subdivision of a lot?

14 A You can subdivide the lot provided you meet the
15 lot size requirements.

16 Q And what are the minimum lot size requirements for
17 Flex 1 zoning?

18 A The minimum lot size is 30,000 square foot or
19 approximately seven-tenths of an acre.

20 Q Seven-tenths of an acre. Sir, I'll hand you
21 Defendants' Exhibit No. 1 and refer you to Lot 20.

22 A Okay.

23 Q And my question is with respect to Berkeley County
24 zoning, is Lot 20 subdividable into three total
25 lots, at least?

1 footage into three individual lots?

2 A It could be subdivided into three lots. There are
3 requirements not just for the zoning aspect as far
4 as minimum square footage. There's land
5 subdevelopment requirements that also have to be
6 met. And those also do include whether or not
7 septic system are water and sewer services.

8 Q Sure. If water is available, is that one of the
9 requirements for subdividing a lot?

10 A The main one we typically look at is septic or
11 sewer availability.

12 Q And is there an exception for the septic subject
13 availability if the transfer or subdivision of lot
14 is between family members?

15 A We do have that understanding. As far as that's
16 concerned, they still have to -- we allow them to
17 subdivide the property with a note indicating that
18 they still have to obtain septic suitability in
19 order to build a house on it.

20 Q Sure. Okay.

21

22 MR. FERRARA: Thank you, sir. That's all the
23 questions I have.

24 THE COURT: Any questions?

25

1 A Prior to subdivision, we request that that
2 information be obtained prior to the subdivision
3 of property.

4 Q Okay. I'm gonna show you -- (Brief pause.) Let
5 me ask you to look at what's been offered as
6 Plaintiffs' Exhibit No. 30. It's a letter dated
7 May 17, 2005, do Diana and Ronald Price. Will you
8 take a minute and review that.

9 A Sure.

10

11 THE COURT: Which exhibit number is that?

12 MR. JACKSON: I'm sorry. It was Plaintiffs'
13 Exhibit No. 30.

14 THE COURT: Thirty?

15 MR. JACKSON: Plaintiffs' Exhibit No. 30.

16 THE COURT: Thank you.

17

18 Q Let me know when you're finished reviewing it.

19 A Okay..

20 Q Okay. I guess let me ask you this: Your area of
21 expertise is in zoning, right?

22 A Planning and zoning, yes.

23 Q Do you deal with septic tank approvals at all?

24 A No, sir.

25 Q So you don't know whether a specific piece of

1 for is can Lot 20 be subdivided into three
2 separate lots. Yes or no?

3 A If it has sewer access.

4 Q Let's back up. From zoning and planning
5 perspective, can Lot 20 be subdivided into three
6 separate lots if the transfers are between family
7 members?

8 A That is correct. They just cannot be built on.

9 Q Correct! Thank you, sir.

10

11 MR. FERRARA: That's all the questions I
12 have.

13 MR. JACKSON: No questions from me.

14 THE COURT: All right. You can step down,
15 Mr. Adley. Thank you very much.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Mr. Ferrara?

18 MR. FERRARA: Your Honor, defendant would
19 call Belinda Fox to the stand.

20 THE COURT: All right, Ms. Fox.

21

22 (Whereupon, the witness, BELINDA FOX,
23 was duly sworn.)

24

25 THE COURT: Thank you, ma'am. Have a seat.

1 a cage. And at the time, we had -- I believe it
2 was the sale of our home, and we were going to
3 build a home. And maybe not at that meeting, but
4 at a later time Danny expressed a need for someone
5 just to put some money up front for the purchase
6 of some land for this boys home, and it was just
7 for a few months. They just needed someone to
8 purchase that in the beginning. And we had this
9 money. We had just sold our home. And we
10 thought, well, it'll just be a short time. So we
11 just thought it would be a good thing to do.

12 Q And you and Gerry, your husband, bought the first
13 piece of property which was phase one of Eagle
14 Harbor, correct?

15 A That's correct.

16 Q And Mr. Gilbert developed the phase one without a
17 problem, correct?

18 A Without a problem?

19 Q Without a lawsuit I should say?

20 A Without a lawsuit, yes.

21 Q And with respect to this lawsuit that we're here
22 on today, Belinda, the Prices, let's assist the
23 Court as best we can. Did you have any
24 interaction with Diana or Ronald Price in
25 connection with their purchase of Lot 20?

1 A Yes.

2 Q Okay. You didn't make any representations prior
3 to closing or even after --

4

5 MR. JACKSON: Your Honor, limitation on the
6 leading, please.

7 MR. FERRARA: Sure.

8

9 Q The wetlands, the Prices have claimed that they
10 were deceived about wetlands on the property.
11 Were you aware of the existence of any wetlands
12 touching or concerning Lot 20?

13 A No, I was not.

14 Q Were you aware of any wetlands in Eagle Harbor at
15 all?

16 A No.

17 Q And what I'm referring to is at the time of
18 closing or before, I'll ask you, Belinda, were you
19 aware of any problems or concerns with the
20 covenants or the roads with respect to Lot 20?

21 A I was not aware of any problems.

22 Q Okay. With respect to the lot being able to be
23 subdivided, did you have any representations to
24 Mr. Gilbert about that?

25 A I did not.

- 1 confuse, cajole, trick the Prices with respect
2 to Lot 20 sale?
- 3 A No.
- 4 Q No. The Prices have alleged that there's a
5 partnership between you and Mr. Gilbert in making
6 these representations. And I'll ask you: Have
7 you resigned any partnership documents or had any
8 partnership agreement with Mr. Gilbert?
- 9 A Absolutely not.
- 10 Q Okay. Have you filed or received a tax return or
11 a K-1 relating to Eagle Harbor Development
12 Partnership?
- 13 A No.
- 14 Q Okay. All of the proceeds that you would've
15 received from closings would be in your own
16 individual name?
- 17 A Was it in my name?
- 18 Q Yes. I'm saying any proceeds from closings like
19 on Lot 20 --
- 20 A Yes.
- 21 Q -- would be in your own individual name?
- 22 A Yes.
- 23 Q Did you or Gerry donate or contribute any money
24 for land to the Eagle Harbor Boys Home over the
25 years?

1 A Yes.

2 Q Okay. Danny handled all that with the engineers?

3 A Yes.

4 Q The plating?

5 A Yes.

6 Q Covenants?

7 A Yes.

8 Q Okay. If you could tell the Court, Belinda, what
9 your and Gerry's overall involvement with Eagle
10 Harbor was in general. Was it to buy this
11 property? What was your overall plan with Eagle
12 Harbor if you had one?

13 A Well, again, our initial emotional, the reason we
14 were caught up in it was hearing about this vision
15 for a boys home. There was nothing like it in
16 South Carolina. So for boys to live in a home
17 with a family was something new. So our
18 contribution, initially, was to buy this property
19 that other people had already agreed they were
20 going to buy for this first phase. So it didn't
21 even seem like a risk. It was just -- we just
22 need someone to come up with the initial
23 investment. And what we didn't know was all the
24 expense. And what didn't happen in a few months
25 took years. So we were renting a home for, I

- 1 A Well, at one point when the roads were in, the
- 2 County came in and said, oh, you've got to go back
- 3 and do these big turnaround for emergencies.
- 4 Which later they said, oh, you really didn't have
- 5 enough homes to need that. So just -- and that
- 6 was an expense that, you know, initially we didn't
- 7 expected to do a big turnaround for an emergency
- 8 vehicle.
- 9 Q And when you say we, who are you referring to?
- 10 A Well, when I say we, I know that there had to be
- 11 money to take care of that.
- 12 Q Okay.
- 13 A So I heard that about that. So I don't know who I
- 14 mean by we. But I know that we, my husband and I,
- 15 spent money.
- 16 Q Okay. Now, I think you mentioned before you
- 17 didn't really have a lot to do with that in terms
- 18 of the selling of these lots. Is that true?
- 19 A That's true.
- 20 Q And isn't true that you relied on Danny to handle
- 21 the marketing and selling of the lots?
- 22 A I didn't handle it.
- 23 Q But you knew that Danny was handling it?
- 24 A I knew that I wasn't handling it.
- 25 Q Okay. Now, what's your occupation?

1 do all that?

2 A I personally didn't do that.

3 Q Okay. So you're not familiar with any of the
4 stormwater management or any of the regulations
5 required to do a subdivision?

6 A At that time, I was not.

7 Q Okay. And so, you weren't participating in any of
8 that?

9 A At that time, I was a stay-at-home mom
10 homeschooling.

11 Q Okay.

12 A So I was not -- I didn't have a real estate
13 license or know anything about it.

14 Q Okay. Show you a letter and see if you
15 recognize -- in this letter. I think you
16 testified before that you didn't recall ever
17 receiving anything or talking to the Prices or
18 being aware of these issues about the DHEC letter,
19 et cetera.

20 A Well, I said I wasn't sure if I had seen that
21 letter that I was presented with.

22 Q Oh, the DHEC letters?

23 A Yes.

24 Q Okay.

25 A I wasn't sure I'd seen it.

1 was looking for a stapler.

2 THE COURT: Any objection?

3 MR. FERRARA: Hold on one second, Your Honor.

4 I apologize. No objection, Your Honor.

5 THE COURT: What will this be marked as?

6 MR. JACKSON: Forty-four, I think?

7 COURT REPORTER: It's 44. Sorry, I didn't
8 hear the question. It's 44.

9 THE COURT: Thank you.

10

11 (Whereupon, Plaintiffs' Exhibit No. 44,
12 Letter, was received into evidence.)

13

14 MR. JACKSON: That's all the questions I have
15 of Mrs. Fox.

16 THE COURT: Mrs. Fox, hold on. Any
17 questions?

18 MR. HUBBARD: I don't have any questions,
19 Judge.

20 THE COURT: Okay. Any further?

21 MR. FERRARA: No, Your Honor. Thank you.

22 THE COURT: Okay. You are free to step down.
23 thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Yes, sir.

1 hostile witness, yes. And he's representing to
2 the Court he's prosecuting his indemnification
3 claim. No objection.

4 THE COURT: Is that your understanding,
5 Mr. Ferrara?

6 MR. FERRARA: Yes, Your Honor. Just to speed
7 things along.

8 THE COURT: All right.

9 MR. FERRARA: Thank you, Your Honor.

10

11 BY MR. FERRARA (Continuing):

12 Q Mr. Gilbert, with respect to the wetlands claim by
13 the Prices you were not aware of any problems with
14 wetlands on Lot 20 prior to The prices purchasing
15 that lot in 2003, were you?

16 A No. Not at all.

17 Q You were also not aware of any problems with
18 covenants or restrictions at that time?

19 A No.

20 Q And the plaintiffs are claiming that there was
21 some type of agreement between you and Mrs. Fox to
22 misrepresent or deceive the plaintiffs out of
23 money in exchange for Lot 20. I'll ask you, you
24 didn't have an agreement with Mrs. Fox or Mr. Fox
25 to misrepresent the status of the neighborhood or

1 paving and all that. So it increased the prices
2 of everything, of the whole development, that
3 increase. So that changed. And then there was a
4 third phase added that was on the backside of
5 phase one that then the County came back and said,
6 well, if you add that there to get there you got
7 to go through phase one. Therefore, you've got to
8 pave. So those were the issues with that
9 particular phase.

10 Q Okay. Now, Belinda just testified that she helped
11 with the purchasing of the lots and that you were
12 handling the development in general. Would you
13 agree with that statement?

14 A I would agree with that. I wasn't marketing
15 anything. I never had to market anything. And I
16 didn't have a trailer set up for Heritage Classic
17 Homes. I have -- you know, it's a double office,
18 mobile office building, that was used for the boys
19 home. And I didn't have to market that. And the
20 reason that I was the one selling these or at
21 least talking to people about it was because
22 people would drive through. We never placed an ad
23 in anything. We ever sought out and found
24 anybody. Matter of fact, the Prices found me.
25 I didn't find them. They came to our place.

1 Q Okay. And that's your signature, correct?

2 A It is. I had to sign this because to get to phase
3 two, you have to go through the Eagle Harbor
4 ranch, boys ranch, property. And so I had to give
5 up a permanent ingress/egress easement. So that's
6 why I had to sign this. Other than that, I didn't
7 have to sign.

8 Q I can't find the document, but I'll just ask you.
9 The Prices -- I think Diana Price testified
10 yesterday to receiving a letter from you in
11 connection with the construction of their home. Do
12 you recall that?

13 A I mean, I received numerous e-mails and probably
14 letters.

15 Q Sorry. I apologize. That was a poorly worded
16 question. Do you recall sending the Prices a
17 letter whereby you advised them even though you
18 were not their current builder that they needed to
19 still apply through the architectural review
20 process to get an approval from Eagle Harbor?

21 A I don't know if it was a letter or an e-mail, but
22 certainly I remember that.

23 Q And in that letter you let the Prices know that
24 you were the developer, correct? Is that right?

25 A I'm not sure. But, I mean, sounds like something

1 they didn't adhere to that. So that's why I was
2 involved. That's why there's an ARB. And the
3 best thing that could have happened is for them to
4 uphold the ARB, you know, so that the things that
5 were built out there would be presentable. And
6 quite frankly, I don't think they are.

7 Q And just to be clear, sir, I wasn't trying to
8 get -- go down the road of anything concerning the
9 roads or concerns --

10 A Sure.

11 Q I was just focusing on the Prices and wanted to be
12 clear to the Court. You weren't saying that the
13 Prices caused any of the problems that they're
14 complaining of, were you?

15 A Sure they did.

16 Q They did?

17 A They started the whole things.

18 Q Okay.

19 A Everything out there. They started the turmoil of
20 everything that's out there. They started -- she
21 dug and she dug and she dug. And every agency
22 that is related to Eagle Harbor, Incorporated, the
23 children's home, she sent letters to telling them
24 we weren't spending our money right. We weren't
25 taking care of kids right. We weren't doing this,

1 A I don't live in the neighborhood. I had a lot in
2 the neighborhood. I sold the lot in the
3 neighborhood. But we actually have a contract on
4 another lot on the other side, yeah.

5 Q Okay. And the boys home today is still ongoing
6 and helpful, correct?

7 A We serve 300 children today.

8 Q Yeah. You heard Mr. Adley testify, sir, about the
9 subdividing of the lots. Did you ever have any
10 conversations with Berkeley County prior to the
11 sale of Lot 20 --

12 A I did. I talked to Carl. And I said I'm just
13 gonna drive down to -- just today -- it was the
14 day before yesterday. I'm just gonna drive down
15 there and see what they say. Took the plat. Took
16 it down there.

17

18 MR. JACKSON: Objection if he's trying to
19 talk about what he talked to somebody else about.

20 THE WITNESS: No. I took the plat --

21 THE COURT: Hang on. Hang on. Where are we
22 going?

23 MR. FERRARA: I was just asking him if he had
24 knowledge prior to the Prices closing about the
25 capability of subdividing Lot 20.

1 built on marginal soil. So therefore, I'm
2 unlimited to how many children's homes I can have.
3 So we have two houses right now. And at the boys
4 home, we're out of drain fields.

5 So the whole ideas is when sewer comes, you
6 know, we can build more houses for the boys home.
7 And someone who bought a big lot, because it's a
8 big lot, they can subdivide it. That was all that
9 was said. Nothing else. No promises for drain
10 field. No promises for any of that.

11 Q Danny, did you ever speak with anybody at DHEC
12 about the possibility that Eagle Harbor would have
13 public sewer in the future?

14
15 MR. JACKSON: Objection if he's gonna testify
16 about what someone at DHEC told him. That's
17 clearly --

18 THE COURT: You can't -- don't solicit. It's
19 hearsay.

20 MR. FERRARA: Okay.

21
22 Q I'll ask you this question and I don't want you to
23 tell me what anybody else told you. I'm asking
24 you did you ever have a conversation with anybody
25 about Eagle Harbor, phase two, and the

1 make that representation?

2 A No. No. If it was buildable -- my goal was to
3 make Mr. Fox money, Mr. Winn money. And the way
4 to do that is to have the small lots. You know,
5 these small lots because you can turn those lots.
6 Because people wanted two-acre lot. Not everybody
7 wanted an eight-acre lot. If we could have -- if
8 it could have been done, we would have done it.

9 Q And if you are able to build, you know, as
10 Heritage Classic Homes, build a house out there
11 for various lot owners, that's a benefit to your
12 company, correct?

13 A It's not so much a benefit anymore, but certainly
14 it seemed like a benefit at the time.

15 Q Right.

16 A Depends on what kind of client you have.

17 Q Danny, let's go to the soil conditions
18 representation. Did you hear Mrs. Price and
19 Mr. Price's testimony about that?

20 A I did.

21 Q Okay. And I'll ask you directly. Did you make a
22 representation that you had some type of soil
23 test or --

24 A Absolutely. Absolutely.

25 Q Okay. One second. What was the representation if

1 said, hey, come check the -- I think we got --

2

3 MR. JACKSON: Your Honor, again, he's talking
4 about hearsay about what someone said.

5 THE WITNESS: I'm sorry.

6 MR. JACKSON: I move to strike that
7 testimony.

8 THE COURT: Don't repeat what other folks
9 said, okay?

10 THE WITNESS: Yes, sir. Yes, sir.

11

12 Q Danny, I'll ask you this: When you got
13 Defendants' Exhibit No. 1, the plat, for phase two
14 approved by Berkeley County, you already had the
15 preliminary approval from DHEC at that time, did
16 you not?

17 A Oh, absolutely.

18 Q You can't get that plat recorded and approved by
19 Berkeley County unless DHEC has communicated with
20 Berkeley County and said we have preliminary
21 approved this neighborhood?

22 A Yeah, that's correct. Or you would have people
23 really selling stuff you couldn't get a drain
24 field for.

25 Q There was all types of testimony about previous

1 fields that are either -- that are on their lots
2 or adjacent drain field sites, correct?

3 A Yeah. They're either on their lots or they pump
4 to another location within the subdivision itself.

5 Q And DHEC had actually approved all of that. And
6 DHEC had reviewed this master plat prior to it
7 being recorded, correct?

8 A Yeah. They have to come out and do the soil
9 borings themselves.

10 Q Right.

11 A So they did all the soil borings.

12 Q Yeah. So these letters from DHEC that are into
13 evidence, those are preliminary letters that are
14 standard for a developer when they're going
15 through the process of taking one track of land
16 and subdividing it?

17 A Sure.

18 Q There's a letter, Danny, Plaintiffs' Exhibit
19 No. 40 about the high water table that occurred in
20 the summer months. Do you remember receiving that
21 letter? I'll hand that to you.

22 A I think I remember it.

23 Q Sure. And that's where DHEC is notifying you that
24 due to an unseasonably rainy season there are some
25 concerns with lots out at the neighborhood. Is

1 correct?

2 A Right. Right. I did. You know, it says right
3 here. After receiving my letter, you hired a
4 consultant over the next several months located
5 remote, you know, tile field sites for most of --
6 most of the denied lots to include, you know, the
7 four sites that were across the street, so.

8 Q Right.

9 A Yeah. This kind of says it all.

10 Q Is this soils consultant the gentleman you were
11 mentioning earlier is gonna testify today?

12 A Yes, sir.

13 Q Okay. We'll leave that to him. Thank you. The
14 wetlands issue on Lot 20, and as it turns out, in
15 Eagle Harbor, that was news to you at the time in
16 2004 or so when it was discovered, correct?

17 A Sure. Yeah, any wetlands was news to me.

18 Q And I want to be clear to the Court that you or
19 anyone on behalf of Eagle Harbor have any
20 knowledge directly or indirectly of wetlands for
21 Eagle Harbor?

22 A No. Not -- no, not direct knowledge. You know,
23 we got a creek that goes through there so we can
24 only assume.

25 Q Okay. Well, and specifically, we're here today,

1 that big cost.

2 Q If that was a requirement -- and Stantec being
3 civil engineers of phase two, if that was a
4 requirement at that time, they would've advised
5 you of that, correct?

6 A Yes. The problem here is that the County Planning
7 and Zoning wasn't talking to, you know, DHEC or
8 any other environmental organization at that
9 particular time. And I think that when this all
10 went down it actually changed policy at Berkeley
11 County where everybody shaking hands and everybody
12 knows what's going on. But prior to that, that
13 wasn't a stipulation on making the subdivision.

14 Q Sure. And let's be clear to the Court. Phase
15 one, Eagle Harbor didn't have a wetlands study
16 done for phase one, did it?

17 A No. Again, you could -- there's a subdivision
18 that was down the road when you turn on Haney
19 Branch we kind of modeled after. They made
20 separate roads off the main road. Although they
21 had more than the allowable lots that they should
22 have had to pave, but they made separate lots. So
23 we paid attention to that. When we did phase one,
24 we kept the lots under 15 so we didn't have to
25 meet all these regulations.

1 that I was trying to help make money.

2 Q Did you have any conversations with the Prices
3 about all these special stipulations in paragraph
4 8 of Exhibit No. 2?

5 A Other than presenting this to them as a contract.
6 I mean, they had to read it.

7 Q Was there a --

8 A I can't tell you if I had a discussion on every
9 item on there. I know I probably made it clear
10 about the rollback taxes because that was
11 something that one of the investors made sure that
12 we had in there.

13 Q Okay.

14 A Yeah. We had -- in number 8. Yeah. So, yeah, we
15 did. So developer agrees to allow subdividing of
16 property. To allow it. It didn't say approve it.
17 It just says allow it. We got no problem with
18 them doing it. I can't be the, you know, the
19 governing body to approve it, but we would allow
20 it. Two separate lots with the possibility of a
21 third upon approval of the homeowner's
22 association. You know, we wanted their lots to
23 be, you know, no less than two acres. So, you
24 know, if they were gonna, you know --

25 Q Right.

1 A Right. That's something that she had to have
2 there because, you know --

3 Q What do you mean by that? That she had to have
4 it.

5 A Well, that's something that she wanted before
6 she'd sign the contract.

7 Q Did Mrs. Price tell you that I'm not signing the
8 contract until you put that language in there?

9 A Yeah, absolutely.

10 Q Okay. And how long, Danny, of a process was it in
11 minutes or hours in this two-page contract in
12 dealing with Prices so the Court can understand?

13 A I don't really know. But they didn't sign it when
14 they came in the office. They brought it back.

15 Q Okay.

16 A So they reviewed it and they brought it back. It
17 wasn't like I gave it to them and they signed it.
18 They took it with them.

19 Q And so, Mrs. Price testified that there was two
20 meetings with you prior to closing. There was a
21 meeting, I think, in October and then there was a
22 meeting later. Is that your recollection?

23 A I remember, you know, maybe Mr. Cotton there
24 telling me that, hey, someone is gonna be coming
25 up looking at place. Mr. Cotton's here in the

1 agreement. Do you understand paragraph 11 to
2 be -- this two-page document being the complete
3 agreement concerning the sale of Lot 20?

4 A Yeah. And I think that's why she read this when
5 she took it home. Then she came back then she
6 made the change to it.

7 Q Right. Danny, page 221, paragraph 21, contingent
8 upon drain fields site (soil test). Did you type
9 that in?

10 A I'm not sure. It could have been -- it could have
11 been there already but as a safety for somebody
12 else. But, you know, the drain field site soil
13 test had been done for every one of those lots.

14 Q Okay.

15 A You know, it's kind in there but it doesn't
16 really --

17 Q And you have a gentlemen that you were gonna call
18 as a witness to explain that to the Court?

19 A Absolutely. Plus you have the plat right there.

20 Q Oh, sure.

21 A It shows the only non-buildable lot out there.

22 Q Okay. I mean, Lot 20, the lawsuit is not about
23 whether Lot 20 is buildable or not?

24 A Right. So therefore, it has a drain field. So
25 the one that's marked not buildable does not have

1 covenants were and he gave them to us. Because in
2 the same manner, it was on the contract.

3 Q Danny, you've heard in the last couple of days of
4 trial and with respect to the covenants which are
5 Defendants' Exhibit No. 2 -- I'll hand those to
6 and just ask you was it your intent when getting
7 those covenants recorded that the lots delineated
8 in the covenants are to be included into the
9 covenants and restrictions for Eagle Harbor?

10 A Explain that to me one more time. I apologize.

11 Q Sure. What was your -- I'll start at the
12 beginning. Did you have those covenants recorded?

13 A I did.

14 Q Either you or your attorney?

15 A Multiple times.

16 Q Sure.

17 A Well, actually, we did maybe twice and then Steve
18 Smith who was hired by the homeowner's association
19 took all the input from the homeowner's
20 association committee and then adjusted it and
21 recorded it again through his office.

22 Q Right. And just to be clear, I didn't want to
23 confuse the Court, that all occurred after and
24 that has nothing to do with this case.

25 A Well, yeah, it does. Because they were a part of

1 concerned with Lot 20 and where applicable to Lot
2 20?

3 A Yes.

4 Q Okay. At any time after the signing of the
5 Defendants' Exhibit No. 2 on September 13, 2003,
6 and the closing which occurred in November of
7 2003, did the Prices come back to you and tell
8 you, Danny, we do not want to go forward with the
9 transaction?

10 A No.

11 Q Okay. Just making sure. Did they have any, I
12 would call it, buyers remorse after the contract
13 was signed but before the closing took place?

14 A No. They actually did a closing before they had a
15 house plan and a budge on a house plan. And
16 that's why when you look at the construction
17 contract it has they have to pay anything over
18 this price because they were in such a big hurry
19 that the drawings weren't even done, but they were
20 just slamming, moving forward.

21 Q I'm gonna stop right there and let your attorney
22 address any questions to you regarding the
23 structure.

24

25 MR. FERRARA: I'll stop right there, Your

1 a soils consultant. And he taught me the right
2 way to say it. Perk hasn't been used in 30 --
3 since the 70s from my understanding. And he
4 showed me soil borings and he showed me color. He
5 showed me water table.

6 Q Okay. Did you ever tell the Prices, either one of
7 them, that Lot 20 would be approved by DHEC for an
8 additional septic system if they subdivided?

9 A Never.

10 Q Okay. Was there ever any resistance by the Prices
11 to the covenants at the beginning of this process?

12 A No. They thought it was a good thing.

13 Q Okay. There was some work done on the house. You
14 began work on the house. Is that correct?

15 A I did.

16 Q Okay. What sort of things did you do?

17 A Well, we cleaned the lot, cleared the lot, you
18 know. Had someone come in and clear the lot. We
19 put in the footings.

20 Q Did you have any expenses related to what you did?
21 Did you have to pay people for what you --

22 A Sure. Almost \$25,000 of my own money.

23 Q All right. Is there anything that would help you
24 remember exactly what those were?

25 A You might have something in your hand, I'm

1 Q Who prepared this?

2 A The QuickBooks, my wife.

3

4 COURT REPORTER: I haven't marked it yet. I
5 haven't been handed it. I can mark it after he
6 looks at it, though. It's fine.

7 MR. HUBBARD: I apologize.

8 COURT REPORTER: No, that's okay. Here you
9 go.

10 MR. HUBBARD: Thank you.

11 COURT REPORTER: Sure.

12

13 Q Did you prepare this?

14 A It was prepared in my office.

15 Q Okay. And what are attached to these -- to the
16 front page?

17 A These are the invoices for the work that had been
18 done to, you know, when I asked for payment
19 because I hadn't been paid yet for anything,
20 anything. No drawings.

21 Q Were they gonna pay you for drawings? Was that --

22 A Usually, I charge money for drawings. I give them
23 a discount and then -- but I still didn't get paid
24 for those. And they built that house and I never
25 got paid.

1 out how much linear feet they kept, you know, for
2 the foundation that they're -- for the footing
3 that they're using that I installed that never got
4 paid for. Yeah. And take it off of here. I
5 wouldn't imagine it to be more than 3500 bucks of
6 this.

7 Q Okay. What's the total of expenses that you had?

8 A Well, at this particular time it was \$23,772.

9 Q Okay. You got some additional expenses?

10 A Well, I mean, this is done on -- money in the long
11 term.

12 Q I understand. I understand.

13 A You know, I mean, yeah, this is it. There was --
14 I think \$,7,000 that I had to give them at closing
15 because they didn't bring the right check book and
16 I had to help them pay for their closing. It took
17 multiple weeks to get back, but I did get that
18 money back. That's the only money they've ever
19 paid me. They say they've paid me a couple
20 thousand dollars, but it was to escrow. It wasn't
21 to me. It was for the lot. I worked --

22 Q -- for the closing --

23 A I worked for nothing.

24 Q Okay. All right.

25

1 Q Sure.

2 A When my wife and I went to the Big Oak Ranch in

3 Gadsden, Alabama, it was run by a gentleman, John

4 Croyle, who was an All American defense end for

5 Bear Bryant. And he had multiple donors that

6 provided incredible resources for the children's

7 home. It was 150-acre children's home. We had a

8 two-and-a-half million dollar gym. We had a

9 baseball field that was lit up, a junior olympic

10 size pool. But the problem there was they

11 wouldn't let anybody else use it. You know, no

12 one else could use it. Me, not having

13 anything and not having a name that everybody in

14 Alabama knows, when we came back to Charleston to

15 start the boys home -- and I probably talked to

16 Doug about it -- I said, you know, Lord, if you

17 provide for us the things that they have there, we

18 will not keep those to ourselves. We'll let

19 people use them. I've told everybody that came

20 there we're gonna have a pool. We're gonna have

21 this. The ranch owns it. That would be

22 mis-mingling. We can't do that. I can't get

23 Gerry to pay for a pool at the boys home and it's

24 just too much cross-mingling. The boys home is

25 gonna get what we get. And if we get it, we'd

1 which I was told yesterday that I hate horses, but
2 that horse is mine, Pegasus. So that's a false
3 comment as well. But people are there all the
4 time. We have 25,000 hours of volunteer time. We
5 have churches, civic groups, you know, businesses,
6 coming out to our place all the time to use our
7 facility. We have churches. They have church
8 picnics. We have -- and that's the plan that we
9 went in with. If we can get this -- because I
10 started with nothing. I told you yesterday, I had
11 a thousand bucks. It's amazing what God can do
12 with a thousand dollars. But I have a facility
13 that has those things in it now, and we share them
14 as much as we can share them.

15 Q Okay. You got a building permit for the Prices --

16 A Sure did.

17 Q -- construction of the house.

18 A Absolutely.

19 Q Tell me about that.

20 A We just went and applied. I applied and got the
21 building permit.

22 Q Then you lost your building permit.

23 A I lost my building permit because -- I lost my
24 building permit because, you know, I should've had
25 the DHEC permit. But when I went to the building

1 it come to such a bad end for both parties?

2 A Toxic. She's toxic.

3 Q Well, let's just explain what you mean by that.

4 A Well, just you got a piece of it yesterday. But
5 this is the same person that sued everybody in the
6 subdivision. I mean, every --

7

8 MR. JACKSON: Your Honor, I object to that
9 characterization.

10 THE WITNESS: Well, it's the truth.

11 THE COURT: Hang on. Hang on. What was the
12 question?

13 MR. HUBBARD: Well, I opened up about how
14 this relationship with the Prices and how the
15 build went forward until it ended is really where
16 I was going and what happened during that.

17 THE COURT: All right. And how is that
18 relevant?

19 MR. HUBBARD: Well, they're making a claim
20 for damages over and above what the contract price
21 was for when they terminated Mr. Gilbert from the
22 job site. And I'm kind of going -- I would like
23 to go into the reasons perhaps from Mr. Gilbert's
24 perspective as to why they terminated him.

25 THE COURT: All right. I'll allow it for

1 build this for? Well, we can't give you a price.
2 We got to get quotes. We talked about modular
3 because I think that's the reason why they came.
4 Don't say that certain, but I think that's part of
5 the reason. But they came in. And you can't give
6 somebody a price. You can't give somebody a price
7 in a week or even two weeks. But they wanted a
8 price. So if you look on the contract, you know,
9 we formulated based on the house that we just did,
10 the boys home. You know, we X amount of dollars
11 per square foot at the boys home. They wanted the
12 same quality. And so we formulated a price based
13 on that, with Boozer panels, with, you know,
14 better built windows with, you know, with all
15 those things. You know, trim and, you know,
16 whatever. Some of the things they were gonna do
17 themselves. We formulated a price, put it on
18 there. But for me, I put below it -- because the
19 bank -- you know, the bank wants a stipulated sum.
20 But I can't do a stipulated sum if we don't really
21 know what we're doing. We're still designing the
22 house six weeks after the closing. So on there it
23 says anything after -- anything over this amount
24 in the exhibit --
25 Q You can refer to it there.

1 THE COURT: Don't testify to what other folks
2 said.

3 THE WITNESS: Yep.
4

5 Q I'll change the subject a little bit. Have you --

6 A You want me to read this to you?

7 Q Sure, that paragraph we talked about, yeah.

8 A These are covenants. Sorry. I might have it
9 right --

10 Q I can find it --

11 A The construction contract.

12 Q Yeah. You got it?

13 A No, sir.
14

15 MR. HUBBARD: Anybody see the construction
16 contract?

17 MR. JACKSON: General conditions, is that
18 what you're looking for?

19 MR. HUBBARD: No, the construction contract.
20

21 (Brief pause.)
22

23 MR. HUBBARD: This is Plaintiffs' Exhibit
24 No. 5, Your Honor.
25

1 didn't do all they were supposed to do. But, you
2 know, that was our intention.

3 Q Okay.

4 MR. HUBBARD: I don't think I have any
5 further questions.

6 THE COURT: All right. Mr. Jackson?

7 - - - - -

8 CROSS-EXAMINATION

9 BY MR. JACKSON:

10 Q Mr. Gilbert, are you a licensed realtor?

11 A No. No, not at all.

12 Q You don't have a real estate license?

13 A No.

14 Q Broker's license?

15 A No, sir.

16 Q Okay. What about architect?

17 A No.

18 Q Not a licensed architect. Okay. I believe you
19 testified earlier about how this was all about the
20 boys home. And that was the total consideration.
21 But showing you Plaintiffs' Exhibit No. 32. Did
22 you expect a net profit of 324,000 and then to
23 split between you and your wife half that net
24 profit?

25 A Well, yeah. And I told you in the same sentence

1 author of the letter from DHEC -- "I was amazed to
2 see roads that are in construction and land being
3 cleared."

4 A That's faith.

5 Q Huh?

6 A That's faith.

7 Q But you were clearing the roads and land for the
8 area, right?

9 A That's faith.

10 Q Did you do any wetlands delineations or any
11 stormwater drainage permits before you just
12 started clearing the land on faith?

13 A We hired an engineer that produced a set of
14 drawings that we followed.

15 Q My question was at this date when he was amazed to
16 see land being cleared and roads being built, did
17 you have any stormwater drainage plans on file
18 with DHEC?

19 A I don't believe so.

20 Q Okay. And isn't that a violation of regulations?

21 A I don't know.

22 Q You don't know. Okay. Let's look at this last
23 letter then. And this was from Tina Hayden and
24 this is --

25

1 2005, at the very last, Your Honor. It's the last
2 letter in that package.

3

4 Q You see that?

5 A Yeah.

6 Q Where it says Notice of violation?

7 A Sure.

8 Q Okay. And what's it a violation for? Do you
9 recall?

10 A No. But I can read it.

11 Q Okay. Well, sure, read it.

12 A This letter would serve as a potential violation
13 of South Carolina Stormwater Management and
14 Sediment Reduction Act, South Carolina Coastal
15 Zone Management Act. So it's a potential
16 violation. I see that.

17 Q Okay. And you see also where they attached to
18 that site location, performance of land
19 disturbance including placement of fill material
20 and stormwater in jurisdictional wetlands without
21 a stormwater permit. Did that happen?

22 A Well, I guess it did if they say it did.

23 Q Okay. In fact, you had an omissions letter
24 attached to that too, right?

25 A I don't know.

- 1 A It wasn't cutting road.
- 2 Q Okay. Well, you hired somebody to cut the road.
- 3 A Exactly.
- 4 Q Okay. Then they were filling in the wetlands?
- 5 A Well, some wetlands got filled in. I don't know
- 6 who did that. Does it say what phase that was?
- 7 Q Well, it was dated October 2005. So I assume that
- 8 would be phase two.
- 9 A Not necessarily. At that time, all three phases
- 10 had been completed.
- 11 Q Let me ask you this: When did you cut the road?
- 12 A Again, I didn't cut the roads.
- 13 Q Okay. When did you hire someone to cut the roads?
- 14 A We had a different group cutting the roads for
- 15 phase one. We had another group doing the roads
- 16 for the boys ranch. And then we had a couple of
- 17 different groups on the phase two.
- 18 Q Okay.
- 19 A Phase three had a separate person as well. So
- 20 there was multiple.
- 21 Q But it's true that you didn't get a wetlands
- 22 disturbing permit -- a permit to be able to fill
- 23 jurisdictional wetlands?
- 24 A It is true that that was done -- that that wasn't
- 25 done, yeah.

1 A It was.

2 Q And so, it's not the Prices fault that you didn't
3 know that you had to get septic tank first?

4 A I'm not saying it is.

5 Q Okay. Make sure we're on the same page. Now, did
6 you ever have a -- your -- let's go back to the
7 wetlands for a second. Let me show you a copy of
8 a complaint. (Brief pause.)

9

10 MR. JACKSON: The complaint I was referring
11 to is --

12 MR. FERRARA: The amended?

13 MR. JACKSON: No. This is the one where they
14 sued Stantec. I probably got a copy but --

15 MR. FERRARA: That's okay.

16 MR. JACKSON: -- find it.

17

18 Q Did you and the Foxes and the Winns sue Stantec?

19 A I believe so.

20 Q Okay. And it was you individually who sued
21 Stantec, was it not?

22 A (No response.)

23 Q Let me show you a copy of this complaint.

24 A This has multiple names on it.

25 Q Right. But is one of your -- is Danny Gilbert --

- 1 A Yeah. I don't understand --
- 2 Q Were there wetlands on the property? I'm sorry.
- 3 Go ahead.
- 4 A Yeah. I don't necessarily understand the verbiage
- 5 of everything, but I would say I agree with most
- 6 of it, yeah, that I understand. That I
- 7 understand.
- 8 Q Okay. Let's look at it then, that the property
- 9 contains wetlands. You agree with that?
- 10 A Yes, it does.
- 11 Q Okay. That you failed to secure a permit. You
- 12 agree with that?
- 13 A True.
- 14 Q Okay. And you properly dredged wetlands?
- 15 A I don't think so.
- 16 Q Okay. And you failed to properly mitigate
- 17 wetlands?
- 18 A (No response.)
- 19 Q This is your attorney drafting a lawsuit on your
- 20 behalf.
- 21 A Yeah.
- 22 Q Okay. And improper use of disposal and fill
- 23 material.
- 24 A You know, I wouldn't --
- 25 Q Well, let me ask you this --

1 this complaint, it's a public record, as the next
2 exhibit.

3

4 Q Now, were y'all fined for that?

5 A I believe there was a fine.

6 Q Okay. Did you settle with Stantec?

7 A There was a settlement with Stantec as well.

8 Q How much was the settlement for?

9 A I'd like to say 28- 30,000. I'm not real sure.
10 Somewhere in there. Maybe less because -- maybe
11 it was less because they did take their fees.

12 Q Well, didn't you just testified that, you know,
13 somehow this cost you 120,000?

14 A I did.

15 Q But you settled for 28,000?

16 A No. No. I -- everything it says needed to be
17 done, I did it. I paid \$120,000 to do that. I
18 paid those fines which was another \$30,000, I
19 believe.

20 Q But you settled with the person you're contending
21 responsible for 28,000?

22 A We settled for less than that, I believe.

23 Q Okay.

24

25 MR. JACKSON: So there's no objection to this

1 approved?

2 A I can't recall the date. But, I mean, that's why
3 I had my Mike Parker back there to help me.

4

5 THE WITNESS: Can we take like a little
6 bathroom break? Do you mind?

7 THE COURT: I'm sorry?

8 MR. JACKSON: Now would probably be a good
9 time. I've got to find this next document.

10 THE COURT: All right. We'll take a
11 ten-minute break. We'll be back at five til.

12

13 (A brief recess was taken from 3:45
14 until 3:51 p.m.)

15

16 THE COURT: You're still under oath,
17 Mr. Gilbert.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Jackson?

20 MR. JACKSON: Thank you, Your Honor.

21

22 BY MR. JACKSON (Continuing):

23 Q Asking you again about whether you could sell any
24 lots even though you had plat approval by DHEC.

25 I'm going to show you --

- 1 A I think this has -- as I'm reading it -- I think
2 it has something more to do with the encroachment
3 permit. Because that's what it says here on the
4 top.
- 5 Q Okay.
- 6 A We had already received a letter for that lots.
- 7 Q Okay. But does it not say final recorded plat,
8 page 2, has been approved -- final approval for
9 phase two is granted for those lots, including Lot
10 20?
- 11 A Yeah. Because they stopped everybody from selling
12 them. But that's not -- there's a document right
13 before that.
- 14 Q Show it to me. I'll be glad to see.
- 15 A No. I was just telling you there's another
16 document. They stopped letting people sell
17 because the encroachment permit wasn't there to
18 put the pipe underneath the road. So when the
19 pipe got put underneath the road, then they opened
20 it back up. That's the new.
- 21 Q Okay.
- 22 A There was an original letter that said you can
23 sell.
- 24 Q Okay. Let's talk about that encroachment permit.
- 25 A Sure.

1 Eagle Harbor. Did you ever apply for an
2 encroachment permit to access the Haney Branch
3 road?

4 A I did twice.

5 Q Okay. Let's take a look at that. Let me show
6 you --

7
8 MR. JACKSON: I have a couple of copies here.
9 I'll share that one. And I've got one more I'll
10 give to the Court.

11
12 Q Let me show you, is this the application that you
13 did? And it purports to be application by you in
14 February of '06?

15 A That's my handwriting.

16 Q Okay. And here's a copy of that. And basically,
17 did that require -- DOT came out and required you
18 to do a bunch of stuff to bring that entranceway
19 up to DOT standards?

20 A The way I read it -- or the way I see it is, is we
21 hired Stantec. They provided, you know, a \$60,000
22 set of drawings that included the, you know, the
23 entranceway, which was already there, it was
24 already existing, onto Haney Branch. When all
25 this started popping up, then obviously, you know,

1 Court what happened with that permit. It's called
2 final approval. Can you say what happened.

3 A Just point to it and I'll read it for you.

4 Q I'm sorry. Just publish right there, inspector
5 comments.

6 A Said cancel permit on 1/7/10.

7 Q Okay. Permittee canceled permit on 1/17. And
8 that would be you, right?

9 A No. I did not cancel.

10 Q You're not the permittee?

11 A Sure, I am. But I didn't cancel the permit.

12 Q Okay. Did you ever build what was required by DOT
13 in that entrance?

14 A No, not yet.

15 Q Okay.

16 A It's changed with the new permit.

17 Q Okay.

18

19 MR. JACKSON: I would like to offer both of
20 these, Your Honor, as my next exhibit.

21 THE COURT: Any objections?

22 COURT REPORTER: Are they the same numbers
23 or --

24 MR. JACKSON: I'll to them as separate
25 numbers.

1 Q Okay. And Stantec is the one who, I believe you
2 said, settled with 28,000?

3 A I'm not sure how much the money was. But Stantec
4 is the one that did phase two if that's what
5 you're saying.

6 Q Okay. Now, let me show you -- give a copy of the
7 regulation to the Court as well.

8
9 MR. JACKSON: This is just copy of the
10 Berkeley County regulation, Your Honor.

11 THE COURT: Thank you.

12
13 Q I would direct your attention to subparagraph B(3)
14 for private streets. Now, you would agree that at
15 least at present the subdivisions in Eagle Harbor
16 are considered private?

17 A Yeah.

18 Q Okay. I'm sorry. Left you out here. Everybody
19 else got one but you.

20 A So what are we looking at?

21
22 MR. JACKSON: Your Honor, if I may approach
23 the witness.

24
25 Q We're looking at B(3).

1 that.

2 Q Okay. And so, is there an account that has a
3 thousand dollars for each lot out there?

4 A No.

5 Q Whose responsibility was it to go to the closing
6 attorneys and say take out a thousand dollars for
7 each of these lots?

8 A I don't know whose responsibility. I mean, if it
9 was mine, then I didn't do it, but that was
10 supposed to be done.

11 Q Okay.

12 A The homeowner's association took over, you know,
13 the book and the corporation at the very
14 beginning. Even Diana Price was on the board
15 there. So it was --

16 Q Okay. And this would be a voluntary organization?

17 A I mean --

18 Q Well, let me ask you this: They asked you about
19 these covenants and you said something to the
20 effect you thought -- it was your intent, at
21 least, that they're beneficial for the neighbor
22 and you wanted to bind them. So you did have the
23 could intent to be able to try to set up covenants
24 for the neighborhood, right?

25 A Yeah. Yeah.

1 any part of Lot 20?

2 A No.

3 Q Okay. And I believe Mr. Ferrara asked you about
4 Mrs. Fox somehow being pseudo tied into these
5 covenants or whatever. Did you ever get her to
6 sign a written document agreeing and adopting
7 these covenants?

8 A No.

9 Q Do you ever know if there's any written document
10 recording in her chain of title that says that lot
11 will be subject to these covenants?

12 A No. Not that I'm aware of.

13 Q Okay.

14

15 MR. JACKSON: Court's indulgence for a
16 minute. I'm getting further down the road.

17

18 Q Okay. We talked about Mrs. Price's building
19 permit, the issues involved in that. Have you
20 ever had any other issues involving building
21 permits by failure to obtain or have you ever
22 been -- had Berkeley County -- have code
23 enforcement for not getting a building permit
24 before building?

25

1 Q One of those . . .

2 A I assume it's related to this case, no doubt.

3 Something's happened and they've --

4 Q Okay. So let's look at the first one. It's
5 dated -- notice date is September 23, 2005. The
6 condition was obtain proper permits for work. And
7 it has asterisk, you see that? Building barn, no
8 permit.

9 A Yeah. That was -- we talked to the County. It's
10 a run-in shelter. And they said it would be okay.
11 And then we got -- and I would assume that came
12 from someone cruising through the neighborhood
13 complaining.

14 Q Okay. And then the second one and it mentions an
15 address, Retiner Circle, Summerville. Is that --
16 you recognize that --

17 A That's Refiners Circle.

18 Q I'm sorry.

19 A And, you know, we own the property but we weren't
20 building the run-in shelter. Just wanted you to
21 know that. That was something else.

22 Q Okay.

23 A Well, I mean, it applies, right? I mean, you're
24 telling me that I didn't pull a permit. We got
25 marked up for it, but we weren't doing the

1 A Because we didn't do it.

2 Q Okay.

3

4 MR. JACKSON: I'd offer this as the next
5 exhibit, this combined document.

6 THE COURT: Any objection?

7 MR. FERRARA: No objection, Your Honor.

8 THE COURT: It's without objection. And this
9 is 48?

10 COURT REPORTER: Yes, sir.

11

12 (Whereupon, Plaintiffs' Exhibit No. 48,
13 Code Enforcement Record, was received
14 into evidence.)

15

16 MR. JACKSON: Let's mark this as the next for
17 identification only. I don't think there's going
18 to be an objection.

19

20 Q I'll show you what has been marked as Plaintiffs'
21 Exhibit No. 49 for identification purposes. And
22 take a minute while you're reading that.

23 A (Witness reviews document.) Yes, I'm reading it.

24 Q Okay. As a charity, you're governed by some
25 guidelines since you're a nonprofit with South

1 information?

2 A Sure. Sure.

3 Q And it looks like there was housekeeping. There
4 were some things they suggested that that report
5 you filed is not accurate.

6 A Because somebody -- somebody ratted us out because
7 they thought we were doing something wrong.

8 Q So there goes that perennial thing you have
9 about --

10 A It's obvious.

11 Q -- that you have about ratted out.

12

13 THE COURT: Hang on. Hand on, gentlemen.

14 MR. JACKSON: Yes.

15 THE COURT: You got the letter? Is there
16 still an objection as to the relevancy?

17 MR. FERRARA: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. JACKSON: Your Honor, I think the
20 relevance is -- the substance of that letter that
21 will lead to my next exhibits shows that Heritage
22 Classic Homes was blending in. He had multiple
23 hats. And he had to properly disclose those
24 multiple hats that he was wearing while he was
25 running the charity.

1 he's familiar with the letter. I'll hold on
2 admitting this to see if it's tied in with the
3 next one.

4 MR. JACKSON: Okay.

5 THE COURT: I'll do both of them because you
6 said they're contingent upon each other.

7 MR. JACKSON: Yes, sir.

8

9 BY MR. JACKSON (Continuing):

10 Q Mr. Gilbert, was is your title or role at Eagle
11 Harbor?

12 A Executive Director.

13 Q Okay. And what is your title or role at Heritage
14 Classic Homes?

15 A Heritage Classic Homes doesn't exist.

16 Q Okay. But it did it exist?

17 A Well, it did. Yes.

18 Q Okay. When it did exist, what was your title and
19 role?

20 A I guess you would say I was the president, I
21 guess.

22 Q Okay. Were you the sole shareholder?

23 A I was.

24 Q And the owner?

25 A I was.

1 is a bench trial. But marking documents and
2 handing them up to the Court for your
3 consideration when you're trier of fact is not the
4 appropriate method for the Court to consider these
5 hearsay statements. And I would just respectfully
6 request that we follow the rules. Mark these
7 documents for identification, ask the witness the
8 documents, authenticate them properly before --

9 MR. JACKSON: I'll be glad to do that, Your
10 Honor.

11 THE COURT: All right. Don't talk over each
12 other, gentlemen.

13 MR. JACKSON: Sure. Sure.

14 THE COURT: I'm going to disagree as to
15 relevancy on these.

16 MR. JACKSON: Okay.

17 THE COURT: I don't see any relevancy at this
18 point in time. So I'm going to disallow both of
19 them, which is for identification, 50 and 49.

20 MR. JACKSON: Okay.

21
22 (Whereupon, Plaintiffs' Exhibit No. 49,
23 Letter, was marked for identification.)
24

25 THE COURT: You can go ahead.

1

2 A Yeah. I know Troy Winn well.

3 Q Okay. And he was one of the partners, if you
4 will, in this development?

5 A He was a partner, yeah. Absolutely.

6 Q Now, did Mr. Winn ever have some disagreements
7 with you and Eagle Harbor, how it was being run?

8 A Not verbally. Apparently, you had something in
9 writing.

10 Q Sure. I'll show it to you.

11 A The original board chair is in the back. Probably
12 give you a better answer to your question. So
13 what's . . .

14 Q Do recall anything about that letter?

15 A (Nonverbal response.)

16 Q Was he ever concerned about finances and nixing
17 finances?

18 A Well, it says right here he was.

19 Q Okay.

20

21 MR. FERRARA: Objection, Your Honor. Witness
22 is testifying from hearsay documents that
23 aren't --

24 MR. JACKSON: I'm asking him about the
25 specifics --

1 Q Did Mr. Winn resign from the board?

2 A I don't if he resigned or -- possibly he did.

3 Q You don't know? You're the Executive Director and
4 you don't know who resigns from your board?

5 A That's not the case. I know he's not on the
6 board. I don't know if we let him go or asked him
7 to resign or resign on his own.

8 Q All right. I'm gonna show you this next document.

9 A Okay. Okay. It says he resigned.

10 Q Okay.

11 A Certainly could have been because we asked him to.

12

13 MR. JACKSON: Offer this as an exhibit?

14 MR. FERRARA: Your Honor, on this document, I
15 don't want to waste the Court's time, but --

16 MR. JACKSON: I'll move on. That's fine. I
17 won't dwell on it.

18 THE COURT: It's not been introduced and not
19 seeking to introduce. Is that right?

20 Mr. Jackson, you're not seeking to introduce that
21 document?

22 MR. JACKSON: No, Your Honor.

23 THE COURT: Thank you.

24

25 Q All right. Let me ask you about Jeff Spell. Now,

- 1 A Here.
- 2 Q Yes, sir. And you'll see, I think, it says Jeff
3 Spell. It's kind of typed in there pretyped.
- 4 A Well, it's not pretyped. It's typed in. It's
5 typed in -- it's typed in on a blank line.
- 6 Q Okay. So all those contracts didn't have that in
7 there?
- 8 A No. There's several people that didn't close with
9 Jeff Spell.
- 10 Q Okay. Now, I was asking you about the role
11 Mr. Spell played in the development. You said you
12 don't recall him having a role.
- 13 A No.
- 14 Q Tell me -- I'm sorry.
- 15 A No, I don't know. I don't recall.
- 16 Q You don't recall?
- 17 A No.
- 18 Q Let me show you this letter dated April 10, 2003.
- 19 A Sure.
- 20 Q There's another letter dated December 12, 2003.
- 21 A Sure.
- 22 Q Attached to it. See if that will refresh your
23 recollection about any dealings with Mr. Spell as
24 part of this project.
- 25 A Yeah. This is for -- well, I think so, now. Jeff

1 A Sure.

2 Q Okay. Who is Sue? You know?

3 A Sue was somebody in his office, I believe.

4 Q Okay. And at the bottom, what does it say?

5 A Please tell Jeff I need ten account today. Expect
6 a check next week. Yeah.

7 Q Okay. Now, let me show you one final letter.

8 Now, did Jeff ever represent you personally?

9 A I think Jeff tried to represent me personally,
10 yeah.

11 Q I'm talking about before he tried to represent you
12 in this case?

13 A You know, I can't remember. I'm not sure.

14 Q All right. (Brief pause.)

15

16 MR. JACKSON: Let's go ahead and mark this
17 for identification.

18 COURT REPORTER: I just got a question. I
19 don't know if we are on 50 or 51. Because the
20 last one -- he handed up two documents that went
21 in for ID only. I only marked 49 but not a 50.

22 MR. JACKSON: Yeah. Those are ID only. I
23 guess 51.

24 COURT REPORTER: You want to do 51. All
25 right.

1 Q I'm sorry. The first paragraph. I should have
2 clarified.

3 A I'm sorry?

4 Q Your first paragraph.

5 A "I received your fax this morning dated September
6 26, 2003. I understand that you represent
7 Mrs. Winn and all correspondence in the future
8 should go through your office. I too am
9 represented by attorney Jeff Spell, but will
10 continue to correspond with you, with all legal
11 decisions referring back to my attorney. It is
12 for this reason I write you --"

13 Q That's far enough. So it would be accurate to say
14 Jeff Spell was your attorney on that date and
15 time?

16 A Well, I guess. Yeah. Looks like he -- looks like
17 he was brought into by this letter. Yeah. I'm
18 not sure if he did anything in regards to that.

19

20 MR. JACKSON: I'd offer this as Plaintiffs'
21 Exhibit No. 51.

22 THE COURT: Any objection to 51?

23 MR. FERRARA: No, Your Honor. Derrick, did
24 he say he wrote the letter and signed --

25 MR. JACKSON: Yeah, he said --

1 your exhibit.

2 MR. HUBBARD: Which one was it?

3 MR. JACKSON: Here it is. We got it.

4

5 Q Just a couple of questions about this.

6 A Sure.

7 Q Do some of these have to do with the pierings or
8 any of the things the Prices' expert testified
9 were defective?

10 A All those costs have to do with the foundation,
11 yeah, that their expert witness said. Yeah,
12 absolutely.

13 Q Okay. So if they had to tear it down because it
14 was defective, they shouldn't be charged for that,
15 should they?

16 A Well, that's not the case here. You know, anybody
17 can find something wrong with anything. So it's
18 like I didn't have an opportunity to go back and
19 fix anything that was --

20 Q Well, can you identify on this very short list, or
21 just tell us in general how much related to that
22 did the Prices' have to demolish?

23 A Well, they said they demolished the walls, the
24 perimeter walls, and I would assume the perimeter
25 footings and kept the internal footing and built a

1 It's for the draw requirements. You would agree
2 that a copy of the building permit and a septic
3 tank is a requirement for the first draw?

4 A Well, I can't read this because there -- the first
5 draw was supposed to be paid at the closing and it
6 wasn't paid.

7 Q Okay. But this says --

8 A I understand that's the first draw and the
9 construction started. But I'm talking about
10 before construction started.

11 Q Okay. What does it say --

12 A You can't read that stuff.

13 Q You can't read it?

14 A No. I can't read it. It's -- can you read that
15 right there?

16 Q Okay.

17

18 MR. JACKSON: Court's indulgence. (Brief
19 pause.) That's all the questions I have, Your
20 Honor.

21 THE COURT: Any redirect?

22 MR. FERRARA: None, Your Honor.

23 THE COURT: Sir?

24 MR. HUBBARD: No, Judge.

25 THE COURT: All right. You can step down.

1 THE COURT: Good afternoon.

2

3 (Whereupon, the witness, MICHAEL G.
4 PARKER, was duly sworn.)

5

6 THE COURT: Thank you, sir. Sit down right
7 there, and give your name, spell your last name
8 for the court reporter.

9 THE WITNESS: Name is Michael G. Parker,
10 P-A-R-K-E-R.

11

- - - - -

12

DIRECT EXAMINATION

13 BY MR. FERRARA:

14 Q Mr. Parker, you're familiar with Mr. Gilbert and
15 the Eagle Harbor subdivision?

16 A Yes, sir.

17 Q Okay you've been listed in this lawsuit that we're
18 involved in here as a witness to the conditions
19 out at Eagle Harbor between some point in time up
20 until 2003 or 2004. Is that correct?

21 A I don't know the time lines very much.

22 Q Okay. Well, I'll ask you this: Do you have any
23 knowledge to assist the judge about the soils of
24 Eagle Harbor that you observed in the time period
25 between 1999 and 2003?

- 1 easements to other lots to make them --
- 2 Q 'Did you --
- 3 A -- pass.
- 4 Q Yes, sir. I'm sorry. Did you assist Mr. Gilbert
- 5 in designing the septic system for Eagle Harbor in
- 6 general?
- 7 A No, not overall. They was already on the plat. I
- 8 looked at existing lots to see if we could find
- 9 suitable areas on those lots so DHEC could approve
- 10 them.
- 11 Q Mr. Gilbert has just testified -- and I don't
- 12 know, sir, if you've heard his testimony about you
- 13 and he being and walking the property of Eagle
- 14 Harbor in phase two. Did you hear Mr. Gilbert
- 15 testify --
- 16 A What is phase two, now?
- 17 Q Oh, I'm sorry.
- 18 A I don't keep up with the phase.
- 19 Q Sure. Saddlehorn Road?
- 20 A So this is the subdivision to the right as you
- 21 come in?
- 22 Q I'm not sure, but I know it's on Saddlehorn Road
- 23 and it terminates in a cul-de-sac. And I believe,
- 24 I'll represent to you, sir, that this was the
- 25 second phase of Eagle Harbor that was developed.

1 engineer to come and possibly get multiple lots
2 now.

3 Q Sure. In your experience in dealing with DHEC
4 over the years, is it typical for a developer to
5 receive denial letters on various development
6 requests in the beginning of the subdivision
7 process?

8 A Oh, yeah, all the time.

9 Q Is that the normal process that there's a
10 back-and-forth between DHEC and the developer?

11 A Yes.

12 Q And accounting?

13 A That's why a lot of them hire me first. I go out
14 there and look at what he has and say okay, you
15 can get X number of lots and we'll put the road
16 here and just say you could get five lots. Well,
17 before they had to go to a surveyor, to the
18 county, to DHEC. DHEC goes back out and looks at
19 the five lots, says no, you can't get five lots,
20 you can only get four lots. Then you got to go
21 back to the surveyor, back to the County, back to
22 DHEC. And it takes months to get it done.
23 Whereas, I usually go out and look at it and we
24 can get it laid out, get it surveyed, get it into
25 the County, get it approved, and get DHEC to

1 found the -- you were talking earlier about the
2 ones across Leisure. And we actually found the
3 lots over there and recommended that he use pump
4 systems to get some of these other lots approved.

5 Q So did you assist Mr. Gilbert in the design to
6 pump the sewer of site?

7 A No. DHEC does that.

8 Q DHEC did that.

9 A Right.

10 Q Okay.

11

12 MR. FERRARA: Thank you, sir. Answer any
13 questions counsel may have.

14 MR. JACKSON: I don't have any questions of
15 this witness.

16 MR. HUBBARD: No questions.

17 THE COURT: Okay. You can step down, sir.
18 Thank you.

19 So you were correct on the time line. That's
20 great. All right. How much more of a case do you
21 have or are you completed?

22 MR. FERRARA: I'm completed, Your Honor. The
23 defendant rests at this time.

24 THE COURT: Mr. Hubbard, do you need to
25 present any testimony?

1 Okay.

2 MR. JACKSON: Yes, Your Honor.

3 MR. FERRARA: Thank you, Your Honor. Just,
4 also, additionally before we close the record, I
5 just wanted for the record just to renew the
6 directed verdicts. The Court's already ruled on
7 that, and I understand the Court's ruling. But at
8 this time as the plaintiff has fully rested and
9 the defense has presented their case, I would
10 respectfully renew the directed verdict motions.

11 THE COURT: I'll do the same again and deny
12 those.

13 MR. HUBBARD: I'll do the same. You took one
14 under advisement. We were gonna hear some
15 testimony about the Unfair and Deceptive Trade
16 Practices Act. I renew that as well, Your Honor.

17 THE COURT: Right I've got everything on the
18 plate. I'll deny the motion, but I'll consider
19 all the arguments. And I may draw on you to
20 present some or all of the arguments. But I may
21 do that by burdening y'all with an order because
22 sometimes it's better that way. I'll try not to,
23 but I may. Okay.

24 MR. JACKSON: Okay.

25 THE COURT: I appreciate y'all's hard work in

CERTIFICATE

Be it known that the foregoing trial proceedings of the captioned case was taken by Heather R. Landry, CVR;

That I was then and there a notary public in and for the State of South Carolina-at-Large;

That the witness(es) were sworn or administered an oath of affirmation to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 16th day of August 2018.



Heather R. Landry, CVR

Notary Public for South Carolina
My Commission Expires: April 10, 2024

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**AGREEMENT TO BUY AND SELL
(GENERAL)**

1. **PARTIES** This legally binding contract, entered into on this 13th day of September, 2003 between,

Seller: Belinda Fox TIN#SS# _____
Buyer: Ronald E. Price & Diana R.B. Price TIN#SS# _____

2. **PROPERTY TO BE SOLD.** Subject to terms and conditions herein, Seller agrees to sell the following:

(a) **REAL PROPERTY**, described as follows:

That lot designated as Lot # 20 containing 7.861 acres as shown on a Plat entitled "Eagle Harbor" Tract A subdivision of TMS 4194-00-02-030 & 031

(b) **TAX MAP NUMBER**
194-00-02-121

3. **PURCHASE PRICE** shall be \$90,400 (Ninety Thousand Four Hundred Dollars)

4. **METHOD OF PAYMENT** Purchase price shall be paid as follows:

(a) Down Payment \$2000 EARNEST MONEY
(b) Mortgage Loan. Buyer shall pay at closing from the proceeds of a Conventional loan.

5. **CLOSING COSTS**, including the costs of obtaining any financing, shall be paid as follows:

(a) Seller shall provide or pay for preparation of deed; any recording charge based on value of the property, and any cost necessary to provide a marketable title; including recording of any satisfactions, property taxes to the day of closing and any other cost agreed to herein.
(b) Unless otherwise agreed herein, Buyer shall pay the costs of the title examination, and if applicable, any loan costs, the cost of any appraisal, survey, transfer fees, and the preparation of other closing documents.

6. **CLOSING DATE** shall be on or before October 30, 2003 at the office of the closing attorney or closing agent.
Closing attorney or agent shall be Jeff Spell.

7. **POSSESSION** Seller shall give possession to the Buyer, subject to any tenant's rights, on or before October 30, 2003 provided title has passed.

8. **SPECIAL STIPULATIONS:** the following stipulations shall, if conflicting with printed matter, control:

- A. Buyer is purchasing property "as is".
- B. Property to be conveyed to buyer at closing.
- C. Buyer to receive copy of the covenants and restrictions from the closing attorney at closing.
- D. Property subject to restrictive covenants attached hereto.
- E. Subject to final subdivision of parent tract by Berkeley County.
- F. Buyer to pay cost of underground utilities (estimated at \$250).
- G. Rollback taxes to be estimated by attorney and included in final closing cost, not to exceed \$300.00.
- H. Buyer has right to withdraw from contract with full reimbursement within 30 days due to job uncertainty.
- I. Developer agrees to allow subdividing of property into 2 separate lots, with possibility of 3 upon approval of Homeowners Association.

9. **RECEIPT OF PAYMENT** The offer is accompanied by an earnest money deposit of \$2000.

10. **INSPECTION:** Buyer, at Buyer's expense, shall have the privilege and responsibility of inspecting, environmental concerns, including but not limited to hazardous waste, wetland study, and radon gas. Buyer shall notify Seller or listing agent in writing by 12:00 noon on October 1, 2003 of any deficiencies revealed by inspection. If Buyer fails to notify Seller or listing agent of the results of such inspection on or before day stipulated, Buyer shall be deemed to have waived the privilege of any inspections.

11. **ENTIRE AGREEMENT.** This written instrument, including the additional terms and conditions set forth, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. Only a subsequently written instrument signed by both parties can change it. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements, which are not expressly stipulated herein.

12. **FINANCING** It is understood that at the time of application the Buyer will advance the necessary money to process any financing. Purchaser also agrees to apply for financing as called for above, from the institution of his/her choice, within 15 business days from the date of execution of this Contract and to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any reasonable action which is needed or requested by the Lender to process the loan application. If Seller has not received written confirmation that Buyer has received written conditional approval for the financing indicated above on or before October 1, 2003, Seller shall have the right to cause the refund of the earnest money and terminate the Contract and neither party shall have any further rights hereunder.
(All parties must initial this paragraph.) Buyer [Signature] Seller [Signature]

13. **LOAN APPLICATION** The aforementioned land shall be secured by the real property described herein. Buyer shall endeavor in good faith to obtain said loan and when requested by lender shall supply all necessary information and sign the customary loan applications, forms, and instruments and shall pay a non-refundable appraisal fee and credit report fee. If Buyer's loan application is rejected for a cause that cannot reasonably be cured, or if a commitment for said financing cannot reasonably be obtained by specified closing date, or a reasonable length of time thereafter, Buyer shall be deemed unable to obtain said loan, in such case, either Buyer or Seller may terminate this agreement and both will execute a release of contract. The Escrow Agent shall then refund earnest money to the Buyer.

14. **APPRAISAL FOR CONVENTIONAL LOANS** In the event the appraised value of the herein described property is less than stipulated purchase price, the Seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. Should the seller elect not to sell for the appraised value, the Buyer shall have the option to proceed with the consummation of the sale without regard to the appraised value. If applicable, all earnest money will be refunded to buyer.

15. **CLOSING COSTS** Including all loan charges, escrow deposits and prepaid recurring items, shall be paid as follows:

P EXHIBIT 2	
WITNESS:	
DATE: <u>5/3/2018</u>	
REPORTER: <u>H. LANDRY</u>	

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B. TYPE OF LOAN	
1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. LOAN 4. ☐ VA 5. ☐ CONV. INS.		6. ☐ 1-451 (FHA) 7. ☐ 1-452 (FmHA) 8. ☐ 1-453 (CONV.) 9. ☐ 1-454 (VA) 10. ☐ 1-455 (CONV. INS.)	
5. FILE NUMBER: PRICE 03-11-021		7. LOAN NUMBER: 000284509	
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 "TPOC" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. NAME AND ADDRESS OF BORROWER:		E. NAME AND ADDRESS OF SELLER:	
Ronald E. Price and Diana R.B. Price Lot 20, Phase II, Eagle Harbor BEN: 257-42-4903 450-04-5763		Belinda Fox 9384 257-25-4561 National City Mortgage Company 7400 CARMELO EXECUTIVE PARK STE 100 CHARLOTTE, NC 28226	
G. PROPERTY LOCATION:		H. SETTLEMENT AGENT:	
Lot 20, Phase II, Eagle Harbor Berkeley County County TMS # 194-00-02-031 Lot 20, Phase II Eagle Harbor		BS-2187500 Lendcountry Title Service, LLC 2183 Ashley Phosphoric Road, Suite A Charleston, SC 29408	
		I. SETTLEMENT DATE: November 28, 2003	
J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER: 89,400.00		400. GROSS AMOUNT DUE TO SELLER: 90,400.00	
101. Contract Sales Price		401. Contract Sales Price	
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)		403.	
104. Commission unborrowed		404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		Adjustments For Items Paid By Seller in advance	
106. City/Town Taxes		406. City/Town Taxes	
107. County Taxes		407. County Taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER 282,814.49		420. GROSS AMOUNT DUE TO SELLER 90,400.00	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Earnest Deposit (See Instructions)	
202. Principal Amount of New Loan(s)		502. Settlement Charges to Seller (Line 1400)	
203. Existing Lien(s) taken subject to		503. Existing Lien(s) taken subject to	
204.		504. Payoff of First Mortgage	
205.		505. Payoff of Second Mortgage	
206.		506. Deposit retained by seller	
207.		507.	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		Adjustments For Items Unpaid By Seller	
210. City/Town Taxes		510. City/Town Taxes	
211. County Taxes		511. County Taxes	
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/ FOR BORROWER 283,700.00		520. TOTAL REDUCTION AMOUNT DUE SELLER 47,379.67	
300. CASH AT SETTLEMENT FROM TO BORROWER:		600. CASH AT SETTLEMENT TO FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120)		601. Gross Amount Due To Seller (Line 420)	
302. Less Amount Paid By/ For Borrower (Line 220)		602. Less Reductions Due Seller (Line 520)	
303. CASH (X FROM) (TO) BORROWER 18,114.49		603. CASH (X TO) (FROM) SELLER 43,020.33	

This undersigned hereby acknowledges receipt of a complete copy of pages 1-2 of this statement & any attachments referred to herein.

Borrower

Ronald E. Price

Diana R.B. Price

by Ronald E. Price
Attorney in fact.

Seller

Belinda Fox

P	EXHIBIT 3
WITNESS	
DATE: 5/3/2018	
REPORTER: H. LANDRY	

000067

PRICE 03-11-021

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY COUNTY)

FILED, RECORDED, INDEXED
12/03/2003 02:59:39PM
Rec Fee: 10.00 St Fee: 235.30
Co Fee: 99.55 Pages: 4
Issued to: LOWCOUNTRY TITLE
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

DEED

NOW THEREFORE:

KNOW ALL MEN BY THESE PRESENTS, I, Belinda Fox, in the State aforesaid for/and in the consideration of the sum of Ninety Thousand Four Hundred and 00/100 DOLLARS (\$90,400.00), TO ME IN HAND PAID AT AND BEFORE THE SEALING OF THESE PRESENTS BY, Ronald E. Price and Diana R.B. Price, the receipts whereof are hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantees, Ronald E. Price and Diana R.B. Price, their heirs and assigns, my interest forever in the following described property, to-wit:

EXHIBIT "A"

All that certain piece, parcel, or tract of land, situate, lying and being in Second Goose Creek Tax District, County of Berkeley, State of South Carolina, measuring and containing 7.861 acres, more or less, known and designated as Lot 20, "Prepared for: Eagle Harbor Incorporated, Danny L. Gilbert, CEO, Berkeley County, South Carolina", as more particularly shown and delineated on a plat entitled: "FINAL PLAT OF EAGLE HARBOR, PHASE II, ST. JAMES, GOOSE CREEK PARISH" prepared by William M. Ferguson, Stantec Consulting Services, Inc., dated July 25, 2002, and recorded September 26, 2002, in Plat Book P, at Page 281-A, in the RMC Office for Berkeley County, South Carolina. Said property having such size, shape, metes, butting and bounds as will by reference to said plat.

Being a portion of the same property conveyed to Belinda Fox by deed of Bennie Harvey ordel, a/k/a Bennie Harvey Ordell, dated August 13, 2001 and recorded August 21, 2001, in Book 2382, at Page 143, in the RMC Office for Berkeley County, South Carolina.

TMS # 194-00-02-031

Grantees' Address: ~~Lot 20, Phase II, Eagle Harbor~~

P.O. Box 191
Mt. Blanchard, OH 45867

EXHIBIT	4
WITNESS	
DATE:	5/3/2018
REPORTER:	H. LANDRY

RECEIVED
12/03/2003
ASSESSOR
BERKELEY COUNTY SC

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me, this
25 day of November, 2003.

Peggy S. Henry (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA

Nanaym Allen
Witness #1

My Commission Expires: 11-7-2012

PRICE 03-11-021
STATE OF SOUTH CAROLINA)

AFFIDAVIT

Date of Transfer of Title
(Closing Date) November _ , 2003

ARTICLE 1
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Landscaping
Driveway material between ROC or Pavement at Saddlehorn Road and concrete slab at garage doors
Bath hardware
Door hardware
Mirrors
Shelving
Job-site cleaning
Punch out items not completed by sub-contractors

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement, or, if applicable, state that the date will be fixed in a notice to proceed.)

On closing of loan or October 30, 2003 which ever comes first.

Closed Nov 25, 2003

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than
(Insert the calendar date or number of calendar days after the date of commencement. Also, insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

February 1, 2004

Extended to Feb 25, 2004

,subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

2088

ARTICLE 5
PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Architect or Owners Lender by the Contractor and Certificates for Payment issued by the Architect or Owners Lender, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

1) At commencement of contract an amount determined by the lender.

2) Draw schedule to be followed as per lending requirements as referenced in Builder information received from National City Mortgage Company.

Atch 1

5.3 Provided an Application for Payment is received by the Architect or Owners Lender not later than the 1st day of a business week, the Owner shall make payment to the Contractor not later than the day of the 5th day of the same business week. If an Application for Payment is received by the Architect or Owners Lender after the application date fixed above, payment shall be made by the Owner not later than 5 business days after the Architect or Lender receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing).

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect or Lender has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to 100 % of the Contract Sum, less such amounts as the Architect or Lender shall determine for incomplete Work and unsettled claims, and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 Reduction, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

4088

ARTICLE 9
ENUMERATION OF CONTRACT DOCUMENTS

9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

Current drawings of all three levels of home are attached, in addition to porch and deck estimate.

(Atch 2, 3, 4, 5)

9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor.

9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

9.1.3 The Supplementary and other Conditions (if any) of the Contract are those contained in the Project Manual dated

NA

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Description of Materials for the Price Residence will be provided to the Buyer at the time provided to the financing institution, on or about September 20, 2003.

6 of 8

9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

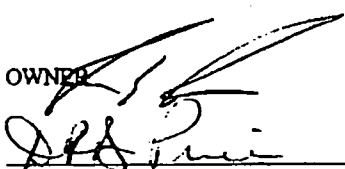
Sketches of all three levels of home, current as of this date September 13, 2003 and Site Plan of this date as well.

Atlet 6

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

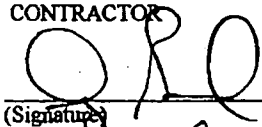
This Agreement is entered into as of the day and year first written above and is executed in at least two original copies of which one is to be delivered to the Contractor for use in the administration of the Contract, and the remainder to the Owner.

OWNER


(Signature)

Donald E. RICE
DONALD E. RICE
(Printed name and title)

CONTRACTOR


(Signature)

Danny Gilbert, Pres
(Printed name and title)

Articles referenced above: 9.10.3, 7.3.7, 9.5, 14 and 12.2.2 will be provided to buyer as well as copies of construction drawings which are required by financing institution.

- GAVE us the AIA Document A201
0/a Oct 5, 2003

Upon execution of this document, buyer will be consulting an attorney and/or Jeff Spell with any questions.

Witnessed by:



Doug C. Cotton

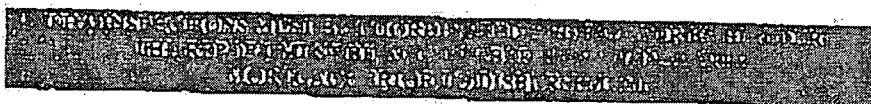
2078

SUBSEQUENT DRAWS: At the time of subsequent draws the following items must be submitted by the builder/borrower:

- Request for Disbursement form.
- Original Request for Disbursement form from the previous draw.
- Inspection (NCM will order)
- Title Update (NCM will order if applicable)
- Satisfactory FHA inspection (if applicable)

FINAL DRAW: At the time of the final draw the following items must be submitted by the builder/borrower:

- Water Test (if applicable)
- Septic System Approval (if applicable)
- Occupancy Permit
- Request for Disbursement form
- Completion Certification
- Warranty of Completion of Construction - HUD Form 92544 and 92344-A
- Copies of borrower's canceled checks (if applicable)
- Acceptable proof of coverage under 10 year warranty
- Satisfactory final FHA inspection (required on all FHA loans)
- Original Request for Disbursement form from the previous draw
- Inspection (NCM will order)
- Title Update (NCM will order if applicable)



A draw is ready to be disbursed after the following has occurred:

- The title company/closing attorney has contacted the Construction Lending Dept. that the title update is ok and they authorize the draw to be disbursed (where applicable).
- The Inspector has notified the Construction Lending Dept. as to what work has been completed.
- All Paperwork has been reviewed and is accurate. Paperwork should consist of the documents described above.
- Original paperwork from previous draw is received.

A check will be written/funds will be wired based on the information filled out on the Request for Disbursement form. If this information was left blank, a joint check will be issued to the borrower and builder.

BE SURE YOU HAVE A SUPPLY OF THE FOLLOWING DRAW PAPERWORK:

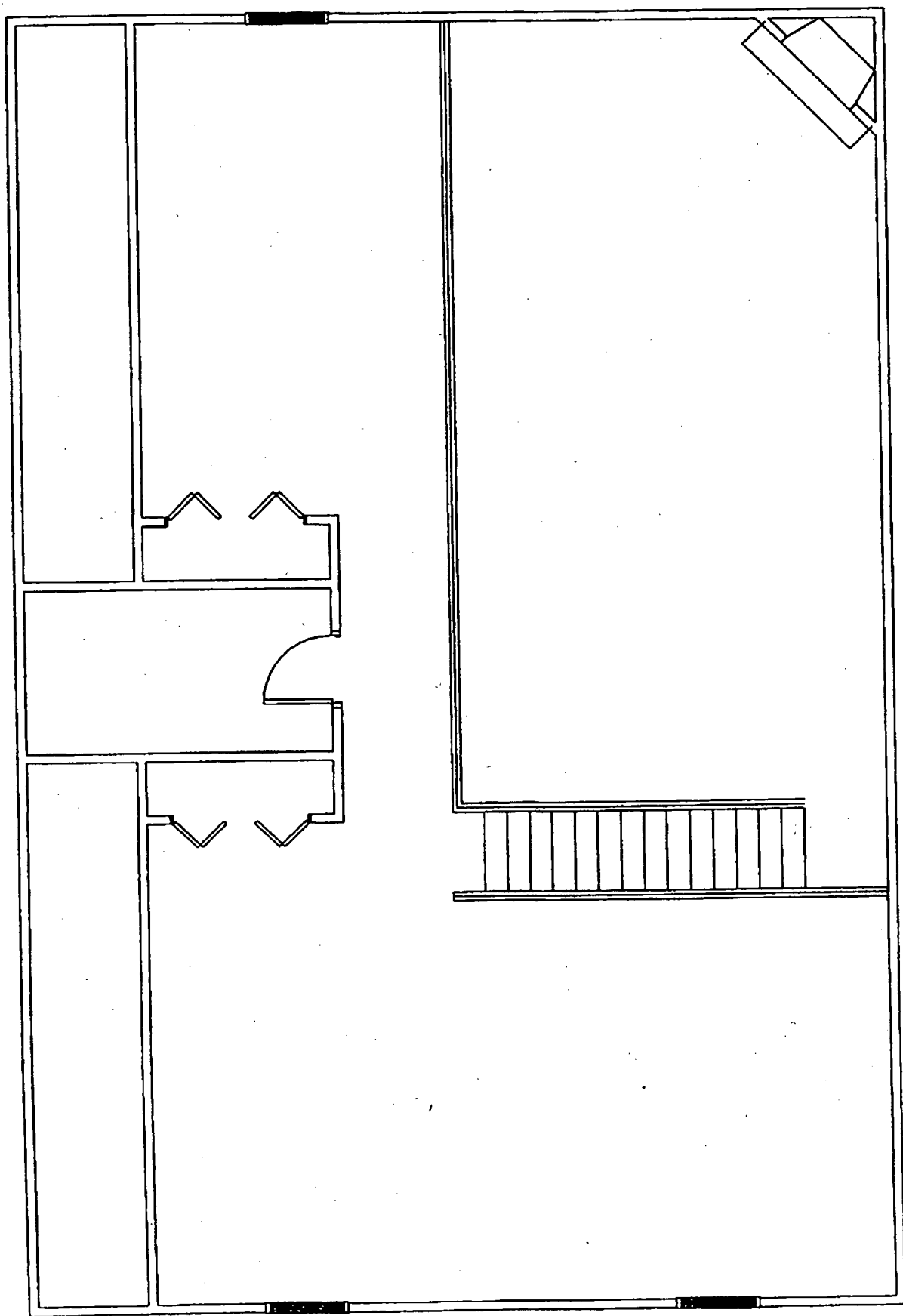
- ♦ REQUEST FOR DISBURSEMENT FORMS
- ♦ COMPLETION CERTIFICATION FORM (for final draw)

Call the Construction Lending Department if you need a supply of these forms.

I hereby acknowledge receipt of these Draw Procedures and agree to comply with these requirements.

(Builder/Contractor)

Date



Sheet 3

ADO REPAIRS & REMODELING

8430 CREEKSTONE COURT
NORTH CHARLESTON, SC 29406
(843) 200-4877

Estimate

DATE	ESTIMATE NO.
9/9/2003	105

NAME / ADDRESS
Price Ranch

			PROJECT
DESCRIPTION	QTY	RATE	TOTAL
Frame porch		0.00	0.00
2x6 plate treated			
2x10 and 2x8 band treated			
2x8 joist treated			
5/4 treated decking			
2x4 with 2x2 treated pickets for handrails			
colonial style columns at 8ft. on center		17,307.00	17,307.00
TOTAL			\$17,307.00

Handwritten signature

LOT 20
342,417 SQ.FT.
7.861 AC.

2

38	Bath Hardware (owner)	425	170		0
39	Door Hardware (owner)				0
40	Countertops*				600
41	Mirrors (owner)				0
42	Gutters			1000	1000
43	Driveway/Sidewalks*			3000	3000
44	Appliances*			2500	2500
45	Lighting Fixtures*			1500	1500
46	Shelving (owner)				0
47	Cleaning (owner)				0
48	Punch List (owner)				0
	Total				143,914
	4.8% Overhead				6907
	6.5% Job Management				9354
	GRAND TOTAL				160,175

* Allowance

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equip-

ment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume usually assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by the Owner and Contractor as provided in the Agreement. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

- 1** materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- 2** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Archi-

tect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an architect against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect.

4.1.4 Disputes arising under Subparagraphs 4.1.2 and 4.1.3 shall be subject to arbitration.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 12.2. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Con-

4.3.4 Continuing Contract Performance. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents; or
3. terms of special warranties required by the Contract Documents.

4.3.6 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.7 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein.

4.3.8 Claims for Additional Time

4.3.8.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.8.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data

substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

4.3.9 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

4.5 ARBITRATION

4.5.1 Controversies and Claims Subject to Arbitration. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies or Claims relating to aesthetic effect and except those waived as provided for in Subparagraph 4.3.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 4.4.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 4.3 and no decision has been rendered.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

6.2.6 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the

nated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.3.11 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make

such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the Owner as provided in Subparagraph 4.3.5.

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. The Contractor shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

* 11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity

other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

11.3.1.1 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

11.3.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.3.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.3.3 **Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so the Architect may observe such procedures.

tify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the

Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

19. Cabinets and Interior Detail

Kitchen cabinets, wall units material Pre-Fab Engineered base unit material Pre-Fab Engineered
 counter top Laminate edging Laminate back and end splash Laminate
 Finish of cabinets White number coats As per mfg specs
 Door profile description Arch Allowance \$5000
 Other cabinets and built-in furniture M. Bath Vanities supplied by owner
 Additional information:

20. Stairs

Location	Treads	Risers	Strings	Handrail	Balusters
Main	Wood	Wood	2 x 12	Oak	NA
Attic	NA	NA	NA	NA	NA
Exterior 1	P.T. 5/4 x 6	P.T. 5/4 x 6	P.T. 2 x 12	P.T.	2" Turned
Exterior 2	P.T. 5/4 x 6	P.T. 5/4 x 6	P.T. 2 x 12	P.T.	2" Turned

Additional information:

21. Special Floors and Wainscot (Describe Carpet as listed in Certified Products Directory)

Location	Floor Material	Thickness	Width	Color	Wainscot Material	Height	Finish
Kitchen	Oak	3/4"	3"				
Powder Room	Oak	3/4"	3"				
Family Room	Oak	3/4"	3"				
Study	Oak	3/4"	3"				
Utility	Oak	3/4"	3"				
M. Bath	Oak	3/4"	3"				
M. Bedroom	Carpet						
Bedroom 2	Carpet						
Bedroom 3	Carpet						
Bedroom 4	Carpet						

Additional information:

22. Plumbing

Fixture	Description	Allowance
Kitchen Sink	Owner specified	\$300
Kitchen Sink Faucet	Owner specified	
M. Bath Lavatory	Cultured Marble	
M. Bath Water Closet	American Standard	
M. Bath Shower	Custom Built, 2 spray heads, Ceramic Tile	
M. Bath Tub	Drop-in Owner Specified	
Lavatory 2	Pedestal	
Lavatory 2 Faucet	Owner Specified	
Water closet 2	American Standard	