THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas

Honorable Dale Van Slambrook, Master-in-Equity

CASE NO. 2004-CP-08-1855

APPELLATE CASE NO. 2018-001993

Ronald E. Price and Diana R. B. Price, Respondents.

v.

Belinda Fox and Gerry Fox, Appellants.

RECORD ON APPEAL

VOLUME II

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INDEX

Examinations

Direct examination of Merrill Cox by Derrick Jackson.....497

Cross examination of Merrill Cox by Paul Ferrara.....510

Cross Examination of Merrill Cox by Carl Hubbard.....521

Redirect Examination of Merrill Cox by Derrick Jackson 523

Direct Examination of Diane A. Cox by Derrick Jackson 525

Direct Examination of Diana R. Price by Derrick Jackson 538

Cross Examination of Diana R. Price by Paul Ferrara 605

Cross Examination of Diana R. Price by Carl Hubbard.....680

Redirect Examination of Diana Price by Derrick Jackson.....693

Re-cross Examination of Diana Price by Paul Ferrara.....701

Direct Examination of Ty Adley by Paul Ferrara.....747

Cross Examination of Ty Adley by Derrick Jackson.....752

Re-direct Examination of Ty Adley by Paul Ferrara.....754

Direct Examination of Belinda Fox by Paul Ferrara.....756

Cross Examination of Belinda Fox by Derrick Jackson.....764

Direct Examination of Danny Gilbert by Paul Ferrara.....770

Cross Examination of Danny Gilbert by Carl Hubbard.....802

Cross Examination of Danny Gilbert by Derrick Jackson.....819

Direct Examination of Michael G. Parker by Paul Ferrara.....871

Certificate

Certificate..... 881

Motions

Defendant's Motions.....740

Plaintiff's Exhibits

Exhibit No. 1 Plat.....882

Exhibit No. 2. Contract.....883

Exhibit No. 3 Settlement Statement.. 885

Exhibit No. 4 Deed. 887

Exhibit No. 5 Standard Form of Agreement.. 890

Exhibit No. 6 General Conditions of Contract. 908

Exhibit No. 7 Description of Materials. 932

Exhibit No. 8 E-mail Correspondence. 938

Exhibit No. 9 E-mail Correspondence.....939

Exhibit No. 10 E-mail Correspondence.....940

Exhibit No. 11 E-mail Correspondence. 941

Exhibit No. 12 Letter. 942

Exhibit No. 13 Letter.....945

Exhibit No. 14 DHEC Documents 947

Exhibit No. 15 Letter.....953

Exhibit No. 16 Letter.....954

Exhibit No. 17 Letter. 955

Exhibit No. 18 Letter. 956

Exhibit No. 19 Mechanic's Lien.....957

Exhibit No. 20 Western Surety Document.....961

Exhibit No. 21 Letter.....963

Exhibit No. 22 DHEC Letter.. 965

Exhibit No. 23 Spreadsheet Extract.. 966

Exhibit No. 24 Spreadsheet Extract. 973

Exhibit No. 25 Request for Wetlands Determination.....983

Exhibit No. 26 Army Corps Letter (ID). 984

Exhibit No. 27 Army Corps Letter (ID)... 988

1 could go ahead and call Ms. Price to the stand.
2 THE COURT: All right. Let's do that.
3 Ms. Price --
4 MR. JACKSON: Your Honor, let me consult with
5 my client first, please.
6 THE COURT: Okay. All right.
7 MR. JACKSON: Thank you, Your Honor.
8 Appreciate it. Can the witness be excused?
9 THE COURT: Sir?
10 MR. HUBBARD: I'd like to be excused for a
11 second.
12 THE COURT: Sure. Let's take a break until
13 quarter till, and then we'll figure out what to do
14 from there, okay. Thank y'all.
15
16 (A brief recess was taken from 2:33 p.m.
17 until 2:48 p.m.)
18
19
20 THE COURT: Are we ready?
21 MR. JACKSON: Yes, sir, Your Honor.
22 THE COURT: All right, Mr. Jackson.
23 MR. JACKSON: I call Merrill Cox to the
24 stand.
25 THE COURT: Mr. Cox, come on up. Good

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 A It was put in her name.
2 Q Okay. And how did that come about? Your
3 purchasing of that property.
4 A We were familiar with, one-time friends with, the
5 people that were starting the Eagle Harbor boys
6 home, Danny Gilbert and some others. Our idea was
7 to buy some acreage out there, put horses out
8 there, help with the boys home, at least the
9 horseback riding parts of it, volunteer basis, of
10 course. And we purchased the land in March of
11 2003.
12 Q Okay. Do you know which part or phase of Eagle
13 Harbor you purchased in?
14 A Phase two.
15 Q Okay. And what was your understanding about the
16 amenities and things like that to develop Eagle
17 Harbor?
18 A Well, there was a lot of talk about horse pastures
19 and the lake being developed and riding trails.
20 In fact, myself and others, we got out there and
21 we actually cut riding trails. They weren't
22 finished, but they were cut.
23 Q Okay.
24 A And fencing for the horse pastures. All of that,
25 we helped with some of that. We put that up.

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 A Oh, well, he was the person that was pushing the
2 sales and he was the architect on-site so to
3 speak. And architectural review committee was
4 essentially him, at least according to him. He
5 was drawing the plats and getting, in theory, the
6 sewage situation, you know.
7 Q Why do you say "in theory"?
8 A Well, because he didn't do it.
9 Q Okay.
10 A It was a mess.
11 Q How was it a mess?
12 A Well, my lot perked. And so, we bought it. Of
13 course, we made sure it perked before we bought
14 it. But I'm an attorney so didn't even think
15 about that. That's just what you do. The people
16 on the other side of me, on the next block up,
17 they purchased but they didn't -- they didn't
18 perk. One day I came in and there was a sewer
19 line stretching from their land into mine.
20 Because mine perked, theirs didn't. I had some
21 words with Danny about that.
22 Q Did he ask your permission to use your land to do
23 that?
24 A He never said anything to me. I just walked out
25 one day and saw some dug up dirt going across my

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 Q Okay.
2
3 MR. FERRARA: Your Honor, respectfully, I
4 would have a relevance objection.
5 MR. JACKSON: Be glad to address that, Your
6 Honor. We have an unfair trade practices cause of
7 action. And the potential for that repetition and
8 actual reputation to an actual resident or formal
9 owner of Eagle Harbor certainly competent to
10 testify about similar activities.
11 MR. FERRARA: Respectfully, Your Honor, the
12 witness has been allowed to testify. And his
13 testimony is that he did not enter into a contract
14 with Danny or Eagle Harbor and that he didn't have
15 a contract.
16 MR. JACKSON: He also testified that Danny
17 was the central guy doing the marketing, drawing
18 all the plans, and the architectural committee.
19 And he also testified that he had a direct
20 contract with Mr. Gilbert.
21 THE COURT: I'll allow it.
22 MR. FERRARA: Thank you, Your Honor.
23
24 BY MR. JACKSON (Continuing):
25 Q So did he ever produce plans as you requested?

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 Q Okay.
2 A Eventually -- my daughter died within days of all
3 this happening. And my wife and I were very
4 upset. Not at Danny but the cause of the death.
5 And I just didn't want to mess with it anymore. I
6 mean, honestly, that was just one more trouble in
7 a really troubled time. I took $2500 and called
8 it quits.
9 Q Okay.
10 A And we went back to the drawing board so to speak
11 with the land. But he never produced anything
12 that we wanted or even close to it.
13 Q Okay. Now, you mentioned before that he
14 trespassed on your property and put a sewer line.
15 Was there any other time that he came and used
16 your property?
17 A Well, it was pretty constant. We -- originally,
18 the land went back and backed up to -- well, the
19 land backed up to near the area where the boys
20 home was supposed to be built. And there was a
21 little trail through there. And we were not on
22 real good terms. And one day I came out and
23 checked it. It was obvious somebody had been
24 using it as a four-wheeler course. Didn't like
25 it. Got upset about it. So I put -- I put up a

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 we bought the lot, there were no covenants or
2 restrictions on it.
3 Q And that was in '03 you said?
4 A March of '03.
5 Q Okay.
6 A After we bought the lot, Mr. Gilbert filed
7 covenants and restrictions. Of course, he never
8 owned the land to file it. His Eagle Harbor Inc.,
9 Eagle Harbor, none of those people are in the
10 chain of title.
11 Q Okay.
12 A So when he came forward with all these issues that
13 were being discussed about -- I don't remember all
14 of them. One of them was lighting, streetlights.
15 And everybody had to put their own streetlight up.
16 Little small ones, not the great big ones. And
17 other issues that had to do with the type of
18 architecture that was supposed to be there, what
19 you could do and couldn't do. Of course, it was
20 all nonsense because, at least for phase two,
21 because Danny didn't have any right to put any
22 restrictions on the -- it came down to a pretty
23 big fur ball before it got finished. There were a
24 lot of tempers. Nobody said or did anything out
25 of line, but, I mean, there was a lot of anger

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 riding lessons with the Girl Scouts. She was
2 gonna volunteer her time for doing that. Supposed
3 to be a barn. These are all amenities that went
4 with the Eagle Harbor subdivision. And nothing
5 was being accomplished until -- in fact, we got to
6 the point where we didn't want to give him any
7 more money. We went up to him one Saturday. We
8 sat down, calculated the cost of putting the
9 correct kind of fencing in for the horses. You
10 know, you tear them all up if you put barbwire up.
11 You got to put better quality fencing than that.
12 I don't remember exactly what the total bill was.
13 We were on the computer with the fencing company,
14 and we worked up the order. It was well over
15 10,000, and it may have been closer to $15,000, in
16 fencing material that we were going to donate. So
17 we got ready to give the money. We were actually
18 going to do a transaction I think over the -- I
19 don't know. That might not be right. But anyway,
20 we were going to cut a check to the fencing
21 company for the delivery of the fencing materials.
22 We were going to donate the fencing for the -- at
23 least the horse fencing. Now, there's some
24 ornamental fencing that was gonna go up, and we
25 weren't paying for that, but horse fencing. And

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
2 MR. JACKSON: That's all the questions I
3 have. Answer any questions that Mr. Ferrara may
4 have.
5 THE COURT: Mr. Ferrara?
6 MR. FERRARA: May it please the Court, Your
7 Honor?
8 - - - - -
9 CROSS-EXAMINATION
10 BY MR. FERRARA:
11 Q Mr. Cox, my name is Paul Ferrara and I'm
12 representing Belinda Fox and Gerry Fox in this
13 lawsuit brought by Mr. and Mrs. Price. Let's be
14 clear, I know you said you purchased -- you and
15 your wife purchased property from the Winns. Do
16 you remember what lot you would have purchased or
17 what the street address would've been in general?
18 A Let's see. Let me think. I went and looked it
19 up. I've got the TMS number. Actually, I can't
20 tell you what the lot number was on the plat. And
21 that was another thing, the plats were not what
22 you would expect. They were deficient and they
23 didn't give information. And Mr. Gilbert would
24 take it on himself to change things. And after
25 you sell the land, that gets to be difficult.

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 Q -- that called out your -- do you have a copy of
2 your recorded deed in your folder with you today?
3 A I do not.
4 Q Okay. And I'll ask you, the plat -- I'll hand you
5 Defendant Fox's Exhibit No. 1, sir. See if that
6 looks familiar to you.
7 A (Witness reviews document.)
8 Q It's not a full -- a full-blown, you know, a large
9 copy, but it is a full copy of the plat.
10 A Yes, sir. I'm actually somewhat familiar with it.
11 Q Okay. And that plat was recorded when you and
12 your wife purchased the property, correct?
13 A Let me see about the recording date on it.
14 5/3/20- -- no, that's something different. Let's
15 see. April 25th -- yes. Yes, this was
16 approximately one month after we purchased our
17 property.
18 Q That plat was recorded one month after?
19 A Yes.
20 Q Okay. So there must have been a plat prior to?
21 A Yeah. Like I said, he kept changing the lines.
22 Q Okay. Let's see. The issue that you testified
23 about with Mr. Gilbert and the sewer line coming
24 on your property, did you ultimately resolve that
25 with Mr. Gilbert?

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 schmo.
2 Q Right.
3 A A plat -- the plat was given to me and we checked
4 ahead of time to make sure that it perked. And I
5 talked to Berkeley County about different issues.
6 Checked the setbacks on it so I could be sure when
7 we got ready to put a house on there I know what I
8 was doing. No, it was not -- it was not as is.
9 It had a clean title and it perked. And I think
10 all the various conditions in the contract of sale
11 were acceptable.
12 Q Okay. Thank you, sir. You testified that you and
13 your wife purchased that lot with the intent of
14 splitting it into smaller lots?
15 A Not exactly.
16 Q No?
17 A I was going to build a big house and have kind of
18 a mini farm. And then I was going to maybe have a
19 guesthouse or something off to one side for the
20 kids to come. You know, I expected to have a lot
21 of grandkids and whatnot. We were going to play
22 on the farm and -- that all went away.
23 Q And I'm assuming you checked -- that was something
24 else you checked with Berkeley County prior to
25 closing to make sure that you could do what you

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 repeatedly selling lots, assisting Danny in
2 selling lots, to unsuspecting buyers. As you sit
3 here today, sir, you didn't have any interaction
4 with my clients?
5 A I didn't have any interaction with your client.
6 Now, I don't know if y'all picked this up, but
7 there was a no sale order that came out from
8 Berkeley County that Danny Gilbert and his Eagle
9 Harbor mess could not sell any more lots. And he
10 ignored it and kept selling lots on top of it.
11 Q Well, we're not aware of that. But my point is is
12 that with respect to Gerry and Belinda Fox and
13 your lot, no contact with them and there were no
14 representations, of course, made by Gerry or
15 Belinda to you or your wife --
16 A No.
17 Q -- about Eagle Harbor?
18 A Nothing. We may have said hello. They did not
19 make any representations to me at all. All that
20 went through Mr. Gilbert.
21 Q Now, you've mentioned about the covenants. And we
22 have Exhibit No. 2, which were recorded covenants
23 on February 3, 2003, that referenced the plat I
24 showed you earlier. Were you -- I'll hand these
25 to you, sir, and see if you are aware of those

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 covenants, would you --
2 A Well, let me see them.
3 Q Sure.
4 A Sir, these covenants and restrictions are
5 unsigned. They've been recorded blank.
6 Q Right.
7 A So I have no idea what the Winns agreed to or
8 didn't agree to. But, certainly, the covenants
9 and restrictions are seriously deficient.
10 Q I understand, Mr. Cox, that's your opinion. But
11 I'm saying, you know, as a layperson, but I want
12 to be clear because you are an attorney. Did you
13 render any type of legal opinion to the
14 homeowner's association or concerned citizens as
15 they're called now about the applicability of
16 these covenants?
17 A No.
18 Q Okay. You were just making a comment about, in
19 your opinion, these covenants didn't apply to your
20 lot, correct?
21 A I think it's a pretty good opinion. I've been
22 practicing 42 years.
23 Q If the covenants state that the declarant, or
24 anyone who wants to be subject to these covenants,
25 agrees to be party to these covenants would agree,

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 seriously did not like that man. And I wasn't
2 going to have anything more to do with him than I
3 had to. And I didn't intend to go around,
4 stirring up, you know, going to the Androsics or
5 the Evans or any of the other people that I knew
6 and saying, "Okay, you got to know this. You
7 know, this is bad and that's bad." I didn't do
8 that. I mean, all I did was -- I wanted to live
9 my life by myself. I wanted to put my farm up
10 there or actually just a horse. We were gonna
11 have a little stable with a horse. That's all I
12 wanted. And the less I had to do with the rest of
13 those people as time went on. The turmoil, you
14 know, the whole road thing blew up. We just
15 are -- got the point we didn't want to mess with
16 him anymore. So the question being about how
17 other people would've reacted to this? I didn't
18 get involved. I mean, as an attorney, you know,
19 you don't go around giving out advice, legal
20 advice, and opinions to people who haven't
21 retained you. This is a very ungood thing. So
22 that's the answer.
23 Q Okay.
24
25 MR. FERRARA: Thank you, sir. That's all the

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 Is it 8? I'm not sure.
2 A Yeah. I think it was either 8 or 7.
3 Q Okay.
4 A One of those two.
5 Q Okay. Can you see this dotted line running across
6 the front of that? Can you read that language
7 right there?
8 A Sewer something.
9 Q Can you make the word easement out of that?
10 A I can see easement. That's on the right-hand side
11 of Lot 8 and the left-hand side of Lot 9. I
12 didn't own Lot 9. I may have owned lot 8. But
13 here's a good little bit, the line that was put
14 down came from Lot 7, and it came about a third --
15 well, I don't know -- maybe 35 feet from the front
16 of the road and across. It was nowhere near sewer
17 easement that is delineated on the plat.
18 Q Okay. Thank you. When did you -- if you've
19 already testified to this, I apologize. You got a
20 date of purchase on 3/21/03. When did you sell
21 the lot? Do you remember?
22 A It was two years later. I can give you the exact
23 date. Sold it on January 3, 2005. I should
24 remember that. That's my birthday. Well,
25 January 3rd anyway.

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 was also because of, oh, you have to have the
2 roads at a certain width. They have to be graded
3 to a certain level. They have -- you have to put
4 ROC down to a certain depth. You have to add so
5 much asphalt to the roads. And all that was in a
6 big blur of what can we do, how can we do it?
7 Danny Gilbert actually contacted my wife for a
8 hundred-thousand-dollar loan so he could put the
9 roads in. And we turned him down.
10 MR. JACKSON: No further questions, Your
11 Honor.
12 THE COURT: Any follow-up?
13 MR. FERRARA: Nothing, Your Honor.
14 MR. HUBBARD: Nothing.
15 THE COURT: All right. You can step down,
16 Mr. Cox. Thank you very much.
17 MR. JACKSON: Your Honor, I would call Diane
18 Cox to the stand.
19 THE COURT: Ms. Cox.
20
21 (Whereupon, the witness, DIANE A. COX,
22 was duly sworn.)
23
24 THE COURT: Thank you, ma'am. You can sit
25 down. Give your name and spell your last name for

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 A Nothing ever came. Danny constantly changed.
2 Honestly, the reason why I left was because
3 Mr. Gilbert, with the house, he never even sent us
4 plans. Okay. I asked for my 5,000 back.
5 Mr. Gilbert came to us at church one day, stepped
6 in my face and started screaming after church was
7 over in the lobby. He followed my husband and I
8 out to our car screaming and yelling. This is a
9 side of him that not a lot of people know.
10 There's a side were he's totally dishonest. And
11 there is this side he comes across as a nice man,
12 but, oh, if he doesn't get his way, he is absolute
13 hellion.
14 Then when I was by myself -- by the way, he
15 had promised pastures, a barn, everything. I
16 brought my three horses out. There basically was
17 a half-acre paddock. Because of the fact you
18 shouldn't keep horses, three horses, on that,
19 okay, my husband and I -- I paid extra for hay,
20 everything else. I kept the place immaculate.
21 With Northwood Church, I had started a group
22 called Horsing Around. All right. Horsing Around
23 was to train volunteers to safely be able to work
24 with the boys and the horses. This never
25 happened. All right. Sir, he came out, he still

1 hadn't -- he came up behind me one day. I was by
2 myself. I was in the pastor 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 went to make the place look good. They didn't go
2 anywhere with horses. The side of Mr. Gilbert
3 that I know is that he is a liar. He is a thief.
4 He is a bully. And he is a coward. To come up
5 behind me -- my daughter hadn't even been dead for
6 a year -- and scream and yell at me over a measly
7 $5,000. This is who he is. And here I sit. I
8 never -- this is -- I'm sorry. But he did not
9 keep his word. He did not keep -- all the plans
10 that he showed when we sat down for Eagle Harbor,
11 he didn't do it.
12 Q Okay.
13 A Okay. I'm sorry. But, I mean, this is just --
14 sorry.
15 Q Let me ask you. You said there was a plan to be
16 able to train the children to safely ride horses.
17 First of all, what's your background in horses?
18 A My background is I have been teaching lessons
19 since 1981. I teach dressage which is classical
20 riding. I teach hunt seat. All right. I taught
21 at various stables around the state. I have taken
22 lessons from -- riders. I know what I'm doing
23 with a barn. I know how to run a barn. I also
24 know how to keep children safe as well as anybody
25 working with the horses. Basically, he kind of

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 see, it was a Thursday. Amy's accident was on the
2 31st. The Thursday before my daughter's car
3 accident, put the two horses in there. Later, I
4 brought my mare from Black Bottom, okay. There
5 was nothing. There was no cover. There wasn't
6 anything. As a matter of fact, one of the pastors
7 from our church, Doug Cotton, and his son-in-law
8 at that time went and cut a dead tree down because
9 it was hanging over the horse pasture. Well,
10 that's a safety issue. It has to deal with the
11 fact that, you know, storm, sooner or later, if a
12 horse is in that area, it's gonna fall on top of
13 it. The bottom line is no stable, no pastures at
14 that time except that dinky little pasture, okay.
15 Nothing that he had said would had happen. I
16 continued after my daughter's death, which was
17 May -- she had her accident March 31, 2003. We
18 declared her dead on April 3rd. The day that we
19 had to meet and declare her dead, I was supposed
20 to be at the barn out there with a man from
21 Clemson who was gonna talk about how the pastures,
22 how -- have the best grasses, how to have things
23 that would be suitable that would have, you know,
24 for the horse, to keep it healthy. Even on that
25 day dealing with everything else to do with my

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 disconcerting to me seeing as how my daughter's
2 accident was coming off of a road. Mr. Gilbert
3 didn't care. Doug Cotton went and worked with him
4 to get the road fixed.
5 Q Okay. So you mentioned -- we know about the
6 $5,000. We know about him -- his inability to get
7 the horse, the pasture, the stable, the stables.
8 A Yes.
9 Q Is there anything else? Is there any other
10 specific incidents that you can remember?
11 A No. The same with my husband. There's a specific
12 incident, other than feeling, like, not safe
13 around Mr. Gilbert, he put -- mowed down our trees
14 in the back. Okay. That treeline was going to be
15 there to kind of act as a buffer. You know, we'd
16 look out on the woods between our property and the
17 house and the boys home. And one day we went out,
18 and the whole -- it's all plowed down. And I
19 remember I cried because at that time -- well, it
20 was really tough. Amy hadn't been gone that long
21 and I was grieving. The bottom line was I could
22 remember crying because he'd taken down with a
23 bulldozer, bulldozer tracks, beautiful little
24 dogwood tree. Everything that was back there that
25 was growing, he just mowed it down. He didn't ask

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 whatever Danny wanted, whatever laws he wanted to
2 break. And by the way, if somebody looks it up,
3 there is in Berkeley County, there is the
4 paperwork when he was ordered not to sell the land
5 and he sold a lot.
6
7 THE COURT: Ms. Cox --
8 THE WITNESS: Sorry.
9 THE COURT: Not to interrupt you, but I've
10 got to concern myself with --
11 THE WITNESS: I know.
12 THE COURT: -- is there any specific
13 representations that Mr. Gilbert may have made
14 prior to y'all purchasing the lot that you
15 considered in going forward with the purchase?
16 Anything specific?
17 THE WITNESS: Roads. Roads. There was
18 supposed to be good roads. All right.
19 THE COURT: What else?
20 THE WITNESS: I think they had to go back
21 with -- spaces for fire engine turnaround. The
22 roads, the fact that, you know, there would be a
23 barn, there would be stables. I believe the lake
24 is there now and the kids can fish in it, and
25 that's good. But all these different amenities

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 THE COURT: Okay.
2 THE WITNESS: And that was because I honestly
3 didn't want to be around this man anymore.
4 THE COURT: All right.
5 MR. JACKSON: I don't have any further
6 questions, Your Honor.
7 THE COURT: Any cross-examination,
8 Mr. Ferrara?
9 MR. FERRARA: No, Your Honor.
10 MR. HUBBARD: No, sir.
11 THE COURT: Thank you, ma'am. You can step
12 down. I appreciate it.
13 THE WITNESS: Thank you, sir.
14 MR. COX: Your Honor, may we be excused from
15 the trial?
16 THE COURT: Any objections from excusing
17 Mr. and Mrs. Cox?
18 MR. JACKSON: No, certainly not.
19 MR. FERRARA: No objection.
20 THE COURT: Yes, sir, you're excused with
21 thanks to the Court.
22 MR. JACKSON: Your Honor, I have one final
23 witness who is Mrs. Price. I'm not sure we'll be
24 able to get -- certainly with direct and cross, we
25 would not be able to finish today. So I'd rather

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 do have to come to a hard stop a few minutes
2 before 5:00 because everybody else in the
3 courthouse has to --
4 MR. JACKSON: Yes, sir.
5 THE COURT: -- has to be able to leave.
6 MR. JACKSON: Sure.
7 THE COURT: So I'd ask you try and time it
8 out. And we can go straight for about an hour and
9 then reach a breaking point, please.
10 MR. JACKSON: Yes, sir.
11 THE COURT: Mrs. Price. Were you sworn
12 before?
13 THE WITNESS: Yes, sir.
14 THE COURT: You're still under oath, okay.
15 THE WITNESS: Yes, sir.
16 THE COURT: Thank you, ma'am.
17 - - - - -
18 DIRECT EXAMINATION
19 BY MR. JACKSON:
20 Q Mrs. Price, I'll skip the usual background. We've
21 already established a lot of that. But if you
22 could tell me a little bit about your educational
23 background.
24 A I have a master's degree.
25 Q Okay. What do you have a master's degree in?

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 ran into the Cottons. They had their house for
2 sale. And I couldn't tell you for sure where that
3 was. I guess it was Hanahan because that's what
4 he remembered. But it was the daughter that had
5 talked about Eagle Harbor. And it was a new
6 development and they were familiar with the boys
7 home scenario that was going on out there and a
8 nonprofit, and, you know, big support kind of
9 thing. It was kind of enticing. I mean, we had
10 never run into anything like that. And it sounded
11 like it might be something we might really want to
12 be involved with.
13 Q Okay.
14 A So she sent us to Eagle Harbor.
15 Q And when you say "sent us to Eagle Harbor," where
16 did you go?
17 A We went out to the development, to Eagle Harbor,
18 in Gilbert's trailer that he had set up there for
19 Heritage Classic Homes.
20 Q Okay. And what did you discuss?
21 A Well, what lots do you have for sale.
22 Q Okay.
23 A And he was very eager. He, in fact, took us to
24 Lot 20. I don't even think we really looked at
25 much else because he seemed to be pretty focused

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 A Well, he actually told us that the lot perked.
2 And, of course, that was a word that wasn't
3 familiar to me or my husband. And I quickly said,
4 well, you know, what do you mean? He said, oh,
5 you can put a septic system on it. And I said,
6 why would we think you couldn't? I mean, you
7 know, that was my response to that because it was
8 such a large lot. So it sort of, like, dropped at
9 that point, but it was sort of like a shock.
10 Q Let me ask you this: What condition was the lot
11 at that time? Was it -- was it bare? Was it
12 wooded? What was the state of the lot when you
13 were looking at it?
14 A Well, it was rough. It was rough. It was dry.
15 We walked around. There was quite a few -- you
16 know, there was a lot of brush. So it was a
17 little bit difficult to walk around. But, I mean,
18 it looked good. It looked like it was gonna need
19 some work leveling. And that didn't -- that
20 didn't sound like a lot of fun or didn't appear to
21 be a whole lot of fun. But at the same time, we
22 expected something like that if we were gonna get
23 acreage.
24 Q Okay. Let me ask you about Plaintiffs' Exhibit
25 No. 2 that's been offered. And what do you recall

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 had already mentioned like the subdividing. We
2 made sure that was gonna be in there because he
3 had said that. And he said there were CCRs in
4 place, the columns for the gates were up. It was
5 gonna be gated. The roads would all be nice,
6 private. The amenities, there would be many
7 amenities for this boys home. And all the people
8 living around would be able to use those.
9 Q Okay.
10 A And he, you know, he spit out some things. And he
11 did show us the master plan. Now, we might have
12 seen that on the first trip. But I think he kind
13 of showed that to us again. We didn't see any
14 other plat. We saw the master plan. He didn't
15 offer any of the plats to us, and he didn't
16 suggest that there was anything else that we
17 needed to look at besides that master plan.
18 But we did notice, of course, when we saw
19 this that Belinda Fox's name was on it. He had
20 never said anything about somebody else. We
21 assumed he had owned -- he owned the property.
22 That he owned all the property, that he was a
23 developer and he was the builder; not necessarily
24 exclusive builder, but it was his plan to build
25 and sell. Didn't seem like an unusual thing

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 replow 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 A Well, I mean Mr. Gilbert was a very enticing kind
2 of guy, and he was very convincing that he was our
3 man to build our house. He could do it all. And
4 we believed it.
5 Q Okay.
6 A We believed the building. We believed the
7 developing. We believed the whole nine yards.
8 And the whole idea with this nonprofit and these
9 boys homes was, wow, what a story. So we didn't
10 -- I mean, we made, you know, some questions.
11 Obviously, he didn't have this contract with these
12 attachments. When we started doing this and
13 working this up, we put in the attachments. We
14 said we need these attached, you know. These
15 places in here, we have to have drawings that back
16 up what you're telling us, you know. We have to
17 have this cost estimate. He offered the porch
18 estimate. He already had that.
19 Q Okay.
20 A We attached that because we were going to have a
21 big porch. It was going to be three levels.
22 Pretty much of a wraparound porch. We asked for
23 the draw schedule, and he had it. He had it from
24 National City Mortgage. And we put that in
25 because we needed to know, you know, how that

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 what's been marked as Plaintiffs' Exhibit No. 11.
2 It appears another e-mail from you to a Patty
3 Zerbst. Can you tell me about the context of that
4 e-mail?
5 A Well, she was the lender or the closer, I guess,
6 for this particular loan that we were trying or
7 had gotten. And so, we went back to her and kind
8 of asked her some questions about what we thought.
9 I understand this, I understand that. So we were
10 kind of getting clarification. And this was kind
11 of what our plan based on what Gilbert was telling
12 us that he was needing a draw, he was needing a
13 draw. But we weren't getting information.
14 Q That was my question is why did this become
15 important?
16 A Why did going to her become important?
17 Q Yeah. Why were you concerned about getting
18 details about the drawing scenario?
19 A Because were already now -- this is 13 January.
20 That last e-mail was the end of December. We're
21 now two weeks later. And Ron's saying, telling
22 me, because I'm not really so much there as he is.
23 I'm kind of back in Ohio.
24 Q Okay.
25 A But things weren't happening and yet he was

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 the marked stamp.
2 MR. JACKSON: Your Honor, I think I had them
3 over here.
4 THE COURT: I'm not sure these -- this stack
5 you have is marked. So when you're talking about
6 them, I want you to identify what they are.
7 MR. JACKSON: Yeah. Yeah, we have -- and I'm
8 trying to say I just had it, the marked stack.
9 THE COURT: Trying to keep tract.
10
11 (Brief pause.)
12
13 BY MR. JACKSON (Continuing):
14 Q Okay. Let me show you what's been marked as
15 Plaintiffs' Exhibit No. 12 and ask can you
16 identify it? Do you recognize that letter?
17 A I do.
18 Q What was the purpose of that letter?
19 A Well, we had just found out that he didn't have a
20 septic permit.
21 Q Okay.
22 A And we had been -- apparently, the last couple of
23 days before this, we had been talking to him and
24 we met with him.
25 Q Okay.

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 receipts and invoices. And some of this was
2 outrageous. And then we found out he didn't have
3 a septic permit. He never would produce a septic
4 permit.
5 Q Okay. Was that a condition of his draw?
6 A Yes. Absolutely.
7 Q Pursuant to his contract, was he required to get
8 all permits?
9 A Absolutely.
10 Q Okay. Let me show you what has been marked as
11 Plaintiffs' Exhibit No. 13 and ask if you can
12 identify it? First of all, what's the date of
13 that document?
14 A 22 January, same day. I had gotten this from the
15 permitting -- permitting department. Bonnie
16 Watson had given me this.
17 Q Okay.
18 A And I actually attached that to this letter and
19 took it, hand-delivered it, to Mr. Gilbert.
20 Q And what does that letter say? The January
21 22nd --
22 A Well, it doesn't have the attachments with it.
23 But there was a whole stack of attachments that
24 were all about the building permit that Danny had
25 gotten erroneously. Because the application that

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 he received it by certified mail as well.
2 Q Okay.
3 A And I think he got a copy from Ms. Watson, county
4 permitting, too.
5 Q Okay. Let me show you the next document,
6 Plaintiffs' Exhibit No. 14 and ask if you can
7 recognize it?
8 A Yes. This is my -- this is the same day. I got
9 the septic permit applied for.
10 Q Why did you apply for the septic tank permit?
11 A Because it hadn't been done yet.
12 Q Okay.
13 A And as far as we were concerned, we were way
14 behind schedule, and this needed to be done.
15 Q Okay.
16 A And we didn't know why it wasn't done. I mean,
17 there wasn't, you know -- there was not any
18 justification for that. In fact, it was the
19 neighbor, a neighbor that was building out there,
20 that told us he would call DHEC and find out if we
21 had a septic permit because he knew how to do
22 that. We didn't even know how to do that. So he
23 called them, and they said, "Oh, no. They don't
24 have a septic permit."
25

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 A Yes. Because in January, we were saying that
2 there was no way that we were going to be able to
3 get through this construction done in time for
4 this construction loan.
5 Q First of all, who is that letter from?
6 A Well, it's actually from the loan officer,
7 National City Mortgage.
8 Q Did you make an inquiry to them about your
9 interest rate?
10 A Yes. Yes.
11 Q Why did you do that?
12 A Because we were saying we were not going to be
13 able to get this construction done. I mean, it
14 was unrealistic to believe after all this time
15 that we could actually meet this target date.
16 Q What was the target date in there?
17 A They had given us until 24 May. Even though the
18 contract was set up to be completed by 1 February,
19 they still set up the construction loan for a
20 six-month period of time. So I went to them and
21 she gave me this letter as here's how this is
22 gonna be handled.
23 Q And what happened --
24
25 THE COURT: Hang on a second. I don't think

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 from Mr. Gilbert?
2 A Well, we handed it to him. Yes, we did. Because,
3 you know, just a few days later, we met with him.
4 Q Okay. What happened at that meeting?
5 A He just said he was done. He hadn't done
6 anything. He wasn't justifying anything. He
7 wasn't explaining anything. He sort of threatened
8 to lien the property. And he basically said I
9 quit.
10 Q Okay. Let me show you the next document. And
11 this is a letter dated January 30, 2004, and it's
12 Plaintiffs' Exhibit No. 16, and ask if you
13 recognize it?
14 A Yes. This is the letter that came next to Danny.
15 Q And what is that letter?
16 A This is the contract termination in accordance
17 with the contract of September 13th. The SF
18 agreement that we had from the general conditions
19 document contained within that contract.
20 Q Okay. And what was your basis or cause for
21 termination?
22 A He wasn't doing any work. He had quit. There
23 were violations. The notice saying, hey, these
24 are problems. This has got to be fixed. He just
25 kind of ignored it. I think he thought he was

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 A It never should have been issued. We talked to
2 him about the builder's risk. We asked him to
3 take down the power pole that he had put up. We
4 just kind of asked him to cooperate. You know,
5 that we needed to get on with getting our house
6 built. We also had gone to the president of the
7 homeowner's association thinking there was one.
8 And there was a lady that was running that. And
9 we had gone to her with the letter and kind of
10 informed her of what was happening.
11 Q Why did you inform her?
12 A Because we thought she should know.
13 Q Okay.
14 A We thought that he should know too that we had
15 gone to the homeowner's association.
16 Q Okay. Now, let me show you the next letter, and
17 it's a letter dated February 19, 2004. It's
18 Plaintiffs' Exhibit No. 18. And ask if you can
19 recognize that?
20 A Yes. And this is Mr. Gilbert sending us a letter.
21 Q Okay. Why did he send you a letter?
22 A Well, like I said here, the homeowner's
23 association, I actually wrote them a letter.
24 Q Okay.
25 A Well, she, the president, Ms. Evans, took it to

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 lien. Ask do you recall this document?
2 A Yes. This is his filing a lien on us. This is
3 dated the 20th of February which was right after
4 this letter.
5 Q Okay. And to your knowledge, was that ever served
6 on you? A statement of accounting ever served on
7 you?
8 A I don't think we got it by service. I think we
9 got it somehow. I'm not sure exactly at what
10 point. I believe it was through the attorney that
11 he hired that sent this to us.
12 Q Okay. Before that was filed, do you recall ever
13 being served with a notice of lien and statement
14 of accounting?
15 A No. No. He had threatened. You know, he had
16 threatened that he was gonna lien our property.
17 But as far as actually being served or being
18 noticed, I don't recall that happening.
19 Q Okay. So what did you do about it? The lien.
20 A Well, we had to get a bond. We had to bond him
21 off.
22 Q How much was the lien for?
23 A He actually wrote on here $23,700.
24 Q Okay.
25 A Now, it's not itemized. It's just a total number.

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 fact, at the time that we, you know, kind of
2 entered into the contract, he offered up this
3 storage. So sometime after we did the contract,
4 not exactly sure when, my husband had brought
5 these items because we didn't have them in our
6 household goods, which was being handled through
7 that government contracting civil service. So he
8 was holding our property hostage. He wasn't
9 letting us get to it. He wasn't letting us get it
10 out. And I had gone down -- I had done homework.
11 I went to small claims court and said how do you
12 do this stuff? So we found out we had to do this
13 right to cure letter.
14 Q Okay.
15 A And give him ten days to give us back our stuff.
16 And if he didn't do that in ten days then we would
17 have a position to file a small claim against him.
18 Q Well, let me ask you this: Did you just ask for
19 your stuff back?
20 A Several times.
21 Q And what was his response?
22 A We couldn't get in. He never could be there to
23 let us get our stuff. Let's see, I have to read
24 this a little bit and see. "We've been requesting
25 that you give us access for six weeks. This is

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 Q Okay.
2 A It is now allowing -- or is now approving the
3 easement for the remote drain field for sites --
4 in the Lots 1, 2, 19, and 20.
5 Q Okay. Now, did you have a problem before then
6 about getting -- I think you said you applied for
7 a permit. Is that right?
8 A Right. But soon after we applied, they revoked it
9 because this encroachment permit was not obtained
10 by the seller, by the developer, by anybody in
11 advance. So without that encroachment permit to
12 get to our drain field, they couldn't give us a
13 septic permit.
14 Q Why did they need an encroachment permit?
15 A Because it runs through -- the drain field is
16 actually on the other side of a state road on
17 another piece of property.
18 Q Okay.
19
20 MR. JACKSON: Your Honor, Court's indulgence
21 while I wrestle some of this paperwork. I think
22 there is an exhibit that I don't see that I
23 thought was in here. (Brief pause.)
24 Let me mark these. I don't see why --
25 COURT REPORTER: I don't even know where we

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

1 identification.)
2
3 A Chronologically out of order.
4 Q Yeah, a little bit. Just one, one set. So where
5 is that letter -- first publish the date and what
6 is it about?
7 A It's February 26th of '04.
8 Q Okay.
9 A And it's from DHEC. It's a local.
10 Q And who is it addressed to?
11 A It's addressed to me.
12 Q Okay. And what is it about?
13 A Well, it's telling me that the Eagle Harbor
14 subdivision has yet to obtain written permission
15 from SCDOT allowing four separate borings under
16 Leisure Drive for four separate lots in
17 subdivision in which Lot 20 is one. Per your
18 recent discussions, I regret to inform you that
19 our agency has no choice but to temporarily revoke
20 your septic tank permit for Lot 20.
21 Q Okay. Now, that was 47, right? Exhibit 47?
22 A Thirty. Thirty-nine.
23 Q Thirty-nine. That's right. I'm sorry. Okay.
24 And let me show what has been marked as
25 Plaintiffs' Exhibit No. 40. And have you seen a

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 SCDHEC standards for any type of approvable sewage
2 treatment and disposal systems.
3 Q Okay. And on the second page, what does it inform
4 Mr. Gilbert?
5 A It says final approval of the plat by Berkeley
6 County Planning Commission does not constitute
7 final approval under DHEC regulation. No lot
8 shall be sold in any subdivision where on-site
9 systems are proposed as the method of sewage
10 treatment and disposal unless the owner or agent
11 has received a written approval from the
12 Department.
13 Q Okay. Now, that also references, I guess, the
14 same thing that you were notified that your septic
15 tank permit was revoked?
16 A Right.
17 Q Okay. And then I guess you have the other exhibit
18 that shows when it finally got approval to get a
19 septic tank. And when was that again?
20 A May. The middle of May.
21 Q Okay. So how did the delay in getting a septic
22 tank affect you?
23 A Well, I mean, we couldn't get construction going.
24 We were just sitting and waiting while this was
25 being resolved. So we had to pay all these extra

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 tract 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 A Well, I was taking the receipts, credit cards,
2 checks, bank statements, information that we had
3 obtained to kind of say, okay, this cost this on
4 this day and sort of keeping a running -- it
5 wasn't exactly chronologically in order because I
6 was stacking this stuff up somewhere until I
7 started doing a spreadsheet.
8 Q Okay. Let me show you -- and I guess we can mark
9 it if y'all want to. I don't really care. Is
10 this a copy of the source documents where you got
11 some of that -- the data that you put on that
12 summary spreadsheet?
13 A It is.
14 Q And what's in this volume?
15 A Copies of checks, canceled checks, credit card
16 receipts. In some cases there's a credit card
17 statement with an invoice. So it's the work, the
18 interest that we paid, the lodging that we paid,
19 the storage that we paid. It's all pretty much in
20 that. Now, I wouldn't say it's all there, but I'd
21 say most of it's there.
22 Q Okay.
23 A There's stuff that was lost. I mean, I,
24 you know . . .
25 Q Okay. All right. But you would -- for example,

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 A Well, I guess if you -- I mean, there's a couple
2 of different ways of looking at it. First of all,
3 we shouldn't have got the -- the lot shouldn't
4 have been sold to us on the day it was. It
5 shouldn't have been -- we shouldn't have closed on
6 it because it wasn't eligible to be sold. And
7 then you go to January, there's a stop work letter
8 that you could use. Then you could go to the
9 contract, the SF agreement, and look at the date
10 of substantial completion. And you've got kind of
11 all these different dates that you could say,
12 well, this was wrong, that shouldn't have
13 happened, this, you know -- so what date do you
14 actually pick? My husband and I seem to think
15 that the best day is 22 January when the County
16 said you can't work. I mean, you can't build.
17 Q Okay.
18 A And that's the same day that we had to apply for a
19 septic permit.
20 Q Okay.
21 A So that was the date that we came up with as a
22 fair date. But some people would say, well, it
23 should've been from the time of substantial
24 completion. Well, that's reasonable too.
25 Q Okay. So from January 22, 2004, when were you

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 we wouldn't have to spend the time waiting to
3 get that torn down or get that -- you know, if he
4 could really repair it. I mean, we were not
5 really sure. I mean, the PE's report said this
6 and this and this and this. And oh, by the way, I
7 don't know about this and I don't know about that.
8 But that could be a problem. Like the mesh, he
9 didn't know. He couldn't tell. And so here we
10 are gonna take the chance of going in and
11 repairing and spending almost $20,000 to repair it
12 when it may not be sound enough to even repair.
13 Q Okay.
14 A So we just moved over, left it there, and started
15 over again.
16 Q Okay. So that didn't cause you any delay further
17 beyond that once you were able to start somewhere
18 else?
19 A Right.
20 Q Okay. Now, let's look at your spreadsheet. How
21 did you show what was rent, what was interest, and
22 what was storage? How did you designate that on
23 your spreadsheet, Exhibit No. 24?
24 A Well, the first part of it, of course, is just
25 basically a running tally of everything.

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 use it, it had been weathering.
2 Q Okay.
3 A So we had to -- so we considered all those things
4 damages.
5 Q Okay. And how did you code those on your
6 spreadsheet?
7 A They're green.
8 Q Okay.
9 A And that's really the only two areas that I broke
10 out.
11 Q Okay. So you lump the delay damages and the legal
12 stuff together?
13 A Right. To me -- to us, those are all costs way
14 above and beyond what we should've ever had to
15 endure.
16 Q Let me see that. Now did you, on this last page,
17 did you break out the legal from the delay on that
18 page?
19 A No. No. The delay and other I have a column I
20 called Delay and Other.
21 Q Okay. And what's the total of that?
22 A 58,949.
23 Q Okay.
24 A Now, there might be a plus or minus in there, you
25 know, based on the dates of something. But

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 Well, he wanted more money for his work. That was
2 one thing. And then, you know, he gave us a cost
3 estimate. It's attached to that contract. So he
4 came up with this is how much he thought it was
5 gonna take.
6 Q The Seibel's contract?
7 A And that wasn't -- well, no, Mr. Kahler's. And
8 that wasn't really going to be everything because,
9 you know, the chances were we were still -- he was
10 telling us this still isn't gonna cover all these
11 other little things.
12 Q Okay. Now, did you total up the amount under that
13 contract? In other words, how is that coded on
14 your spreadsheet?
15 A Okay. So what I did here, I didn't break out all
16 the construction costs because it was pretty
17 lengthy. So what I did was I broke out the delay,
18 other cost. I broke out our cost, what we
19 accepted. And then I broke out the -- well, wait
20 a minute. Let me look at this. Okay. And then I
21 put in the stipulated sum.
22 Q Okay.
23 A And took it from the total and came up with a
24 construction amount which is right here.
25 Q Okay.

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 one.
2 MR. FERRARA: Twenty-six and 27.
3 MR. JACKSON: Twenty-six and 27?
4 MR. FERRARA: Yeah.
5 MR. JACKSON: Okay.
6
7 Q Let me show you what has been marked as
8 Plaintiffs' Exhibit No. 25 and ask can you
9 identify it?
10 A Yes. This is the request that we made for the
11 wetlands determination.
12 Q And why did you make a request for wetlands
13 determination?
14 A Because somehow or another -- and I think it was
15 this neighbor that said --
16
17 MR. HUBBARD: Object to what the neighbor is
18 going to say.
19
20 A -- wetlands study. Okay.
21
22 THE COURT: I'll allow it.
23
24 A It was somebody else that gave us the idea to do
25 this.

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 that was sent to them. And it's a public -- I
2 mean, it's a public agency and a public record.
3 THE COURT: I'm having trouble finding those
4 letters. Is that the November 7?
5 MR. JACKSON: Yes, sir. These two letters
6 right here.
7 THE COURT: What's the purpose for these to
8 be offered?
9 MR. JACKSON: I'm offering these for results
10 of their request for delineation of two acres of
11 wetlands determination. It's addressed to them as
12 a result of their request. And again, I would
13 contend that it was a public document from a
14 public agency in the performance of a public duty.
15 THE COURT: We're gonna -- I'm gonna take
16 this as a time for an appropriate break. I'll
17 take a look at these --
18 MR. JACKSON: Okay.
19 THE COURT: -- and make a ruling on that when
20 we come back tomorrow, okay.
21 MR. JACKSON: One matter of housekeeping, I
22 think. There was an exhibit -- I think my
23 appraiser expert ran off with the exhibit that he
24 had in his hand. And so, we have multiple copies
25 of the identical thing that he was testifying to.

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. Anything else,
2 gentlemen, that we need to touch on before we --
3 MR. FERRARA: Yes, Your Honor. Just a matter
4 of housekeeping. With the Court's permission, I
5 was going to pass up a copy of that motion to
6 dismiss memorandum.
7 THE COURT: I had forgotten about that.
8 MR. JACKSON: That's fine.
9 THE COURT: Hand me that. I'll take a look
10 at those as well.
11 MR. FERRARA: May I approach, Your Honor?
12 THE COURT: Yes, please.
13 MR. FERRARA: Thank you.
14 THE COURT: Anything else for today,
15 gentlemen?
16 MR. JACKSON: I don't think so, Your Honor.
17 THE COURT: All right. We're gonna lock the
18 courtroom up. So he's gonna lock the courtroom so
19 if y'all want to leave some, all, or part of what
20 you've got, it's certainly safe to do that. Okay.
21 - - - - -
22 (The proceedings adjourned for the
23 evening at 4:47 p.m. and resumed on
24 Friday, May 4, 2018, at 9:05 a.m.)
25 - - - - -

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 Your Honor, the admissibility of Plaintiffs'
2 Exhibit No. 26 and Exhibit No. 27 is clearly
3 hearsay because there is no one here testifying
4 from the Department of the Army. I've got -- I
5 believe that Mr. and Mrs. Price can testify about,
6 you know, what they understand, you know, pursuant
7 to letters they've received. However, the
8 admissibility of these documents to prove the
9 matters asserted therein is clearly hearsay. And
10 803(8) in public records and reports discusses
11 duties and it talks about police officers.
12 That's --
13 MR. JACKSON: I'm sorry. Go ahead. Please
14 finish.
15 MR. FERRARA: It talks about matters
16 excluding -- it says however in criminal cases
17 observed by police officers and law enforcement,
18 the notes and opinion are not admissible.
19 Accident reports, we have a statute on that that
20 Your Honor is looking up. And it's still hearsay.
21 The public records doctrine, Your Honor,
22 respectfully would be, for example, Defendants'
23 Exhibit No. 1 and Exhibit No. 2. Those are
24 official recorded documents that the RMC office or
25 Register of Deeds office for Berkeley County, they

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 agency, which obviously the Army Corps of
2 Engineers is, or subparagraph B, matters observed
3 pursuant to a duty imposed by law as to which
4 matters there was a duty to report. And then it
5 goes to the exclusive for criminal cases. My
6 client submitted an identified delineation for
7 wetlands request to a public agency. Under the
8 code of regulations, they delineate the wetlands
9 and send it back to here. I don't see any clear
10 example of a public record or report.
11 THE COURT: In that part of the rule, doesn't
12 it exclude opinions, judgments, and conclusions?
13 MR. JACKSON: Yeah. But that is for police
14 officers and other law enforcement personnel.
15 Then it says provided the investigative notes of
16 those. So if it's a criminal case, they don't
17 want the officers saying, well, I think this
18 was -- you know, in my opinion, this was a drug
19 dealer or something like that. For a public --
20 THE COURT: It's that -- I don't have the --
21 MR. JACKSON: Is says -- well, here's how it
22 reads directly on the thing, Your Honor. It says,
23 it gives A and B, which I just said. Then it says
24 "provided however" in italics. It goes,
25 "Excluding, however, in criminal cases, matters

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 they observe.
2 THE COURT: That's where I think I'm
3 different with you as to where -- once it contains
4 the opinions, judgments, and conclusions. I read
5 that sentence to mean that in addition to the
6 exclusion regarding the police officers, any of
7 those public records that include something such
8 as opinions, judgments --
9 MR. JACKSON: Well, this is not really a
10 judgment or a conclusion. It's just a delineation
11 that they actually walked the property and drew on
12 a map where the wetlands are affected. And the
13 actual letter, too --
14 THE COURT: Isn't that a judgment or a
15 conclusion as to whether it exists or doesn't
16 exist as wetlands?
17 MR. JACKSON: Perhaps. But, you know, at
18 that would -- at a lot of the public reports are
19 going to have some kind of statement or conclusion
20 or fact or something in those. But again, I think
21 the reason why we have confidence in them is
22 because they're public agencies. They're, you
23 know, authorized under the code to give reports.
24 And so, therefore, it's not a reason to have bias
25 or something like that creep into those.

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 THE WITNESS: Yes, sir.
2 THE COURT: Thank you, ma'am. Yes, sir?
3
4 BY MR. JACKSON (Continuing):
5 Q Let me show you what's been marked as Plaintiffs'
6 Exhibit No. 28. It's in evidence. Ask can you
7 identify that?
8 A This would be the second recording of CCRs that
9 EHI did.
10 Q Okay. With regard to that, what was the date of
11 that recording?
12 A October 25, 2004.
13 Q Okay. Is that before or after you bought your
14 property?
15 A After.
16 Q Okay. And who is the declarant listed on that?
17 A It's Eagle Harbor, Incorporated.
18 Q Okay. And publish for the Court the first whereas
19 clause in that document as to ownership.
20 A "Whereas declarant is the owner of certain real
21 property located in Berkeley County, South
22 Carolina, and more particularly described in
23 Exhibit A."
24 Q Okay. And we'll get to Exhibit A in a minute.
25 But who is the declarant listed on the page 6?

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 THE COURT: I believe you provided me copies,
2 and it's under . . .
3 MR. JACKSON: That's all right, Your Honor.
4 I don't believe I have another copy. But I will
5 be glad to -- there's only a few points I want to
6 make and then I'll move on to the next exhibit.
7
8 BY MR. JACKSON (Continuing):
9 Q Would you read the description, the legal
10 description, it says in Exhibit A?
11 A "All those pieces, parcels, and lots of land shown
12 on a plat entitled on Final Plat of Eagle Harbor,
13 Phase 2, St. James, Goose Creek Parish, said plat
14 dated July 25, 2002, prepared by Stantec
15 Consulting Services, recorded on September 26,
16 2002, as document number 21023 in Plat Cabinet at
17 page 281A in the Office of the Register of Deeds
18 for Berkeley County and relates to TMS numbers
19 194-00-02, 031, and 194-00-0 --
20 Q You don't have to read the rest. What -- so what
21 phases does that specifically mention as it
22 applying to?
23 A Phase two. It goes on to address phase three and
24 also phase one.
25 Q Okay. Now, and it refers to a plat. Let me show

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 A They did not.
2 Q Okay. Now, did you ever make a request of an
3 agency to determine if your property could
4 actually be subdivided?
5 A Yes.
6 Q Show you what has been marked as 31. Fist --
7 yeah, it looks like -- I'm sorry. It's 30 on this
8 list.
9
10 MR. JACKSON: Your Honor, this is a May 17,
11 2000, letter, Plaintiffs' Exhibit No. 30.
12 Q And ask do you recognize that letter?
13 A Yes. This is a letter we received from DHEC,
14 Columbia.
15 Q Okay. And publish that letter, please.
16 A Read the whole thing?
17 Q Well, just the high points.
18 A Okay. We had sent them a letter.
19 Q Okay.
20 A Requesting information on subdividing our
21 property. We actually asked them to reevaluate it
22 because the local DHEC had told us you can't
23 subdivide it.
24 Q Okay.
25 A The only way you're gonna be able, possibly, is go

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 Exhibit No. 24, Your Honor. And I'm going to
2 introduce Plaintiffs' Exhibit No. 23.
3 Twenty-three is the long one like this, and 24 is
4 the more -- the wider version that --
5 Q First, let me show you Plaintiffs' Exhibit No. 23
6 and represent that's a recapitulation of the same
7 thing on your spreadsheet, Exhibit No. 24. And I
8 believe you mentioned yesterday about the total of
9 construction.
10 A Correct.
11 Q And you labeled that as contractor. That's how --
12 on your spreadsheet, Exhibit No. 24?
13 A We did.
14 Q Okay. And I think in the blue there's a summary
15 for all the costs for the contractor?
16 A It appears that way, yeah.
17 Q Okay. Could you publish what the total of all
18 that was?
19 A For the contract?
20 Q Yes.
21 A Okay. Are you talking about -- you're not talking
22 about the sum difference?
23 Q No. I'm talking about the total for the
24 contractor.
25 A Okay. It's 283,011.83.

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 A Because of the result of the construction taking
2 so long and the interest rate increasing with
3 National City Mortgage, we would have to refinance
4 to get a better rate.
5 Q Okay. So let me clarify that. On your original
6 closing, did you have a permanent loan in place?
7 A We had a loan to set in place at the end of the
8 construction.
9 Q Okay. And so you refinanced after that because of
10 the interest rate problem?
11 A We did.
12 Q Okay. And if it had closed on time, would you had
13 to have refinance?
14 A If we found better financing, we might have
15 pursued that. But we definitely had to do it
16 based on the rate change.
17 Q Okay. And you also included legal costs, and
18 you're asking for the Court to award you legal
19 costs under some of your causes of action?
20 A Yes.
21 Q Okay. So let's clarify one more time. What
22 categories are your delay damages? What are the
23 main categories for your delay damages?
24 A It would be rent, it would be storage, and it
25 would be interest.

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 relevant part of 14.2. 14.2.4 I think.
2
3 THE COURT: Which exhibit are you looking at?
4 MR. JACKSON: This is -- I think it's 3 -- 4.
5 No, I'm sorry. It's 5, Plaintiffs' Exhibit No. 6.
6 It's the general terms and conditions of the
7 contract, and it's, I think, 14.2.4 . . .
8
9 Q Really all of 14.2 addresses that issue. Can you
10 just publish that section of 14.2.4?
11 A 14.1.3?
12 Q 4.
13 A 4. Oh, I see. "If the unpaid balance of the
14 contract sum exceeds the cost of finishing the
15 work including compensation for the architect
16 services and expenses made necessary, thereby such
17 excess will be paid to the contractor. If such
18 cost exceed the unpaid balance, the contractor
19 shall pay the difference to the owner."
20 Q Okay. And that's what you're asking the Court to
21 award you for damages for breach of contract for
22 the difference?
23 A Correct.
24 Q Okay.
25

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 A Completely?
2 Q Yes?
3 A Are you saying everything on this document is the
4 only thing applicable?
5 Q No. I'm asking you when you and your husband
6 purchased Lot 20, the only contract that applies
7 that you're aware of to Lot 20 is this document in
8 your left hand? This two-page document.
9 A This would be the written contract.
10 Q Right. Well, let's go through that. I asked your
11 husband these questions yesterday, and I'll ask
12 you because I haven't had a chance to ask you yet.
13 But, ma'am, if you look at --
14 A I have a question. I have a copy of this myself
15 that I brought.
16
17 THE COURT: Ma'am, you don't get to ask
18 questions. Okay. All right. Mr. Ferrara.
19 MR. FERRARA: Thank you, Your Honor.
20
21 Q Ma'am, if you can look at paragraph 8A.
22 A 8A.
23
24 MR. FERRARA: And, Your Honor, respectfully,
25 Mrs. Price is looking at some notes that she has

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 regulations.
2 Q Can you show --
3 A That's what "as is" means.
4 Q Really?
5 A On this contract, that's what it means.
6 Q Where does it say it on that contract?
7 A It doesn't have to say all that. That's what it
8 is.
9 Q Where did you learn that information?
10 A When land is subject to subdivision development
11 regulation, which is not just local, it's also
12 state. It's also federal. Those laws apply. So
13 as is does not mean that that does not apply. It
14 does apply. And that is exactly how we read that.
15 Q I understand. So you read the words "as is" in
16 quotes in paragraph 8A to mean as is subject to
17 other the things that are not written in this
18 document?
19 A No. Right up at the very top it talks about the
20 subdivision.
21 Q Sure.
22 A The TMS. Which I did a little homework on this
23 last night.
24 Q Right.
25 A This TMS information is incorrect.

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 things apply. And in fact, in this whole thing
2 there are numerous errors. Because, for example,
3 it says contingent upon drain field site soil
4 test. And those were already done and not
5 disclosed.
6 Q Ma'am?
7 A Which is required by law.
8 Q Ma'am, if you could just please answer the
9 questions I'm going to ask you.
10 A Okay.
11 Q Exhibit No. 23, page 2 -- I'll hand it to you --
12 you have a line item charge of damages that you
13 just testified about with your attorney of
14 $1572.90 for legal. Is that correct?
15 A I do. I remember writing that it.
16 Q Okay. And that was for Westlaw research that you
17 did in April of 2007 to December of 2008, correct?
18 A Yes, it was.
19 Q Okay. So --
20 A I had the subscription for that period of time.
21 It could have been longer.
22 Q Did you have any other lawsuits besides this
23 lawsuit and the Investors Title lawsuit that you
24 were doing legal research on during that time?
25 A I don't think so. Maybe.

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 A Okay.
2 Q At the time that you and your husband entered into
3 a contract, which was September 13, 2003, you
4 testified you understood it to be as is in
5 paragraph 8A. Ma'am, did you also understand that
6 paragraph 8C says that you would receive a copy of
7 the covenants and restrictions from your closing
8 attorney at closing?
9 A It says that we would've done that. It would've
10 happened.
11 Q Right. Well, let's look at it. Who -- are you --
12 you and your husband supposed to get copies of the
13 covenants and restrictions from?
14 A The seller.
15 Q Okay. Again, I'd like you to read paragraph 8C
16 out loud if you don't mind.
17 A It says we're supposed to get them there from the
18 closing attorney. But actually, you're supposed
19 to get them from the seller. That's --
20 Q Is that something else you learned on Westlaw?
21 A No. It's sort of a mistake. I guess I should --
22 should have said from the seller.
23 Q You and your husband don't want this -- this
24 contract was a big mistake. You don't want the
25 judge to consider this contract. Is that your

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 execution of this document, buyer will be
2 consulting an attorney as well as Jeff Spell
3 concerning that "correctness and duplication of
4 items listed above"?
5 A It does say that.
6 Q You bargained for that language in this contract,
7 correct?
8 A I put that language in there to have the option to
9 contact Mr. Spell or any attorney. I did not put
10 that in there as an absolute that I would be doing
11 that. It was simply to let Mr. Gilbert, let
12 Mrs. Fox know that we may be contacting an
13 attorney.
14 Q And did you contact an attorney other than Jeff
15 Spell?
16 A We did not.
17 Q Because you and your husband decided that you
18 didn't want to pay an attorney to review this
19 contract?
20 A No.
21 Q Why didn't you?
22 A We decided there was no reason to. We did not see
23 anything going on at this point in time.
24 Q Well, let's go back here because your eye is so
25 critical. You made a determination when

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 THE COURT: Mrs. Price. Mrs. Price, the
2 court reporter is trying to take everything down.
3 So if y'all talk over each other it's real hard
4 for her.
5 THE WITNESS: I'm sorry.
6 THE COURT: So let him finish and then you
7 speak and then he'll let you finish. Okay?
8 THE WITNESS: Okay. Okay. I'm sorry.
9 THE COURT: Thank you, ma'am.
10
11 Q You and your husband chose not to contact Jeff
12 Spell prior to closing. Is that correct?
13 A Well, we didn't follow up on it. I did call him a
14 couple of times. And I'm not even sure if it was
15 before the closing or after.
16 Q Right. Then after Mr. Spell did not call you
17 back, you and your husband made a conscious
18 decision not to consult another attorney as he
19 referenced in the bottom of page 2?
20 A We did not because we did not feel there was any
21 reason, that nobody gave us any big indication
22 there was a problem.
23 Q You and your husband --
24 A We were very trusting people.
25 Q Right. And you and your husband rolled the dice

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 A Would you --
2 Q Are you familiar with caveat emptor, buyer beware?
3 A No, I'm not.
4 Q Okay. Well, you and your husband are from Ohio?
5 Or lived in Ohio at the time of contract?
6 A I was still in Ohio, yes.
7 Q You were in Ohio?
8 A Yeah, we were there.
9 Q And neither one of you had purchased property in
10 South Carolina before, correct?
11 A We had not.
12 Q Okay. Don't you think that it would have been
13 prudent for you or your husband to consult with a
14 South Carolina attorney to make sure the contract
15 was fully correct, not duplicative, and these
16 other items that you're suing about, okay, like
17 the covenants and subdivision plat, that those
18 things would be in order prior to closing on Lot
19 20?
20 A No. We really didn't because as you read this,
21 all of those things are obligations of the seller,
22 and they are obligations by subdivision
23 development law. So it wasn't a risk on our part.
24 It was a risk on the seller's part.
25 Q You don't have an attorney or someone else to come

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 It should've been done before this agreement to
2 buy and sell was ever presented to us. So, yes,
3 you're right.
4 Q No. I mean, you and your husband should've done
5 that?
6 A There are numerous things in here -- I'm sorry.
7
8 THE COURT: Let her answer the question.
9
10 Q Sorry. Go ahead. I'm sorry, ma'am. Go ahead.
11 A There are numerous things in here which the seller
12 is responsible for. And at minimal, disclosure of
13 the information they had access to and knew of at
14 that time whether it was Mr. Gilbert or Mrs. Cox.
15 I mean Fox. Either one. They had
16 responsibilities to disclose to us anything that
17 is relevant in this contract.
18 Q Right. Paragraph 10, ma'am. Does it not say that
19 it is your responsibility to do the inspection,
20 environmental concerns including hazardous waste,
21 wetland study, and radon gas in paragraph 10?
22 A Here again, sir, it is not our responsibility
23 after the fact that the seller was already
24 supposed to do that.
25 Q That's not my question, ma'am. Does --

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 am saying that those -- you were saying and I am
2 saying the special stipulations that are in here,
3 these are all responsibilities that the seller
4 had. She had the responsibility to put the CCRs
5 on the property before it was ever sold to us.
6 Q Let's go through paragraph 10, ma'am. The last
7 sentence of paragraph 10.
8 A Paragraph 10?
9 Q Yes, ma'am. Does it not say if buyer fails to
10 notify seller or listing agent of the results of
11 such inspection on or before day stipulated -- and
12 I think that means referring to the closing -- or
13 referring to the date above -- buyer shall be
14 deemed to have waived the privilege of any
15 inspections?
16 A That would apply if the seller had knowledge and
17 known of the conditions of the property and
18 selling it to us. They did know the conditions.
19 Those were not disclosed. That is not overwritten
20 in this contract. The seller disclosure is
21 required by law. So first and foremost, it's the
22 seller's responsibility to tell you that these
23 things have been done or what has been discovered.
24 Correct?
25 Q You have -- are you asking?

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 Harbor, phase one, phase two and phase three.
2 Q Okay. Now, paragraph 2A of Exhibit No. 2 states
3 that the lot that you and your husband are
4 purchasing contains 7.861 acres on a plat entitled
5 Eagle Harbor Track A. It has the TMS number.
6 Does it not?
7 A That does not exist. That plat does not exist.
8 Q Well, let's take a look here at Defendant Fox's
9 Exhibit No. 1, which is the plat.
10 A Right.
11 Q Is that not a plat showing --
12 A It is a plat.
13 Q That's a recorded plat, correct?
14 A It is.
15 Q Okay. And you might've heard, and I asked your
16 husband, but this plat was recorded what date,
17 ma'am, if you could look? It's tiny print. I
18 apologize.
19 A It does show September 2002.
20 Q Right. September 26, 2002?
21 A Right.
22 Q That plat is recorded in Berkeley County, and it
23 contains Eagle Harbor, correct?
24 A It does say Eagle Harbor.
25 Q And it's your street which is Saddlehorn?

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 test being done beforehand. There's a lot of
2 things that could've been marked out.
3 Q Right. Well, back to Mr. Spell, when Mr. Spell
4 performed the closing or his associate at the
5 office -- your husband testified he didn't see
6 Mr. Spell at the closing. He appeared on your
7 behalf. Your husband appeared on your behalf with
8 power of attorney. My question is that when
9 Mr. Spell did the title search, he or his
10 abstractor would've seen that recorded plat that's
11 in your hand. Do you agree?
12 A Possibly. I would think at this point in time
13 Mr. Spell did not do a title abstract.
14 Q You think he just rolled the dice?
15 A I think Mr. Spell just didn't do it or he did not
16 disclose the reality of what he found. One or the
17 other.
18 Q You think Mr. Spell bears some responsibility for
19 this contract that you and your husband are suing
20 upon?
21 A Not at this time, I do not.
22 Q Do you think he ever did at any time?
23 A Possibly. I can't say for sure.
24 Q Okay. Now, let's go back to the soil test you
25 mentioned, paragraph 21, ma'am, page 2 of the

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 Q Doesn't it make sense --
2 A Should've been --
3 Q Sorry.
4 A Nonapplicable. It should've been nonapplicable on
5 this contract.
6 Q Right. So if the soil test has already been done
7 and you and your husband actually heard those
8 statements and relied upon that, wouldn't you and
9 your husband, considering your sophistication,
10 have lined through paragraph 21 and said this
11 doesn't apply because, Mr. Gilbert, you already
12 told me the soil test has been done?
13 A No. Because there are several things over here
14 that could've been lined through.
15 Q Sure.
16 A And they weren't.
17 Q Okay.
18 A They weren't by us and they weren't by him and
19 they weren't by Mrs. Fox before the closing took
20 place.
21 Q So Mrs. Price, importantly, I understand you and
22 your husband claimed that you relied upon
23 Mr. Gilbert in the soil test representations. But
24 the contract still would allow you and your
25 husband to demand Mr. Gilbert prior to closing to

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 permit be presented. He did not present it.
2 Q That's after this transaction. So my question --
3 A That's true.
4 Q -- then to you is this: If you and your husband
5 carefully looked at paragraph 21 and held Danny
6 and/or Belinda's feet to the fire and say, "Danny,
7 you told me there was a septic approval or a soil
8 test permit -- a septic permit or a soil test
9 done, and we need that. Give us a copy of it or
10 we're not going to close." If that happened and
11 Danny did not produce it to you, you and your
12 husband would not have closed on this lot,
13 correct?
14 A This is all very hypothetical.
15 Q I'm asking you.
16 A It didn't happen. We had no reason to believe
17 that Mr. Gilbert was not telling us the truth.
18 Q It didn't happen because you and your husband
19 didn't perform any studies or research as the
20 contract required?
21 A It did not require that above what the seller was
22 required to tell us that already happened. And
23 that's a big factor here. I don't know why you
24 want to avoid that. We had no more responsibility
25 with the soil testing than the seller and/or

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 Q Okay. I just wanted to make sure that I
2 understood that you and your husband understood
3 how important that paragraph 11 is. Now,
4 additionally, ma'am, only a subsequent written
5 instrument signed by both parties can change it.
6 That is stated in paragraph 11 as well, correct?
7 A I see that in there.
8 Q And this last sentence, "Buyer and seller
9 acknowledge that they have not received or relied
10 upon any statements which are not expressly
11 stipulated herein." You agree that paragraph 11
12 says that?
13 A I agree that is says that.
14 Q And you agree --
15 A But I keep going back to the same thing. The are
16 words in this contract that shouldn't even be here
17 because of what the seller and Mr. Gilbert already
18 knew before this was even done. Certainly, we see
19 that written in there just like we've already
20 established the fact that several things should've
21 been lined through, changed on the spot, but they
22 weren't. It was realistic to even use this
23 1 October date for inspection. It says you have
24 to have it done by the 1st of October. That's
25 only two weeks after we actually signed this.

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 you could've told Danny and/or Belinda, "Hey,
2 Danny, you are in default. You have not provided
3 us with this soil test that we relied upon. You
4 haven't provided us with any other approvals. You
5 haven't provided us with the covenants. And we're
6 holding you in default," as you did in Danny's
7 builder contract. You agree you could've done
8 that?
9 A We could have if we had thought that was a
10 problem, but we didn't think it was a problem. If
11 you look at that, it says buyer or seller, failure
12 to perform any covenant. Well, if you go back to
13 item 8 under special stipulations, without a
14 doubt, the seller was required to have put CCRs on
15 the property before selling it as CCR property.
16 That's even listed twice in the special
17 stipulations of this contract.
18 Q Right.
19 A And the seller did not do this. So right there
20 there's a default of this agreement before you
21 even get out -- out of the cage.
22 Q But you and your husband didn't exercise the
23 alleged right of default you just testified about.
24 And, yet, still chose to proceed forward with
25 closing on Lot 20, correct?

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 and your husband, then owner of Lot 20, agreed for
2 those to apply, correct?
3 A I agree.
4 Q Okay. Now, Defendants' Exhibit No. 2 are recorded
5 covenants that were recorded in Berkeley County,
6 ma'am. And I'll hand those to you. And what is
7 the date of recording on those documents?
8 A February 2003 which was before we bought the land.
9 Q Right. And as I understand your testimony is that
10 you believe that because the covenants that are
11 being held in your hand right now, although being
12 recorded prior to purchasing your Lot 20, because
13 Belinda Fox's name is not on those covenants that
14 you don't believe they are attached to Lot 20. Is
15 that in essence your testimony?
16 A We did not think that initially when we first got
17 this. We did not see that nor did we understand
18 that. Later on, that came to our attention when
19 we had a new title abstract done after we hired an
20 attorney. That title abstract confirmed that
21 these CCRs are not in our chain of title
22 because --
23 Q Do you have an attorney who is testifying in this
24 case to that point? That those covenants do not
25 attach and did not attach to Lot 20 at the time

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
2 Q All right, ma'am. If you could turn to 2.2 of the
3 covenants.
4 A 2.2.
5
6 THE COURT: Which exhibit are we looking at?
7 MR. FERRARA: Exhibit No. 2, I believe, Your
8 Honor.
9 THE COURT: Before you go forward, let me
10 make sure I got that in front of me.
11
12 A 2.2.
13 Q Yes, ma'am.
14
15 THE COURT: Hang on a second. Let me make
16 sure I got them.
17
18 A You want me to read that?
19 Q One second.
20
21 MR. FERRARA: Your Honor, I do have an extra
22 copy.
23 THE COURT: If you do, let me have those so I
24 can quit digging around for them.
25 MR. FERRARA: Your Honor, may I approach?

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 It says the association or any owner. Which the
2 association implies it's the homeowner's
3 association, right? I'm a member of the
4 homeowner's association.
5 Q No. I mean --
6 A An owner within the association.
7 Q Right. Any owner, any lot owner in Eagle Harbor
8 can agree to be subject to these covenants?
9 A Oh, yeah. At a later -- yeah, sure they can.
10 Q Sure. Sure.
11 A They can sign on and accept them. I agree with
12 that.
13 Q Right. And so did you or -- did you or any of
14 your attorneys ever ask Belinda Fox if she agreed
15 to have her lots subject to these covenants that
16 were recorded at the time you sold -- you
17 purchased your property?
18 A We never saw any document like that.
19 Q Right. Right. And if you look at page 51 of the
20 exhibit, it specifies the lots subject to the
21 architectural review and the covenants. And Lot
22 20 is on there, is it not?
23 A Yeah. Lot 20 is listed here.
24 Q Sure.
25 A So is lot 21, which is a drain field.

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 Q So --
2 A Eagle Harbor, Incorporated, is a boys home. It's
3 a nonprofit, correct?
4 Q You've asserted in this lawsuit, ma'am, that Eagle
5 Harbor was the developer of this neighborhood. Am
6 I missing something?
7 A We have found out that Eagle Harbor, Incorporated,
8 although he suggested he was the developer, he was
9 not actually the owner of the property, which he
10 made known to the County after several of these
11 properties were already sold.
12 Q Ma'am, you're assuming that Eagle Harbor is not
13 the developer despite recorded documents and
14 admitted documents in this case that established
15 that Danny Gilbert and Eagle Harbor were the
16 developer?
17 A He did apply as the developer, yes. We found that
18 out through the Freedom of Information request.
19 Q Sure.
20 A But he also told the County later that he wasn't
21 the developer, that he didn't own the property.
22 Q Okay.
23 A It was sort of like he misled the County right
24 from the beginning.
25

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 MR. FERRARA: Thank you, Your Honor. May it
2 please the Court?
3
4 BY MR. FERRARA (Continuing):
5 Q Mrs. Price, I wanted to turn to your claim for
6 damages now which is exhibit -- Plaintiffs'
7 Exhibit No. 23. And I'll hand that to you, ma'am,
8 for reference. You agree that the total legal
9 expense that you and your husband are claiming
10 against all defendants' legal expenses,
11 $31,524.52?
12 A I don't see that total on here. That sounds like
13 a fairly close number, but I don't see that number
14 on here.
15 Q Oh, I apologize. I must have -- Plaintiffs'
16 Exhibit No. 24. I'll hand that to you.
17 A I don't see that number on here either. We have
18 delay and other all in one so the legal is
19 included in that.
20 Q Okay. Well, the last page, ma'am, of 24.
21 A Right.
22 Q You've got $31,524.52 of legal.
23 A Okay. I didn't put that number in there.
24 Q Who did?
25 A I'm not sure. That's probably the calculation

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 We were not pro se in '11. But we did pay for
2 copying expenses in relationship to this case.
3 Q Okay. You submitted this document to substantiate
4 all of your claims. And I'm just asking you, are
5 you claiming this $111.15 legal copying costs?
6 A Yes.
7 Q Okay. That's a large amount of copies. Is that
8 whenever you copy all of the documents in the
9 Investors Title case and sent that in?
10 A No. This was not Investors Title.
11 Q Okay. So none of these legal expenses are
12 Investors Title legal expenses?
13 A Well, this subscription as you brought up earlier,
14 there are some time frame of that of which we were
15 in that suit.
16 Q And you think that my client should have to
17 reimburse you and your husband for that legal
18 expense for the Investors Title, for Westlaw?
19 A We didn't have that exclusively for Investors
20 Title. That became and was part but certainly not
21 exclusive.
22 Q So you don't know how much of the 1572.90 was for
23 Investors and how much was for this action?
24 A No. I can't really say.
25 Q Okay.

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 hire Chellis and Frampton's office to represent
2 you in this case? This 2004 case that we're here
3 on today.
4 A Yes.
5 Q Okay. And do you recall -- you got a legal
6 expense here for Chellis and Frampton which is on
7 line 153.
8 A 153.
9 Q Yeah.
10 A Yes. That was the rate -- that was the retainer.
11 Q And what was the date of that?
12 A June 2005.
13 Q 2005. Okay. And you recall filing in this case
14 an amended complaint whereby you've brought in
15 Belinda Fox, the Winns, Mr. Gilbert, and Investors
16 Title?
17 A I remember an amended complaint. Is this by
18 Mr. Moore?
19 Q Yes.
20 A I can't tell you exactly all the particulars about
21 that. But I do remember he did file one that he
22 did not serve.
23 Q Okay. And then there was -- but the attorney's
24 fee for Mr. Moore, for the Investors Title claim,
25 that's included in your legal expenses --

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 a complaint but did not serve it, I believe?
2 A Well, he didn't serve it. I'm not sure about the
3 filing of it.
4 Q Okay. Well, it's hard to see on the copy, but
5 this amended complaint from 2000 is in this case
6 that you're suing on now, correct?
7 2004-CP-08-1855.
8 A It would be in the history.
9 Q Okay. And you're sure that the legal expenses
10 that you have on exhibit -- Plaintiffs' Exhibit
11 No. 23, or Exhibit No. 24 rather, for legal to
12 Chellis and Frampton are not for this complaint --
13 A They are not.
14 Q -- that was with Investors Title?
15 A They are not.
16 Q How do you know?
17 A Well, right after he filed that, Mr. Moore left
18 the firm, and Mr. Parker withdrew it.
19 Q Okay. Mr. Parker withdrew?
20 A The attorney, Mr. Parker.
21 Q Okay. So the $8,000 attorney's fee, what did that
22 go for that you're claiming on line 153?
23 A This case, 1855. And at that time, 1150, which is
24 the construction case, was a separate case. So
25 that was for both of those.

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 were doing back then. But he gave us a piece of
2 paper and we signed it.
3 Q And so, just to be clear, Defendant Fox's Exhibit
4 No. 3, this amended complaint, you and your
5 husband met with your counsel and agreed to the
6 filing of this second amended complaint in this
7 case, correct?
8 A Well, I guess we met with him. But that was
9 Mr. Moore that came up with that.
10 Q Okay.
11
12 MR. JACKSON: Your Honor, just for
13 clarification, and I guess it's kind of a strange
14 objection. I'm not sure that that was ever filed.
15 I think it was a motion to amend and I think we
16 withdrew -- and I know he withdrew it. I don't
17 know whether it was actually filed or not. He
18 filed a motion to amend a second amended
19 complaint. Later, like two weeks later, he
20 withdrew it. I don't know if he actually filed it
21 or not. That's the only point of clarification I
22 wanted to make. And if it's filed -- that's fine.
23 I'm just not sure.
24 MR. FERRARA: But this was filed and then
25 there's a stipulation.

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

2 BY MR. FERRARA (Continuing):

3 Q Ma'am, just to be clear, I've handed you Defendant
4 Fox's Exhibit No. 4, I believe. And that's a
5 consent order that your attorney agreed to
6 withdraw the second amended complaint that we were
7 just talking about. Do you recall?
8 A Yes, I recall. Yes, it says without prejudice.
9 Q Sure. Now, are any of the fees that you're
10 claiming in Plaintiffs' Exhibit No. 24 for legal
11 connected with the second amended complaint or the
12 withdrawal of that claim?
13 A Not to my knowledge. Because this happened well
14 after we retained them for the cases that were
15 already pending.
16 Q Do you know in the Investors Title claim how much
17 money you and your husband paid for attorney's
18 fees for that action?
19 A No, I don't. We did. We had a lot of cost
20 involved with that action.
21 Q Right.
22 A But we -- but, no. I don't have that spread out.
23 My intention was not to put any of that in here.
24 Q Okay. And so the -- but it was Chellis and
25 Frampton that assisted you initially with that

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 part of it pro se?
2 A We did.
3 Q Okay.
4 A Until we found representation.
5 Q When he quit, did you and your husband get any of
6 this $5,000 retainer --
7 A We did not.
8 Q Do you know why?
9 A He refused to give it to us. In the contract, it
10 said no refund.
11 Q So it was a flat fee?
12 A (Nonverbal response.)
13 Q Okay. Moving on, O'Neil and Phepps, $500, line
14 386. What was that for?
15 A That's when we were pro se. I don't recall.
16 Q Okay.
17 A There might be something written on the check.
18 Q Okay. The next line below, there's another filing
19 fee for Peterson and Scott, $150 in '04. Is that
20 a duplicate of --
21 A Could be. Could be --
22 Q -- 226 up above? Because they both say 226?
23 A Okay. Are we looking in the green, just solid
24 green?
25 Q Yes, ma'am.

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 case.
2 Q Oh, that's just the costs?
3 A That's just the costs, not the retainer.
4 Q Not the attorney's fee?
5 A No.
6 Q Okay. But you don't know what the specifics are
7 for the costs?
8 A We don't have the final because we paid some
9 things through them and then we paid some things
10 separately. But really what we're looking for is
11 the chronological entire from start to finish with
12 this case.
13 Q On the Investors --
14 A That's an estimated amount.
15 Q Okay. In the Investors Title case, the 2007 case,
16 you and your husband filed an appeal and won the
17 appeal and were granted 2500 and some-odd dollars
18 of cost of reimbursement. Do you recall that?
19 A Yeah. I remember that, but we didn't get it.
20 Q You didn't get those costs?
21 A We did not.
22 Q Are some of those costs that you were claiming,
23 the $2500 of in the Investors Title, on this
24 sheet?
25 A No, they're not.

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 They were all training books. I don't know what
2 you would mean by legal books. I was taking
3 classes that were related to paralegal
4 certification.
5 Q Okay. And you're claiming that the classes costs
6 need to be reimbursed by my clients in this case?
7 A Of those books?
8 Q I think your testimony was that it was books and
9 classes. Yes, ma'am?
10 A Well, it's just the books. The classes are not on
11 there at all.
12 Q You're gonna pay for classes out of your pocket?
13 A I already did.
14 Q But you want my clients to pay for the books?
15 A Well, it's all related to this case that whole
16 thing happened. I only started the training
17 because of this case.
18 Q Okay. Why not include the classes in this
19 spreadsheet?
20 A Because the VA paid for them.
21 Q Oh, okay. So if somebody else pays the amount
22 then you're not seeking reimbursement of it?
23 A Why would I seek reimbursement? I didn't pay for
24 it.
25 Q Okay.

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 Q In 2007 you have a line item for Simmons and
2 Keaveny for legal, line 380.
3 A I'm sorry?
4 Q Yes, ma'am. I'm sorry. Line 380 in 2007, do you
5 see that?
6 A Right.
7 Q What was that for?
8 A He was reviewing the cases to decide whether or
9 not he wanted to take them.
10 Q Which cases?
11 A 1150 and 1855.
12 Q And in 2007, at the time, you hadn't filed the
13 Investors Titles claim, correct?
14 A We had not.
15 Q Okay. Was that part of his review as well?
16 A It was not.
17 Q Was not. Okay. We talked about the Chellis and
18 Frampton, 8,000. Did you get any refunds from any
19 of these attorneys off of these amounts?
20 A No.
21 Q No. Okay. All these mechanics lien charges and
22 certified mail, you're not claiming that Belinda
23 Fox is responsible to you and your husband for
24 those, are you?
25 A This is a group -- the way this is done is group,

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 A Okay.
2 Q $4,753.59 for a refinance with USAA?
3 A Right. That's what it costs us for closing and
4 the interest, the extra interest, to get the
5 refinance.
6 Q That's your total refinance closing costs?
7 A Yes. I'm pretty sure.
8 Q Do you have the settlement statement from that?
9 A I do.
10 Q Okay. And you contend and your husband contends
11 my client is responsible for this full amount of
12 money?
13 A Well, here again, I'm not exactly sure how to
14 divvy these things up because it's all related to
15 each other.
16 Q If you get the money you'll be happy, but you
17 don't really care who pays it?
18 A Yeah, pretty much. I mean . . .
19 Q Okay. But I just want to be clear because my
20 clients contend that they're not responsible for
21 that amount of money and I'm asking you. Are you
22 claiming this 4,753 to be a charge that Belinda
23 Fox and Gerry Fox need to pay you and your
24 husband?
25 A Not necessarily just them. I mean, like you said,

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 $59,000 of delay damages against my client and
2 Mr. Gilbert. And then another $98,000 of contract
3 damages for the house, delay of the house.
4 A In round numbers, yeah, that's pretty close. Now,
5 obviously, that $150 that we just got through
6 pointing out is a duplication, that would come
7 out. I mean, if there really is this issue of
8 commingling between like the Westlaw subscription,
9 I mean, certainly we can take something out there.
10 Q Sure.
11 A I mean, those are not -- this is just the best I
12 can come up with for -- and this is really not all
13 of it. You must believe that there's things not
14 even addressed here. So this is not really, in
15 the big picture of life over 15 years, a true and
16 accurate running tally of all these costs.
17 Q These damages that you're presenting in
18 Plaintiffs' Exhibit No. 24, then you testified
19 yesterday this was a ballpark. Is that correct?
20 A That is the best way I can describe it because it
21 does not include everything that was involved. We
22 just have what we have, the best that we kept up
23 with, and we could explain. There are receipts
24 that we couldn't find, the receipt to match an
25 invoice. Those things had to be deleted. I mean,

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 everybody is driving in and out of there. That's
2 the entrance in and out of Eagle Harbor. But
3 because it hasn't been permitted by law, that's
4 where the legal access comes into play. If there
5 was an accident that occurred at that
6 intersection, there would be a problem.
7 Q Okay. In this case the judge started at the
8 beginning of yesterday, we bifurcated -- and I
9 asked your husband this and I'm going to ask you
10 just to be clear. The damages that you testified
11 about, the damages that are on Plaintiffs' Exhibit
12 No. 24, these are the total damages that you and
13 your husband are seeking in this action, correct?
14 A Yes. In this action, yes.
15 Q Now, let's go to the appraiser. The $82,530, your
16 attorneys at Chellis and Frampton hired
17 Mr. Carter, correct?
18 A He did.
19 Q Okay. The sum of his expense included in this,
20 these damages? Mr. Carter's expense.
21 A Yes. It came out of that retainer that we gave
22 Chellis and Frampton.
23 Q Okay. And do you know how much Mr. Carter
24 charged?
25 A I cannot say for sure because it was paid for with

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 Because the appraiser, Mr. Carter, had that
2 considered in this hypothetical.
3 Q Sure. But what I'm saying is in the 2007 case you
4 used the covenants and the timing of the recording
5 of the covenants and being attached to your
6 property as part of your damage in that case as
7 well, correct?
8 A It's right here in the 82,000. What Mr. Carter
9 came up with if CCRs are not in place, if this is
10 not the way this is, if it -- so it's incorporated
11 here.
12 Q Now --
13 A It's just simply -- it was just simply a copy --
14
15 MR. JACKSON: Your Honor, I'm sorry. I
16 didn't mean to interrupt. I was just wanting to
17 point out to the Court it is 11 o'clock. You said
18 you had to do -- and I hear some rumblings back at
19 the door. I didn't know --
20 THE COURT: -- is there anybody out there for
21 the sale?
22 BAILIFF: Yes.
23 THE COURT: There is? Okay. All right.
24 Well, let's take a short recess.
25

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 Yes, ma'am. I apologize. You'll have to start at
2 the front and count back.
3 A Page 7?
4 Q Yes, ma'am. If you look at line 389 which is
5 about a little past halfway down the page. Do you
6 see that?
7 A I see that.
8 Q You're having some concern about?
9 A That's -- I didn't enter that.
10 Q You didn't enter that? Who did?
11 A (Nonverbal response.)
12 Q I thought you testified earlier that you prepared
13 this.
14 A Well, there's been some modification to it.
15 Q Who modified it?
16 A That I didn't -- I assume it was Derrick's.
17 Q Okay. And that's fine. But let's look at line
18 389. Between March of '09 and April of something
19 after -- I guess that's April 2018. There's a
20 charge for $6500 of legal expense for Mr. Ward.
21 A I have to suggest that that is duplicated or the
22 number that they came up with as opposed to my
23 estimated 7,000.
24 Q Right.
25 A So is the estimated 7,000 still in there?

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 Q So is it 6500 or 7,000?
2 A Well, I would have to say it's 6500.
3 Q Okay.
4 A Because mine was an estimated number.
5 Q Well, the 6500 is also estimated too, correct?
6 A Well, I would have to say no at this point in
7 time.
8 Q You have a statement that breaks out the $6500?
9 A I haven't physically got the statement. But it
10 must exist because it took place of the estimated
11 7,000.
12 Q Okay. So now we -- so we should take $7,000 off
13 the legal expense number we started out with of
14 the 31,524 then?
15 A Yeah. Both are included in that 31,000. Yes,
16 you're right.
17 Q So now you're claiming 35,524 minus 7,000 for
18 legal?
19 A I'm suggesting to you that, yes, if we have any
20 duplicates, the duplicate needs to come out.
21 Q But you don't know for sure?
22 A Well, the total number if it's -- it looks to me
23 like it does have both of them in the total
24 because it does go to over 31. Right?
25 Q Right.

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 Well, it's a little confusing. Because the total
2 in the green here is 54, the total in the green
3 here is 58.
4 Q Exactly. You don't know which one it is, do you?
5 A I would have to go with the 54 as being --
6 Q Okay. So now we're --
7 A Because there's been some adjustment, but exactly
8 where that is is not clear exactly.
9 Q So now we're going to take the $54,000 on Exhibit
10 No. 23 as your total. And then we're going to
11 take out of that number -- that's the total
12 number. And out of that number, we'll take 7,000
13 off for the duplicate legal and the 150 off for
14 the duplicate legal?
15 A The 54,000 does not include the 6500. It does
16 include the 7,000.
17 Q You testified, ma'am, moving on, that there was
18 $20,000 of expense associated with National City
19 and refinanced. Did I write that down wrong?
20 A 20,000?
21 Q Uh-huh. I had down yesterday that you testified
22 that there was about $20,000 of --
23 A Oh, we had to add in 18,000 to the second contract
24 and the building.
25 Q The 18,000 that you just testified about, is that

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 A Right. Right.
2 Q Okay. Now, don't you agree that you and your
3 husband would've had some interest expense even
4 if --
5 A Certainly. Yes, we would have. Had everything
6 gone as it should've gone, certainly. There
7 would've been some. But it would've been
8 substantially less.
9 Q Do you know what the difference is in between what
10 the interest would've been if everything would've
11 went smoothly according to your plan as opposed to
12 how it actually occurred?
13 A I have -- no. I don't know.
14 Q You don't know. Okay. You testified, ma'am,
15 earlier today about $3,000 for demolition --
16 demoing a foundation.
17 A Right.
18 Q Is that a damage you're claiming against
19 Mr. Gilbert and Heritage Classic Homes?
20 A Yes.
21 Q Okay. And isn't it true, though, that you and
22 your husband actually didn't demo the entire
23 foundation?
24 A We demoed everything except the footings
25 underground.

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 MR. HUBBARD: Thank you, Judge.
2 - - - - -
3 CROSS-EXAMINATION
4 BY MR. HUBBARD:
5 Q I'm just gonna pick up with these footers. So the
6 footers for that original thing are still there?
7 A They're in the ground.
8 Q Okay.
9 A We did not pull those out because we -- by the
10 PE's report and by Mr. Kahler, what he thought and
11 what we found when we pulled out the concrete,
12 there was no vapor barrier. There was no wire
13 mesh. All that had to be destroyed, but the
14 footings were still there. We left them there for
15 a while.
16 Q And then what happened to them?
17 A And then we built on them.
18 Q Oh, so you're using those footings?
19 A Yeah. They're --
20 Q So you got --
21 A -- underneath the building that we have.
22 Q -- the benefit of those footings that were put in?
23 A Yes, we do.
24 Q Okay. All right. Thank you.
25 A Because it would have cost us more to dig them up

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 Q Did you meet with him before that?
2 A Sure.
3 Q Can you tell us when you met with him?
4 A Exactly when he showed up?
5 Q Yeah. Sure.
6 A Had to be somewhere between June 30 -- I mean
7 January 30 and 9th of February. He was working
8 with somebody else I think in Heritage Classic --
9 I mean, there in Eagle Harbor.
10 Q So you never met with him before you terminated
11 Heritage Classic Homes?
12 A I don't ever remember ever meeting him, no.
13 Q Was it Mike Cable (ph) who perhaps introduced
14 y'all? Is that a name you recall?
15 A Right. I think he might have been working for
16 Mike Cable.
17 Q But it's your testimony here today that you two
18 never met with Mr. Kahler before you terminated --
19 A No. I can't tell you that. I might have met him.
20 I mean, we were all meeting each other on occasion
21 out there in the -- because they were building
22 their house. We were building our house.
23 Q I'm asking about specifically about Mr. Kahler.
24 Did you have any conversations with Mr. Kahler?
25 A I personally do not recall a conversation with

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 Homes, before you filed suit, an opportunity to
2 come in and cure those defects?
3 A We didn't -- we didn't have those defects at the
4 time that he was terminated. What happened was on
5 the 22nd of January, we gave him a negligence
6 letter that came primarily because of the
7 permitting from Bonnie Watson, her letter and all
8 those attachments. He didn't get a septic. His
9 building permit was invalidated. And at that time
10 is when we gave him a negligent -- we did not know
11 about the defects in the construction at that
12 point. We only knew about his extensive increases
13 in rates for charging items in the construction.
14 He was coming up more and more with cost. He
15 didn't get the septic permit and he deceived us
16 about that. But we gave him the opportunity
17 because we thought we were gonna get one. We
18 thought we were gonna have a septic permit within
19 a few days.
20 We gave him the opportunity in that letter to
21 get things right so we could get on track. We
22 didn't know ahead any defects in the construction
23 at that point. We only knew that he wasn't being
24 honest with us about the septic permit, and he
25 wasn't doing the things required to get a draw.

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 answer that?
2 Q Actually it does not. But I'm going to ask the
3 question again. Prior to filing your lawsuit --
4 A In August.
5 Q -- against Heritage Classic Homes and Danny
6 Gilbert seeking damages allegedly caused by
7 construction defects, did you serve him with a
8 written notice of claim that asserts the
9 construction defect, the nature of the claim, the
10 defects, and any description of the results of the
11 defects if known? And did you give him that
12 letter? Did you do it, one? If you did, did you
13 give it by personal service or did you send it by
14 certified mail? That's just a yes or no.
15 A We didn't file a lawsuit against Heritage Classic
16 Homes. Knight's filed a lawsuit against us. We
17 filed a counterclaim that involved Danny and
18 Heritage Classic in that lawsuit. He was notified
19 of that, yes.
20 Q In August -- on August 23, 2004, you did not file
21 a lawsuit?
22 A We filed a lawsuit on the property, not the
23 construction.
24 Q Those claims you're saying were not included in
25 this?

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 construction defects?
2 A They were filed in the counterclaim to Knight's.
3 Q Against Heritage?
4 A Against -- yeah. I'm sure that Knight's -- well,
5 now, wait a minute. I'm not really sure exactly
6 how Knight's did that. We hired an attorney to do
7 all that. Knight's filed a complaint against
8 Danny and/or I don't know about Heritage Classic.
9 But we were included as defendants in that because
10 it was on our property. It was filed against him.
11 They had the contract with him. Was that with
12 Heritage Classic Homes? I don't know. Their -- I
13 think that initial paperwork showed something like
14 Eagle Harbor, Incorporated, as opposed to Heritage
15 Classic Homes. Heritage Classic Homes became a
16 part, yes. It all was consolidated. So, yes.
17 Q Who was your contractor?
18 A At what time?
19 Q In the beginning, who was your contractor?
20 A Mr. Gilbert, Heritage Classic Homes.
21 Q You haven't sued Kahler who was a contractor and
22 you haven't sued Seibel who was a contractor. So
23 that only leaves Heritage Classic, right? As your
24 contractor that you sued.
25 A That contract -- this is the contract that's in

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 Heritage Classic Homes?
2 A According to the contract that goes with this, we
3 couldn't pay him anything once we terminated him.
4 It's very specific in here. You can't give him
5 any more money.
6 Q Okay. Any more money. How much have you given
7 him?
8 A Prior to the terminating?
9 Q Ma'am, you just said you can't give him any more
10 money. I'm asking you how much have you given to
11 Heritage Classic Homes?
12 A We gave him the $2,000 down payment.
13 Q What was that for?
14 A Well, it was written out to him. But it was --
15 well, it was to buy the land.
16 Q Okay. We're talking about -- this about -- I'm
17 sort of focused on the construction.
18 A Okay.
19 Q Okay. I'm asking how much did the Prices pay to
20 Heritage Classic Homes for the work he did?
21 A We didn't pay him anything for the work that he
22 did.
23 Q And you never paid him anything? You never paid
24 Heritage anything, have you?
25 A Not to my knowledge, we haven't. We gave Danny

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
2 (Brief pause.)
3
4 Q Mrs. Price, I think I marked yesterday in haste
5 when these were being tendered up. I think it's
6 No. 5. Oh, you have it? Okay. Correct. That's
7 No. 5. If you would, please, turn to Article 4,
8 third page, I believe. And there's some
9 underlying there. I'm not sure who did that. But
10 under contract sum if you could direct your
11 attention to 4.1. And the subparagraph there, if
12 you could publish that for us, please?
13 A The subparagraph.
14 Q Begins with "an estimate sheet."
15 A Okay. It says, "An estimate sheet dated the 13
16 September is attached to this contract and gives a
17 cost estimate of work to be done. The owner
18 assumes responsibility for any costs exceeding
19 that cost in each description."
20 Q Okay. Thank you.
21 A But you realize, of course, this is a stipulated
22 sum.
23 Q Ma'am, thank you. I didn't ask that.
24
25 MR. HUBBARD: Thank you. I have no further

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 partnership? Eagle Harbor is part of a
2 partnership with Ms. Fox, not that she's an agent
3 of specifically Eagle Harbor, Inc.?
4 A Correct.
5 Q Okay. Now, looking at that exhibit, do you have
6 any knowledge of any paperwork in your chain of
7 title that where Ms. Fox agreed to adopt those
8 covenants as binding on her property?
9 A I do not.
10 Q Okay. Now, the Exhibit No. 24, there was some
11 questions about it, about attorney fees and costs.
12 Now, have you received invoices from me for
13 attorney fees and costs up to through the date of
14 this trial?
15 A No.
16 Q Have you received an invoice from Mr. Carter or
17 the other experts who have testified?
18 A No.
19 Q So you anticipate receiving additional legal costs
20 and expenses?
21 A Oh, absolutely.
22 Q Okay.
23 A Yeah. Those would not even be addressed here.
24 Q Now, when you said -- you made some comments about
25 this not being true and accurate or no way to tell

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 Q Okay. Now, Mr. Hubbard asked you did you send any
2 kind of certified letter to Mr. Gilbert about --
3 where is your No. 2? You have your stack of
4 documents over there. Track those down.
5 A Here's the contract.
6 Q Nope. Nope. Looking for your negligence letter.
7 A It's not up here.
8 Q It may have been from the prior stack.
9
10 MR. JACKSON: Court's indulgence for just a
11 minute.
12
13 Q Plaintiffs' Exhibit No. 12. At this time, did you
14 send this to Mr. Gilbert?
15 A We did. We actually hand carried it as well.
16 Q Okay. And at that time, were you still trying to
17 work with him to move forward on your construction
18 project?
19 A Certainly. Certainly. We still thought we could
20 get him to get going. Yeah.
21 Q And what was his response to that?
22 A Well, he really didn't say a whole lot. We were
23 in there. We handed it to him. He didn't say too
24 much at the time. But within the next two or
25 three days, we talked a couple of times before we

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 Q I'm sorry. I'm sorry. Did you pay Heritage
2 Classic. Correct. Did you pay any subcontractors
3 on the job?
4 A After we fired him?
5 Q At any time did you pay any subcontractors that
6 were Mr. Gilbert's responsibility or Mr. Heritage
7 Classic's --
8 A Yes, we did pay.
9 Q Who did you pay?
10 A We paid B&B dirt guys. Some people that had done
11 some obvious work on the land.
12 Q Okay.
13 A And he was trying to get payment from us for that.
14 But the guy came and talked to us, and we gave him
15 some money for doing that work even though Gilbert
16 had hired him.
17 Q Okay. How much did you pay him? Do you remember?
18 A Well, the invoice is in there and the check. I
19 think around $3500, maybe.
20 Q Okay. Now, what is your understanding of the draw
21 requirements for the first draw for Mr. Gilbert to
22 receive payment? Looking at a contract document?
23 A I'm looking at the draw requirements.
24 Q All right. Please tell the Court what exhibit
25 number you're looking at.

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 Q As part of your Knight's Redi-Mix lawsuit, did you
3 notify Heritage Classic Homes and Mr. Gilbert of a
4 right to inspect the concrete piers and stuff
5 before demolition?
6 A Yes, sir.
7 Q Okay.
8
9 MR. JACKSON: I believe that's all I have on
10 redirect, Your Honor.
11 THE COURT: Anything further, gentlemen?
12 MR. FERRARA: Very briefly, Your Honor.
13
14
15
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25

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 Q Right.
2 A Right.
3 Q Did you pay more than $150 to Mr. Scott for legal
4 fees?
5 A He gave us back our retainer. So it's not on
6 here.
7 Q The $150, though, is.
8 A He did not give us back that money.
9 Q Okay. So if we look at Plaintiffs' Exhibit No. 23
10 and the green section -- I'll hand that to you --
11 on the second page, $927.04 to $150 legal,
12 Peterson and Scott. Is that the 150 you were
13 talking about?
14 A It must be. Is it $150? I'm not seeing that.
15 Q I'm sorry.
16 A This one?
17 Q Yes, ma'am.
18 A Right. That's the $150 that we paid him for
19 filing. I guess, a filing fee.
20 Q Now, that fee, though, that was for the mechanics
21 lien, correct?
22 A Yeah. He became our representative then. But he
23 also told us we needed to file against Belinda
24 Fox.
25 Q Right. But he wasn't -- that $150 was for the

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 dollars off of --
2 A No. Because he charged us for that. He didn't
3 pay us back the 150.
4 Q I know. But that was the mechanics lien portion
5 of the case.
6 A No. I can't say that for sure because of the
7 date. It might have been the filing fee of the
8 actual complaint against Belinda Fox.
9 Q But it might have also been the mechanics lien
10 legal defense which started all of this, correct?
11 A Well, I can't say for sure right now.
12 Q Right. And your attorney represented at the
13 beginning of court when we were starting this
14 process that you -- hold on -- that you and your
15 husband have settled the case, the mechanics lien
16 portion of this case with Knight's Redi-Mix. Did
17 you hear your counsel state that at the beginning
18 of this section?
19 A Yes. We have settled with them on that --
20 Q And that --
21 A Not the mechanics lien that Danny had filed,
22 though.
23 Q Right. I understand.
24 A There's still that.
25 Q And, ma'am, would you agree that that mechanics

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 Q You're pretty sharp.
2 A -- filed against you. So that would be -- that
3 would be the one against Belinda Fox.
4 Q But you do have the receipt in your folder --
5 A I have the invoice in there.
6 Q -- answer the question. Would you mind? I'll
7 just give you the folder and you can take a look
8 and see to answer the question.
9 A Sure. Sure. Absolutely. Let's see. Do you have
10 the number? The item number. 226, right?
11 Q (No response.)
12 A Oh, it doesn't look like I have the invoice. I
13 just have the check, the canceled check. And he
14 didn't -- he wrote this number on there. He wrote
15 that. We didn't write that. I guess the invoice
16 is missing.
17 Q So as we're sitting here today, you can't say for
18 sure that that $150 was not for the mechanics
19 lien?
20 A The court record will tell -- will tell us that,
21 though.
22 Q Sure.
23 A Because they keep an accounting of that. So that
24 would verify that.
25 Q Okay. All right. Thank you. How many attorneys

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 tab 389 for legal estimated costs when we were
2 trying to decide if the costs were 6500 or 7,000.
3 So if we --
4 A See that one is not -- that one is not in there
5 because it was estimated. I didn't have that. So
6 you won't find that in there.
7 Q So I've opened up your book here in item number
8 377.
9 A Right.
10 Q It says 5,000 for legal.
11 A Right.
12 Q Mr. Ginn.
13 A Okay. All right.
14
15 MR. FERRARA: Mark this for identification.
16 (Brief pause.) Any objection to this?
17 MR. JACKSON: I don't think so. I don't
18 think it has any privileged matters.
19 MR. FERRARA: Okay. Sure.
20 Your Honor, this is a three-page document,
21 Defendant Fox's Exhibit No. 5.
22 Q I'll hand that to you, ma'am, which
23 cross-references to your compilation 377 of $5,000
24 for legal attorney's fee. On your Plaintiffs'
25 Exhibit No. 24 you say contract-CT REC. Do you

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 consolidated.
2 Q Which you and your husband agreed at the opening
3 of court today to voluntarily dismiss that action
4 against Knight's Redi-Mix according to your
5 counsel's representation, correct?
6
7 MR. JACKSON: Object to -- the question is
8 misleading. We agreed that the mechanics lien
9 portion of that case. There's various crossclaims
10 and counterclaims relating to breach of the
11 construction contract and everything else. It's
12 still viable. And on that, just the mechanics
13 lien portion.
14
15 A Just the mechanics lien portion.
16 Q And I'll repeat it. I'm sorry. You and your
17 husband agreed that the mechanics lien portion,
18 meaning the part of the case Mr. Ginn was
19 representing you on involving Knight's Redi-Mix
20 was to be dismissed, correct? Or am I incorrect?
21 A Well, what I gathered was it was strictly the
22 mechanics lien's cost that we were dismissing.
23 Q And then also your attorney's fees that you paid
24 to Mr. Ginn --
25 A No.

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 it quickly. Now, with respect to -- well, with
2 respect to that $5,000, you can't tell the Court
3 how much of that about $5,000 fee that you paid
4 Mr. Ginn went towards the Knight's Redi-Mix
5 portion of the case and how much of the 5000 went
6 to the Fox portion of the case, correct?
7 A Well, there's an appearance form just like that in
8 the 1855 case file from Mr. Ginn. We primarily
9 were hiring him for 1855. But he's the one that
10 actually got the two cases consolidated so they
11 became one. To us, that fee, that retainer,
12 belongs to that consolidation not so much to this
13 one and this much to another.
14 Q Now, if we look at line item 380 on Exhibit 24
15 it's a -- I believe it's a thousand-dollar
16 retainer. You testified earlier to Simmons and
17 Keaveny?
18 A Right.
19 Q Okay. Looking at 380 in the book, you didn't have
20 a copy of the fee agreement. But do you recall
21 hiring Simmons and Keaveny for this case and other
22 matters other than this case?
23 A We hired him to -- he wanted a thousand dollars to
24 review. The canceled check is there and then
25 there's another letter. He wanted another

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 A Correct. No, we did not.
2 Q You didn't provide them with a retainer?
3 A No. We just simply paid him a fee to -- and I
4 think there's a check there, a canceled check. He
5 wanted that much money to review it before he
6 would accept it. He wouldn't charge us a retainer
7 until he actually accepted representation, right?
8 Q Well, you paid an attorney for the Fox case in
9 other related matters. That's my question. Is
10 that a fair statement?
11 A Well, that's what that says, yes.
12 Q Well, we want the truth. Is that what you did --
13 you and your husband did? You paid Mr. Simmons --
14 Simmons and Keaveny for the Fox case and other
15 related matters?
16 A We paid him to review both cases.
17 Q Okay.
18
19 MR. FERRARA: Your Honor, at this time I
20 would move Defendant Fox's Exhibit No. 6, an
21 August 20, 2007, letter from Simmons and Keaveny,
22 into evidence.
23 MR. JACKSON: No objection.
24 THE COURT: Any objection?
25 MR. JACKSON: No objection, Your Honor.

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 Q Yeah.
2 A I mean, yes. We couldn't keep paying him just to
3 review.
4 Q Right. Ma'am, on Exhibit No. 24, line item 385.
5 A That was a retainer that we gave to Mr. Ward for
6 these two cases.
7 Q Okay. And so when we go to your book for item 285
8 we should see an invoice for legal expenses of
9 $5,000?
10 A Well, I don't have an invoice. What I have is
11 those two statements that were generated. And so
12 those are what's in there.
13 Q But those two statements don't total $5,000 or
14 anywhere close, do they?
15 A Those statements come from the 2500 for each case.
16 Q Okay.
17 A Yeah. Each one is covered there.
18 Q So out of the $5,000 that we're talking that
19 you're claiming in this case, you admit the $2500
20 of that $5,000 was for the Knight's Redi-Mix case?
21 A The retainer was 2500 for both. One case was 2500
22 the other was 2500. They were consolidated just
23 about -- right about the same time that either
24 just before Mr. Ward took over or just after he
25 took over as representing us. So the two became

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 you anticipate having to go through on this
2 portion of the recross?
3 MR. FERRARA: Respectfully, Your Honor, it
4 might just be a few. It might just be two or
5 three. I just haven't gone through the book
6 carefully to match it up. But now, I'm
7 understanding that there's some damages that have
8 been claimed that are for both cases. And it's
9 broken out in line item in the book. So I would
10 only be bringing up those points. So it may just
11 be one or two more documents, or it may be -- Your
12 Honor, respectfully, it can't -- it would never be
13 any more than just the legal section of paragraph
14 24, which I think, Your Honor, is only
15 approximately 15 or so line items. That would be
16 the maximum that it would be. I'm not saying that
17 it would be.
18 MR. JACKSON: Your Honor, my -- as I recall
19 on my redirect, I just had her confirm that the
20 items in there were true and authentic copies of
21 what she had in there. Not any argument about
22 splitting these out one way or the other in
23 reference to the source material. But, I mean,
24 whatever the Court wants to do in that regard.
25 THE COURT: As far as the initial list that's

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 wants to take a break that I just be given the
2 opportunity at the lunch break -- I'll just look
3 and then confirm that there's nothing else to
4 question Mrs. Price about. Just specifically only
5 limited, Your Honor, to the exhibits in the book
6 and related to the legal line items. I don't
7 anticipate having any.
8 THE COURT: You can certainly take a look at
9 it during the break. All right. Is there
10 anything else for this witness other than what may
11 be --
12 MR. JACKSON: Other than whatever limited
13 redirect. And I just have a few items to offer
14 into evidence that are not witness related, that
15 are just exhibits. I think our case will be done.
16 THE COURT: Why don't we do that. Why don't
17 we let you step down. You're subject to being
18 called back up. And tell me what you have as far
19 as -- you can step down -- what you have that's
20 non-witness.
21 MR. JACKSON: Yeah, I just have three items,
22 Your Honor. Item one was an e-email in the
23 designations of her testimony. I just offer that
24 as an exhibit and as part of my case in chief. We
25 can just label it and identify it.

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 Belinda Fox. The deposition of Mrs. Fox is very
2 small. I planned on calling her as a witness
3 anyhow, Your Honor. So I would say that that --
4 THE COURT: I'm not sure I'm following. We
5 got the designations here. Are you saying she
6 wants to make designations in response?
7 MR. JACKSON: I think what he's saying in
8 lieu of them saying I want this in, I want this
9 in, I want this in, we'll just offer the
10 depositions themselves. Is that what you're
11 saying?
12 MR. FERRARA: Yes. I mean --
13 MR. JACKSON: I don't have an objection to
14 that with it becoming part of the record. Either
15 way. Because I just want to be able to argue from
16 this testimony. That's all.
17 THE COURT: So would that resolve -- the
18 depositions would be in their entirety? Is that
19 what we're saying?
20 MR. JACKSON: I have no objection to doing
21 that.
22 MR. FERRARA: Yes, Your Honor.
23 THE COURT: They'll come in racketed by this
24 which is essentially your --
25 MR. JACKSON: It's the portion I designated

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 a separate exhibit with all of them designated.
2 And the final thing, Your Honor --
3 THE COURT: As to the DHEC letters, any
4 objections?
5 MR. FERRARA: No, Your Honor.
6 THE COURT: Admitted without objection then.
7 MR. JACKSON: And I can discuss this in more
8 detail with counsel in the break. Your Honor, in
9 a lot of your rulings on those two letters, I've
10 been in contact with the Army Corps of Engineers
11 and James Chowick (ph) their attorney about, A, if
12 they could get a witness here to testify about
13 those letters. But he says they don't let their
14 federal people testify. But he did provide me
15 with a certification for those records from a
16 custodian that prepared in ordinary business. And
17 it's a digital copy which I can go and get a copy
18 made for those two records.
19 THE COURT: All right. Any objection to the
20 presentation of the digital?
21 MR. JACKSON: I'll show it to you.
22 MR. FERRARA: No, Your Honor. I can -- as
23 long as I'm able to ask Mr. and Mrs. Price in our
24 case about those letters. I'll address our
25 concerns, I guess, on examination.

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 THE COURT: We'll break for an hour. Be back
2 here in an hour. And then we'll proceed at that
3 point with whatever follow-up on the recross as
4 may be necessary, okay.
5 MR. FERRARA: Thank you, Your Honor.
6 THE COURT: Thank you.
7 MR. JACKSON: Thank you, Your Honor.
8
9 (Whereupon, Plaintiffs' Exhibit No. 41,
10 Deposition Designations, was received
11 into evidence.)
12
13 (Whereupon, Plaintiffs' Exhibit No. 42,
14 Affidavit, was received into evidence.)
15
16 (Whereupon, Plaintiffs' Exhibit No. 43,
17 Certification, was received into
18 evidence.)
19
20 (Lunch recess was taken from 12:31 p.m.
21 until 1:33 p.m.)
22 THE COURT: Y'all are set to go?
23 MR. JACKSON: Yes, Your Honor.
24 MR. FERRARA: Yes, Your Honor.
25 THE COURT: Okay. All right. Mr. Ferrara,

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 Just go ahead and ask her for identification for
2 right now.
3 MR. FERRARA: Your Honor, may I approach the
4 witness?
5 THE COURT: Yes.
6 - - - - -
7 RECROSS-EXAMINATION
8 BY MR. FERRARA (Continuing):
9 Q Ma'am, before we took a break we were talking
10 about Plaintiffs' Exhibit No. 23, and I'm handing
11 you a document that has been marked for
12 identification as Defendant Fox's Exhibit No. 8.
13 A Okay. This is the Chellis and Frampton?
14 Q Yes, ma'am.
15 A Okay.
16 Q And during the break I looked through your
17 notebook of receipts. And I'll ask you the
18 document that you have that's in your hand right
19 now, Defendants' Exhibit No. 8, is that a copy of
20 a check and legal services agreement you had with
21 Chellis and Frampton?
22 A It is, yes.
23 Q And it's signed by you as well on the last page?
24 A Yes.
25

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 9, Bank Statement, was received into
2 evidence.)
3
4 (Whereupon, Defendant Fox's Exhibit No.
5 10, Settlement Statement, was received
6 into evidence.)
7
8 Q Ma'am, if you recall earlier when we looked at
9 Plaintiffs' Exhibit No. 24, I believe it's page 7,
10 it was the legal expense we talked about earlier
11 today, the $8,000 that's on line 153.
12 A Right.
13 Q And your prior testimony was that you believed
14 that full $8,000 fee to be for this case involving
15 the Foxes only, correct?
16 A Only?
17 Q Yes, ma'am.
18 A No.
19 Q You did not? Okay. I misunderstood you.
20 A No.
21 Q So what is your testimony now as you understand
22 about the $8,000 reimbursement that you're seeking
23 from the Foxes?
24 A It's not any different than it was earlier. We
25 hired them for both of these cases because we were

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 Well, you're claiming -- you're just claiming the
2 $8,000 in total for legal expense that you paid
3 Chellis and --
4 A For retaining them to do this two cases.
5 Q Okay. All right. Moving on. Let's look at line
6 item 396 on that same page on Exhibit No. 23.
7 A Twenty-three.
8 Q Twenty-four. I'm sorry. I'm sorry. Plaintiffs'
9 Exhibit No. 24.
10 A On the same page. What number?
11 Q Yes, ma'am. 396.
12 A 396. It's kind of hard to find. Okay. This is
13 the subscription, Westlaw.
14 Q Yes.
15 A Okay.
16 Q You testified earlier to your attorney that you
17 had receipts totaling $1572.90 and the book,
18 correct?
19 A We have -- well, I can't tell you there's
20 100 percent of the receipt there because it was a
21 subscription that once started it went monthly
22 until the end of December. I'm not sure I had an
23 actual statement document for each month.
24 Q And so in truth the --
25 A But most of the months are there, I mean.

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 was modified from 5.25 percent, your old loan that
2 you had with National City. And then after you
3 refinanced it, it turned out to be 5.375?
4 A No. This transaction here, this history here, is
5 during the construction loan. We did assume their
6 permanent loan. I mean, that's why we refinanced
7 because we were given calculations that the
8 payment -- in fact, we made one payment that's in
9 the book -- was over $2,000. And the initial loan
10 paperwork that we had from them, the payment was
11 going to be like 1500. And then it went up, it
12 went even higher than that. So that's the reason
13 why we went to USAA who gave us a monthly payment
14 of 1500.
15 Q Right. Which was that 5.375 on your new permanent
16 loan?
17 A Okay. The interest rate, right.
18 Q Well, yesterday, do you --
19 A Some how -- well, I can't say that I particularly
20 noticed the interest rate. But what we were
21 paying attention to was the monthly rate the they
22 were going to charge us as opposed to what USAA
23 was gonna charge us.
24 Q Sure. Yesterday your testimony --
25 A That's what this calculation is all about.

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 A No, no, no.
2 Q -- incur these closing costs?
3 A No, no, no. The construction loan interest is
4 what Ms. Zerbst was talking about. Your
5 construction loan is going to double. Your
6 construction loan, that means if it's not done by
7 May whatever date, we're going to start charging
8 you 11-point something during the construction.
9 Now, once we got to the end of the construction,
10 we still found that the interest rate that they
11 were going to charge for the permanent loan was
12 still higher. And I actually have a document that
13 -- I think it was 7 percent is what she told me
14 and the loan paperwork. And so we did get this
15 lower interest rate. We were never getting an
16 interest rate of 5.25.
17 Q Even though the document says the interest is
18 5.25?
19 A It says right here the date of payment,
20 November 1, 2004. But the actual payment we made
21 in December was 21 -- over $2100. Now, this
22 particular -- if I had anything to hide, I
23 wouldn't be giving you this. But this particular
24 rate did not compute to me with $2100 for a
25 payment. So there was a significant difference in

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 not -- we were not given any document about that.
2 We found that when it came time to finish and we
3 were going to be looking at the permanent loan,
4 they told us how much that permanent loan payment
5 was going to be. And that's when we went to
6 refinance with USAA.
7 Q. Thank you, ma'am.
8
9 MR. FERRARA: Your Honor, as a housekeeping
10 matter, before the lunch break there is a
11 documented that I identified, questioned the
12 witness about, and I failed to move it into
13 evidence. Your Honor, Defendant Fox's Exhibit
14 No. 7, disbursement statement. And at this time,
15 I don't believe there was an objection, but at
16 this I would --
17 MR. JACKSON: I need to see it again.
18 MR. FERRARA: Sure. Here it is. Here it is.
19 MR. JACKSON: Yeah. I remember that. That's
20 fine.
21 THE COURT: With no objection, seven.
22
23 (Whereupon, Defendant Fox's Exhibit No.
24 7, Disbursement Statement, was received
25 into evidence.)

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 case.
2 THE COURT: You can step down, Mrs. Price.
3 THE WITNESS: Can I take this?
4 MR. JACKSON: Sure. I guess --
5 THE WITNESS: There's something missing here.
6 THE COURT: And what number will this
7 certification be?
8 COURT REPORTER: It's 43, Plaintiffs' Exhibit
9 No. 43.
10 THE COURT: Plaintiff's 43?
11 COURT REPORTER: Yes, sir.
12 THE COURT: Thank you. So are we ready to
13 proceed with the defendant's case?
14 MR. FERRARA: We are, Your Honor. Very
15 briefly, just for the record, Your Honor, I had a
16 few motions.
17 THE COURT: All right. What are those?
18 MR. FERRARA: Your Honor, respectfully,
19 defendant's Belinda Fox and Gerry Fox and
20 additional, Your Honor, to the extent that that
21 the Foxes activities would be, I guess, as agents
22 on behalf of Eagle Harbor Phase 2 Development
23 Partnership, I respectfully request Your Honor to
24 grant a directed verdict on first and foremost,
25 Your Honor, Unfair Trade Practices Act. I don't

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 relating to the Partnership. And so I'm not
2 basing the motion -- I'm not asking the Court to
3 grant a motion for directed verdict on the
4 Partnership allegations at this time because I
5 think there's a question -- a fact for Your Honor
6 to rule upon with that.
7 Likewise, Your Honor, for Gerry and Belinda
8 Fox only, the breach of fiduciary duty cause of
9 action, we respectfully request you to dismiss
10 Belinda and Gerry Fox in their own individual
11 capacity. There's been absolutely no testimony
12 that Belinda or Gerry Fox owned a duty to the
13 Prices considering their testimony. Defendants'
14 Exhibit No. 2, Your Honor, respectfully does --
15 and it's in evidence. It's A contract from
16 Belinda Fox, which I understand the Prices to take
17 as the basis of the duty for the negligent -- or
18 for the breach of fiduciary duty. But
19 respectfully, Your Honor, when we consider the
20 statute of frauds that this sale of Lot 20 is a
21 real estate transaction that the statute of frauds
22 and the fact that it's a contract between the
23 parties and requires a writing makes it impossible
24 for the Prices to maintain a breach of fiduciary
25 duty based upon any relationship between the

1 parties as established by the contract.
2 So for those reasons, Your Honor, I
3 respectfully request you gran 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 MR. HUBBARD: Okay. Your Honor, I would also
2 join Mr. Ferrara in his motion for the unfair and
3 deceptive trade practices against my clients,
4 Heritage Classic Homes, Inc., Danny Gilbert, the
5 Partnership as it's alleged, and Eagle Harbor,
6 Inc. As the testimony showed, these were folks
7 that originally got together to build a boys home.
8 And there been no evidence that any other
9 development properties that have gone forward with
10 these entities. It's a one time offering. And so
11 I would ask that that claim would be dismissed.
12 In addition, I move that all construction
13 claims be dismissed against Danny Gilbert in his
14 individual capacity. While Danny Gilbert is with
15 Heritage Classic Homes, there's been no offer of
16 evidence or testimony that it wasn't anything
17 other than Heritage Classic Homes that the Foxes
18 entered into -- sorry -- that the Prices entered
19 into a contract with for the construction of the
20 home. And therefore, I'd ask that he'd be
21 dismissed individually from that.
22 I have information motion, Judge, and that is
23 a motion to dismiss the construction claim against
24 all of my defendants or all of my clients as it
25 stands. And I base that on South Carolina statute

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 briefing that issue. For purposes of the motion
2 today, I'll deny it on the basis I believe it is
3 probably waived as a result of the time frame
4 involved on this that there's supposed to be a
5 motion, I believe, is contemplated to enforce
6 that. And there was no motion. That would have
7 been appropriate ten years ago if there was a
8 request to do that. I'm not sure that it was
9 properly presented. So at this point, I'm gonna
10 say it's waived.
11 As to dismissing the construction claim as to
12 Mr. Gilbert individually, I'll deny that as well.
13 The contract indicates it's Mr. Gilbert and the
14 corporation. In fact, I think that the mechanics
15 lien that was filed by Mr. Gilbert had Mr. Gilbert
16 doing business as the corporation. So we'll leave
17 him in individually on that construction claim.
18 As to the Unfair Trade Practices Act, at this
19 point I'm going to deny that as well. But that
20 one, I'm not sure how that's gonna hold up upon
21 further consideration as to him. Because I
22 believe you're right, it does seem that the bulk
23 of unfair trade practices focus is as to the
24 representations on behalf of the Partnership. But
25 I'm not sure if that would continue against him

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 Q Okay. And how long have you been working for
2 Berkeley County?
3 A Getting ready to go on two years.
4 Q Two years. Okay. My office sent a subpoena over
5 to you and I appreciate you appearing today. This
6 action that you're here on and we need your
7 testimony about concerns Lot 20 which is know as,
8 I believe it is, 1109 Saddlehorn Drive.
9 A Okay.
10 Q Did you have a chance to look at the zoning
11 requirements as it relates to Saddlehorn Drive in
12 Eagle Harbor?
13 A I've only seen the parcel only a couple of times.
14 Q Okay. Do you know what the zoning requirement is
15 for that area of Berkeley County?
16 A Its that zoning Flex 1?
17 Q Yes. That's what I'm asking you.
18
19 MR. JACKSON: Your Honor, I think he needs to
20 testify whether he knows about the zoning before
21 Mr. Ferrara provides answers.
22 THE COURT: I agree. Ask him the question.
23 MR. FERRARA: Sure.
24 THE COURT: I wasn't sure if that was an
25 answer or a question. So ask him again.

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 A The subject property as far zoning as concerned
2 could be subdivided as long as they met the
3 requirements, yes.
4 Q As they long as they met the requirements being
5 the minimum square footage you talked about?
6 A Correct.
7 Q And then, additionally, approval from DHEC is not
8 required if the subdivision lot is going to be in
9 between family members, correct?
10
11 MR. JACKSON: He's leading.
12 THE COURT: Just ask the questions --
13 MR. FERRARA: Sure.
14 THE COURT: -- leading.
15 MR. FERRARA: Sure.
16
17 Q Mr. Adley, is there any other government agency
18 involved in the determination of subdividing Lot
19 20 other than Berkeley County?
20 A I'm not quite sure what you mean.
21 Q Sure. I'll ask you this: If the owner of Lot 20
22 came to Berkeley County to apply for a subdivision
23 of Lot 20.
24 A Uh-huh.
25 Q Can Lot 20 be subdivided based upon the square

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 CROSS-EXAMINATION
2 BY MR. JACKSON:
3 Q You mentioned septic tank is an additional
4 requirement. You're not opining -- well, let me
5 ask it -- you're not opining in any way, shape, or
6 form that someone could build a house on each of
7 those lots, are you?
8 A I'm not you what you're meaning.
9 Q Okay. Well, what do you mean by subdivide?
10 Mr. Ferrara asked you about subdivide. What do
11 you mean by that?
12 A To divide the lot into more that one lot.
13 Q So they would get a plat or survey approved by
14 zoning?
15 A Correct.
16 Q Carving the land?
17 A Yes.
18 Q But that doesn't tell you one way or another
19 whether they can put a house on each of those
20 lots, does it?
21 A It doesn't tell you. But every lot has the
22 associated and allowed uses on that property.
23 Q Right. But they would still have to go through --
24 apply to get the proper septic tank permit if that
25 was available?

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 property can support a septic tank or not under
2 DHEC's regulations?
3 A That's why we request the DHEC approval letter.
4 Q So if you were wanting to get approval through
5 subdividing to be able to build, you would have to
6 go through DHEC to try to get a proper permit. Is
7 that correct?
8 A Correct.
9 Q And if DHEC told you no, then you couldn't build
10 on that lot. Isn't that correct?
11 A Correct.
12
13 MR. JACKSON: No further questions.
14 THE COURT: Mr. Hubbard, any questions?
15 MR. HUBBARD: No questions, Your Honor.
16 - - - - -
17 REDIRECT-EXAMINATION
18 BY MR. FERRARA:
19 Q Ty, I'll hand you Plaintiffs' Exhibit No. 30 and
20 ask you on page 2, the middle paragraph, last
21 sentence, Mr. Houston is saying that the only way
22 he knows to subdivide the property would be to
23 have public sewer access. You see that sentence?
24 A Yes, sir.
25 Q Okay. So the question that we're asking your help

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 Give your name, spell your last name for the court
2 reporter.
3 THE WITNESS: Belinda Fox, F-O-X, is my last
4 name.
5 - - - - -
6 DIRECT EXAMINATION
7 BY MR. FERRARA:
8 Q Belinda, where do you currently reside?
9 A 160 Loganberry Circle, Goose Creek.
10 Q And you've heard the testimony in this case. If
11 you could very briefly tell the Court how you got
12 involved with the Eagle Harbor subdivision?
13 A A neighbor invited us to their home. It was a
14 group of adults there. And Danny and Liz Gilbert
15 were there that night. And they had just -- I
16 think they had just returned from the boys home
17 where they had worked before. And they were
18 sharing their vision for a boys home.
19 Q Danny and his wife?
20 A Danny and Liz.
21 Q Right. Right.
22 A But that night -- we didn't really know them, but
23 they described some of the boys. And the one I
24 remember the most was they described a boy that
25 was locked in a cage, and he was being fed through

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 No, I did not.
2 Q Okay. If you had no communication with them, you
3 would not have been able to make any
4 representations about Lot 20 or the neighborhood,
5 correct?
6 A Correct.
7 Q Okay. And Mr. Gilbert was an agent or signed on
8 your behalf regarding the Lot 20 contract which is
9 Exhibit No. 2. You're familiar with that?
10 A Say that again.
11 Q Mr. Gilbert acted on your behalf when selling lot
12 2?
13 A Yes.
14 Q Okay. And what were your instructions to
15 Mr. Gilbert, if any, about what your understanding
16 was about him selling Lot 20 to the Prices?
17 A Well, the property was in my name only. So I
18 didn't really have a lot to do with that. So I'm
19 not sure what you're asking. But my husband put
20 the land in my name. But that didn't -- I wasn't
21 really interacting with the process.
22 Q Right. Mr. Gilbert was on-site at Eagle Harbor in
23 his trailer and selling --
24 A Yes.
25 Q -- the lots, correct?

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 Q Today, Belinda, is Eagle Harbor subdivision
2 progressing along as planned?
3 A The subdivision is progressing. There has been a
4 road issue that has been resolved.
5 Q Okay. Yeah, we weren't going to talk about that
6 today. But with respect to -- we've heard some
7 testimony about the amenities and fences and gates
8 in the neighborhood. Are you aware of any
9 problems as we sit here today with the
10 neighborhood?
11 A No, I'm not.
12 Q Were you ever made aware of, Belinda, of any of
13 the letters that Mr. Gilbert would've received
14 from DHEC that are into evidence?
15 A I don't think so.
16 Q Okay. Well, ma'am, Plaintiffs' Exhibit No. 40
17 with Mr. Gilbert that talks about the problems in
18 2004 with Lot 20. Did you ever receive a copy of
19 that letter from Mr. Gilbert or DHEC prior to the
20 Prices closing?
21 A I don't think I did. I don't know why I would.
22 Q Right.
23 A So not to my knowledge.
24 Q And, Belinda, what I'm asking is that was there
25 any type of an agreement between you and Danny to

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 Well, we purchased that property. And, yes, we
2 did.
3 Q Okay. With respect to the development of the
4 neighborhood, what was your understanding with
5 your -- what was your understanding that Danny was
6 to do with respect to the development of the
7 neighborhood and specifically phase two?
8 A Well, again, I was in the background. So I can't
9 be real specific. But I do remember that we
10 were -- there was another builder and they
11 approached us about doing something as partners.
12 And we were just adamant that we do not do
13 partnerships. So, you know, that was just never
14 an issue. And my name was on the land. And that
15 was my participation is that it had been put in my
16 name. As far as the other details, I was in the
17 background on that.
18 Q Belinda, looking at Defendant Fox's Exhibit No. 1,
19 it's signed by you -- the plat is signed by you,
20 correct?
21 A Yes.
22 Q Okay. And this Defendants' Exhibit No. 1 is a
23 plat of phase two, Eagle Harbor. And it was --
24 the engineering work and the planning work was
25 performed by Stantec?

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 think, five years because of this situation. So
2 it was -- you know, like you said, Diana, what you
3 know now. Well, we didn't know anything then what
4 we were -- you know, the initial phase one was not
5 without problems, you know. And so, yes we -- so
6 what is your question? So that's how we -- we
7 really got involved just thinking about the boys
8 home. And it just wasn't a simple project.
9 Q Right. And, in fact, Mr. Gilbert advised you and
10 your husband that he could use his builder's
11 license and build a boys home at a discounted
12 cost, correct?
13 A I don't know.
14 Q You don't know that. Okay.
15
16 MR. FERRARA: Okay. Thanks, Belinda. That's
17 all the questions I have.
18 THE COURT: Cross-examination.
19 MR. JACKSON: Yes, couple of questions here.
20 - - - - -
21 CROSS-EXAMINATION
22 BY MR. JACKSON:
23 Q You mentioned there was some problems with phase
24 one. What were some of the problems with phase
25 one?

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 A I'm a realtor.
2 Q Okay. And how long have you been a realtor?
3 A I got my license about 13 years ago, I believe.
4 Q Okay.
5 A After this ordeal.
6 Q Okay. And you say after this ordeal, you mean way
7 after it or like --
8 A Probably a year or two later.
9 Q Okay. Now, have you sold any lots as a broker in
10 Eagle Harbor subdivision?
11 A What is your question as a broker?
12 Q Have you sold any lots in Eagle Harbor subdivision
13 as a broker?
14 A Since I got my license as a realtor?
15 Q Yes, a realtor. I'm sorry.
16 A Yes, I have.
17 Q -- terms -- you have. Okay. Now, you may not
18 know the answer to this. And if you don't, that's
19 fine. Let me back up. You said that you weren't
20 involved in the different things and you said you
21 didn't know if there were any wetlands. Did you
22 try to do any investigation to see if there was
23 any wetlands? Do you know if there was any
24 stormwater management plan done as part of the
25 subdivision? Or did you rely on somebody else to

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 Q Sure. Okay. That's fine. And let me see if you
2 recognize this letter, and if you're familiar with
3 it, and if not, that's fine.
4 A Well, this is addressed to my husband.
5 Q Okay.
6 A So I would've -- I'm sure I would've seen it then.
7 Q Well, are you familiar with any of the contents or
8 recall receiving it or discussing it with him?
9 A (Witness reviews document.) Yes, sir.
10 Q Okay. What, if anything, did y'all do in response
11 to that letter?
12 A Well, my husband had a conversation with
13 Mr. Gilbert and also asked to meet with the
14 Prices.
15 Q Okay. What was the conversation with Mr. Gilbert
16 about?
17 A You would have to ask my husband.
18 Q Okay. You didn't have that conversation?
19 A I did not.
20 Q Okay. All right.
21
22 MR. JACKSON: I'll go ahead and move to offer
23 this as --
24 COURT REPORTER: Am I marking this one?
25 MR. JACKSON: Yeah, you can mark that one. I

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 MR. FERRARA: Your Honor, at this time,
2 defendants will call Mr. Danny Gilbert to the
3 stand. Danica purchased in.
4 THE COURT: All right. Mr. Gilbert, come on
5 up. You previously have been sworn. You're still
6 under oath, okay. Thank you, sir.
7 - - - - -
8 DIRECT EXAMINATION
9 BY MR. FERRARA:
10 Q Mr. Gilbert, you've been here throughout the trial
11 and you testified a little yesterday. And without
12 duplicating your testimony from yesterday, I'll
13 ask you, at or prior to the closing of Lot 20 with
14 the Prices, you were you aware of --
15
16 MR. JACKSON: Leading, Your Honor.
17 Objection, Your Honor. Leading.
18 THE COURT: No leading.
19 MR. FERRARA: Okay. All right, Your Honor.
20 Respectfully, Your Honor, we got -- we've got a
21 claim for indemnification against Mr. Gilbert.
22 And, technically, he's an adverse witness. So I
23 would request permission to lead?
24 THE COURT: Any objections?
25 MR. JACKSON: As long as he declares him a

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 Lot 20 --
2 A Never. Never.
3 Q -- in order to sell the lot?
4 A Never. We got -- we were gonna run a children's
5 home out there. I mean --
6 Q Right.
7 A -- can't do that.
8 Q You testified about that yesterday. And I'll ask
9 you because you were brought in as a witness for
10 the plaintiff. Do you have any additional
11 background information relating to this
12 subdivision in Eagle Harbor that you think would
13 be important for the Court?
14 A Yeah, I do. Phase one was nine lots and then
15 count the residual property Eagle Harbor owns is a
16 tenth lot. The subdivision regulations for a --
17 you know, for a subdivision that's under 15 lots,
18 way different. No paving, the storm drainage, all
19 that not needed. You just had to have -- had to
20 go before planning and zoning and get the plat
21 approved and that was it. You know, didn't even
22 have to make roads, you know, passable. But
23 things changed when it went to phase two because
24 it was more than 15 lots so then it had to have
25 the stormwater, you know, the whole thing; the

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 Right. And I apologize. I wasn't trying to paint
2 a picture that you were in a trailer.
3 A No. I wasn't marketing. My point is I wasn't
4 marketing.
5 Q My question, I guess, sir, is that you were
6 on-site handling the day-to-day development
7 activities of phase two, correct?
8 A Yeah. It was convenient for me to do that because
9 I was there. We were -- at the end of 2004,
10 October is when we got our first child. Prior to
11 that, 2003, we were building. We were building
12 the first house. We were putting in roads for the
13 boys home. We were putting in the lake. I mean,
14 I was there every day.
15 Q All of the building and putting in the roads and
16 things like that, that was done on behalf of Eagle
17 Harbor, correct?
18 A The whole purpose out there was Eagle Harbor. It
19 was just a vessel to use to get us to that
20 particular point.
21 Q Mr. Gilbert, if you can look at Fox Exhibit No. 1,
22 there's some signatures at the bottom of this
23 plat. And there's this signature by Eagle Harbor.
24 Is there not?
25 A Yeah.

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 that we did.
2 Q Sure. Sure. I think you were just try to let the
3 Prices know that before when they had you build
4 their house, you were handling some things in the
5 background with architectural review. But now
6 that they have terminated their relationship with
7 you, you were warning them that they needed to
8 follow the covenants and restrictions?
9 A Sure. So myself and Malcolm Brennan, who's an
10 architect in Charleston, and we were looking for
11 somebody that had bought a lot out there to be on
12 the committee. So that we could -- the reason --
13 the reason the declarant was to have oversight of
14 what was going in the communities. Because I had
15 vulnerable, you know, children there. And, you
16 know, I didn't want rapists or -- you know, I just
17 didn't want different kind of houses or things
18 that could affect the 91 acres that we owned in
19 the middle. So ARB was very important. And then
20 they fought it because where she put her lot, she
21 put her new house too far to the road. People
22 complained about having to pay the fee. And now
23 they've got -- they've got a mess out there. They
24 got a mess because they fought the ARB. And, to
25 me, it's diminished their property values because

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 we weren't doing that. She sent everything to
2 every agency that exist for the environment. She
3 did everything. Its cost -- we spent $120,000
4 three years ago for a land disturbance permit that
5 quite frankly we would never had to pay if it
6 wasn't for her. She's cost -- she's cost numerous
7 kids money. Numerous kids. Program things that
8 we could have done with the kids have been left
9 out because of what she started.
10 Q That $120,000 that you were talking about, that
11 came from Eagle Harbor?
12 A It came from Eagle Harbor, absolutely.
13 Q Eagle Harbor. Okay. And you've heard what the
14 Prices are complaining about. And I'll ask you
15 this -- in this action, I'll ask you this: It's
16 absolutely, positively, unequivocally true that
17 you did not have an agreement with Belinda or
18 Gerry to misrepresent or shade in any way any
19 information you might have known at the time that
20 the lot was sold?
21 A No.
22 Q Lot 20 sold to the Prices?
23 A No. Again, we have to live there. We have to be
24 there. We have to --
25 Q Yeah. You live in that neighborhood, correct?

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 THE COURT: Okay. Limit the answer to what
2 was prior to the closing, Mr. Gilbert.
3 THE WITNESS: Gotcha.
4
5 A Prior to her closing?
6 Q Yes.
7 A Have a conversation with who?
8 Q Did you have any discussions with Berkeley County
9 about the ability to subdivide any lots in phase
10 two?
11 A Sure, we did. Yeah.
12 Q And so, the Prices -- you heard their testimony --
13 are claiming that you represented that Lot 20
14 could be subdivided into two or three lots?
15 A Yeah.
16 Q You heard that?
17 A I did. I said that the lot could be subdivided.
18 I didn't promise them a drain field. I never said
19 the word perk. I was taught not to say that.
20 There is non-buildable -- they can subdivide it
21 the day that they bought it. Right here, lot
22 three is a non-buildable lot. They could have
23 made two other non-buildable lots. And what we
24 talked about was, you know, our hopes for sewer to
25 come out there because the children's home was

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 availability of potential public sewer in the
2 future?
3 A I think so. I think I've had conversations with
4 DHEC.
5 Q Okay. And that's fine.
6 A Okay.
7 Q That's all I wanted to ask you. And so, was that
8 your plan when you look at Exhibit No. 1 for Eagle
9 Harbor, phase two, to have public sewer?
10 A No. It wasn't my plan. It was just -- it's just
11 a bonus to those people who bought the extra lots.
12 You know, for Eagle Harbor to have it, you know,
13 that's our plan in the future because we're very
14 limited.
15 Q Okay. Danny, you never had any conversations with
16 Belinda prior to the closing of Lot 20 about any
17 representations you may have made to the Prices
18 prior to their closing, did you?
19 A I don't believe so. What specific representation
20 are you talking about?
21 Q Well, I'm just asking you that the Prices are
22 contending that you advised them -- and you had
23 talked about this earlier -- that you advised them
24 that Lot 20 would not only be subdividable, but
25 they understood that to be buildable. Did you

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 you can tell the Court?
2 A Mr. Park -- Mr. Parker will be here. And me and
3 him -- he's a soil consultant.
4 Q And I don't want you to testify to what he told.
5 A Okay. He's a soil consultant that we hired
6 because when we applied for the subdivision
7 permit -- you saw the letter that said we had a
8 limited amount of lots. Very small. But the end
9 result, you see that we have 20 lots. Well, it
10 started out at five. And then we had to bring in
11 Mike Parker. And me and Mike Parker walked every
12 piece of this property doing soil borings to find
13 suitable soil for a drain-field system. There was
14 no perk word there. I don't even know what perk
15 is.
16 Q Sure.
17 A We walked it. He taught me. He showed me the
18 soil colors. He showed me the grays and the reds,
19 and when to cull the water table. And he taught
20 me like I was his son. And I take pride in that
21 because he's a good person. We did that. We
22 started out with five or six lots. We ended up
23 with 20 lots. So there's was the soil done and it
24 was done for DHEC as well because DHEC had to come
25 out and check. When Mike Parker called him and

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 letters from DHEC advising you different lot
2 concerns. But all of those concerns were relieved
3 or addressed by DHEC prior to your closing of Lot
4 20, correct?
5 A Yeah. Yes, sir.
6 Q Okay. Do you agree with the Prices' testimony
7 that DHEC later revoked a permit that they had in
8 hand due to the DOT encroachment permit?
9 A Yeah, I agree with that.
10 Q Okay. Was that known to you at the time that you
11 entered into the contract on behalf of Belinda for
12 Lot 20?
13 A No. No.
14 Q Meaning, I'm asking you.
15 A I'm like -- we hired, you know, expensive
16 engineers. And people that submitted for permits.
17 And it was my, you know, my belief that we needed
18 an encroachment permit or whatever we needed that
19 that would've been taken care of.
20 Q The encroachment permit turned out to be an
21 ancillary matter that applied to a few lots in
22 phase two, correct?
23 A Four lots, yes.
24 Q Four lots. The other lots that are included on
25 the plat, which is Exhibit No. 1, have drain

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 themself.
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 that correct?
2 A Yes, it seems that way.
3 Q Prior to that, had you already received some type
4 of approval or an agreement by DHEC that your plan
5 for phase two was going to be accepted?
6 A Can you say that one more time.
7 Q Prior to receiving that letter --
8 A Right.
9 Q -- you must have met with DHEC and had them come
10 out and do the samples, walk the phase two, and
11 give you a preliminary approval?
12
13 MR. JACKSON: Can you clarify which letter.
14 I'm sorry --
15 MR. FERRARA: Sure. I'm sorry. Plaintiffs'
16 Exhibit 40.
17 MR. JACKSON: Okay.
18
19 A I don't know. I mean, I can't --
20 Q Can't remember?
21 A I can't remember.
22 Q Okay. Well, if you can, it will help the Court --
23 you've already testified that you did have
24 communications with DHEC prior to the plat, which
25 is Defendants' Exhibit No. 1, being recorded,

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 though there so we can
24 only assume.
25 Q Okay. Well, and specifically, we're here today,

1 sir, on Lot 20.
2 A Right. No, no knowledge.
3 Q No knowledge. Okay. You heard me ask the Prices
4 about the plat and the plat specifically
5 references that no wetland delineation has been
6 conducted by Stantec. Do you recall that?
7 A Yes, I do.
8 Q Okay. You must had a conversation with Stantec
9 about wetlands at some point?
10 A No, I can't say that I did. I won't say I didn't.
11 But I just can't recall that.
12 Q Okay. Did Eagle Harbor high Stantec to assist
13 Eagle Harbor in developing phase two in getting
14 all of the approvals from DHEC and Berkeley
15 County?
16 A Not directly. I mean, Stantec was hired by me
17 and, you know, those who were paying the bills. I
18 mean, you know.
19 Q Okay. And Stantec would have told you that you
20 needed to have a wetland study done, would you
21 have done that?
22 A Yeah, we would have had to do that. And then we
23 would have put it into the price of the lots.
24 Q Sure.
25 A And then we would have had to the incur that cost,

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 Q Okay. Danny, why was -- and I'm putting my hand
2 on it -- but why was the contract with the Prices,
3 why was it an as-is contract?
4 A Well, every one was out there.
5 Q Okay.
6 A And they had the -- you know, they had the right
7 to do their own due diligence.
8 Q Right. Did you have any conversations with the
9 Prices about due diligence and the items --
10 A Sure. Because we agreed on the dates. I mean,
11 these dates aren't -- they're not arbitrary. You
12 know, you had to get your financing, proof of
13 financing. You had to -- you know, you had so
14 many days to do your whatever, your inspections or
15 whatever else. These guys are on, you know, a hot
16 path to get to getting something done real quick.
17 It's not my fault that they didn't do the work.
18 Q Did your -- who prepared Exhibit No. 2?
19 A I'm sorry. Is this Exhibit No. 2 here?
20 Q Yes, sir. Yeah, the contract for Lot 20.
21 A This contract was given to me by an attorney and I
22 had a blank form on my computer. So that if
23 something like this happened, someone came in --
24 I'm not a realtor. I was just, you know,
25 facilitating, you know, a service for the people

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 -- do their own little subdevelopment, I mean, we
2 were certainly against that.
3 Q Lot 20 was 7.86 acres. If you divide that into
4 2.86, two acres and three acres, you can have
5 three lots, right?
6 A You could, yeah.
7 Q Mrs. Price testified, Danny, on page 2 about
8 the -- her conversations with you, I guess,
9 regarding hiring or having the ability to hire
10 either Mr. Spell to review this contract or
11 another attorney. Do you recall that?
12 A I do. I made it clear. I'm just -- can I speak?
13 Q Well, I'll ask you the quick questions. What was
14 your conversation, if any, with Mrs. Price
15 specifically about consulting an attorney
16 concerning the correctness or duplication of
17 items?
18 A That was something that she wanted in there.
19 Q Okay.
20 A I'm sorry. I thought you were talking about the
21 closing attorney because there was some issues
22 with the closing attorney.
23 Q Well, we can come to that. But this on page 2 the
24 language about consulting an attorney concerning
25 correctness and duplication. position?

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 back now.
2 Q Okay.
3 A He's been referred to multiple times. But, you
4 know, give me kind of a heads up, hey, somebody
5 came by, you know, told him about what's going on
6 in Eagle Harbor. Then they came -- if I recall,
7 they had a trailer behind their car, I think.
8 Q Sure.
9 A But and then they came back. Yeah, they came
10 back..
11 Q And so, did you give a copy of this two-page
12 contract to the Prices to take with them?
13 A At one point. I don't know if it was the first
14 meeting. But, certainly, it was when they were
15 serious about buying the property then that's when
16 they came back with the change. And I'd given it
17 to them as well. I told everybody out there, you
18 know, you choose your closing attorney, but this
19 is the one we use and he's very familiar with what
20 we're doing out there. He's got the master plat.
21 He's got all that stuff, so.
22 Q Sure.
23 A I didn't tell them they had to use Jeff Spell.
24 Q Sure. I understand that. You heard me ask
25 Mrs. Price about paragraph 11 the entire

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 a drain field which is, you know, very close to
2 what the gentleman was saying here earlier. You
3 can subdivide, but, you know, it's gonna be
4 non-buildable until you get your DHEC stuff
5 squared away. And then, again, I went to the
6 County the other day. I met with the guy and said
7 can I subdivide this and he --
8 Q Right. And we had the gentleman -- we had the
9 gentleman come in with Berkeley County, and he
10 advised the Court on his opinion.
11 A Yes, sir.
12 Q Yeah. Real quick, Danny, paragraph -- hold that
13 in your hand there -- paragraph 8C, buyer to
14 receive copy of the covenants and restrictions
15 from the closing attorney at closing. Plaintiffs
16 are claiming they were not provided with that, and
17 they understood that that was not their
18 responsibility. Did you -- is this part of your
19 standard contract or did you write this covenant
20 and restriction language in --
21 A No. It was -- I don't know if it was written in
22 there by us or it was already there. But I that's
23 pretty typical. My wife and I just, you know, our
24 last house that we purchased, we went to the
25 closing and we asked the closing attorney were the

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 input into what Steve Smith was gonna change on
2 these things, so.
3 Q And respectfully, I'm just asking you let's just
4 go back to prior to or with Lot 20 closing.
5 A Okay.
6 Q Back in 2003.
7 A Okay.
8 Q And so, the covenants that I've handed you, was it
9 your intent that those covenants attached to phase
10 two at the time of recording?
11 A Yeah. Phase two and phase one.
12 Q Okay.
13 A Absolutely.
14 Q And if you look at the second to the last page, or
15 maybe the last page, do you have all the lots
16 listed that --
17 A Yeah, we do.
18 Q That touch and concern those covenants?
19 A Yes, sir.
20 Q At the time that you were acting on Belinda's
21 behalf with the Prices, was it your understanding
22 that those covenants were recorded in Berkeley
23 County?
24 A Yes.
25 Q And that those covenants actually touched and

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 Honor.
2 THE COURT: Mr. Hubbard?
3 MR. JACKSON: I don't get the right to cross
4 yet?
5 MR. HUBBARD: Yeah. I was gonna say is it me
6 or him?
7 MR. JACKSON: I'll let him go --
8 THE COURT: I thought you could cross in
9 full.
10 MR. JACKSON: That's fine. I'll be glad to
11 do that, Your Honor.
12 - - - - -
13 CROSS-EXAMINATION
14 BY MR. HUBBARD:
15 Q Danny, did you ever -- when you met with the
16 Prices at any time, did you ever tell them that
17 they could put a septic tank on the lot?
18 A I don't think I said it that way, but certainly
19 there's a septic tank on their lot right now.
20 Q All right. Did you tell them -- you mentioned
21 earlier that you don't use the work perk. Why is
22 that? Did you tell them the lot perked? They
23 said --
24 A No. I never used the word perk. Because before I
25 even knew anything about the subdivision, I hired

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 thinking.
2
3 MR. HUBBARD: Your Honor, may I approach?
4 THE COURT: As you wish.
5
6 Q I'm gonna --
7
8 MR. HUBBARD: I'm not sure what we'll call
9 this.
10 COURT REPORTER: I don't know. I'd have to
11 look it up. I don't know right now.
12 MR. HUBBARD: I think I had one exhibit
13 yesterday. But I don't know if we just called it
14 Fox or not.
15 COURT REPORTER: You just had one. So we'll
16 mark it as two. Yeah, it's two.
17 MR. HUBBARD: So call that Heritage Exhibit
18 No. 2?.
19 COURT REPORTER: That's fine, Heritage
20 Exhibit No. 2.
21
22 Q Danny, I'm handing up what's been marked as
23 Heritage Exhibit No. 2. Are you familiar with
24 that?
25 A Yes, sir.

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 Q Okay. So you mentioned earlier you had land
2 clearing?
3 A So clearing, yeah. So we did the land clearing.
4 Looks like to me we dug the footings. We put in
5 the, you know, temporary power pole. Got the
6 permits. Got all the insurances. You know, all
7 that stuff taken care of. You know, had the
8 footing inspected. You know, had the concrete
9 poured.
10 Q Did the footing pass inspection?
11 A Absolutely.
12 Q And I think you heard Mrs. Price say it's still
13 there today and they've actually built something
14 on it.
15 A Yeah. That's convenient.
16 Q Do you have a value -- do you have any idea what
17 the value for that footing would be?
18 A Well, in this, I think -- right here we're looking
19 at -- the guy's name that did the footing was
20 Norwood Wade. Hold on, I'll find it. Yeah.
21 Q Sort of towards the back.
22 A Sure. So the total price for the footing, the
23 original footing, $5341 and it looks like 24
24 cents. So, you know, I mean, you could get -- you
25 could break that down by linear foot and then find

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 MR. HUBBARD: Your Honor, I'd ask that this
2 document be entered into evidence as Heritage
3 Exhibit No. 2.
4 THE COURT: Any objection?
5 MR. JACKSON: No objection.
6 MR. FERRARA: No objection, Your Honor.
7 THE COURT: Entered without objection.
8
9 (Whereupon, Defendant Heritage's Exhibit
10 No. 2, Transaction Document, was
11 received into evidence.)
12
13 Q Mrs. Price testified earlier today that you sort
14 of took them to Lot 20. Is that true? You wanted
15 them to buy Lot 20. Did you direct them to Lot
16 20?
17 A No. I mean, it's probably -- I assume this is
18 probably how it went down. They came in, said,
19 hey, we're looking for land. Okay, let me see
20 what's been sold, what's not been sold. This is
21 what's available. What do you want to look at?
22 Q She also said you talked about amenities. Did you
23 offer amenities to them?
24 A I offered amenities to nobody. And I'll tell you
25 where that comes from if I could.

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 love to share it with you to the point where if we
2 have a swimming pool and your kid throws a chair
3 in the pool, then we're gonna kick him out. And I
4 told that story over and over and over to
5 different people. I never -- if you look at the
6 covenants that you guys figured out that I
7 prepared when the lawyer gave them to me, there is
8 nothing in there, nothing, about a swimming pool,
9 about anything else. It's cut and dry. Nothing
10 was ever promised to anybody.
11 Q Okay. Do any of the residents use any part of the
12 boys ranch?
13 A All the time. All the time.
14 Q What sorts of things --
15 A People are riding four-wheelers there. There's
16 people fishing in the lake all the time. There's
17 people with the horses. We have 30 acres of
18 fences pastures. We tried, you know, having horse
19 boarders there. You saw the drama yesterday from
20 one horse person. We had 18 of those people. We
21 stopped that. And now we give our -- we have our
22 facility that we for nothing -- because God gave
23 it to us, we're giving it back. We gave it to
24 Hope Acres who has horse rescue. So we have 25
25 rescued horses out there. Except for one horse,

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 permit -- when I went to pick up the permit, that
2 wasn't -- that wasn't --
3 Q That wasn't a request --
4 A That wasn't it. I mean, I got the building
5 permit, I started working. You know, I talked to
6 Berkeley County and I talked to DHEC about this
7 stuff. You know, there's multiple developments in
8 places that have started and done this without the
9 proper authority, putting their stamp on it. And
10 they continue to run and, you know, it's no
11 problem. But we got pegged and then we got really
12 pegged because she kept prying and prying and
13 prying and sending letters and digging, digging,
14 digging. And anything that was out there, you
15 know, was gonna stop.
16 Q What did you have an intention to mislead anybody?
17 A No. No. My intention was to build them a really
18 nice house.
19 Q Okay.
20
21 MR. HUBBARD: Just a second, please.
22 Q I guess we should talk a little bit about your
23 relationship once you got going on this -- how did
24 the relationship go with the Prices once you
25 started -- once the contract was signed? How did

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 now.
2 MR. HUBBARD: Okay. Thank you, Judge.
3
4 BY MR. HUBBARD (Continuing):
5 Q Danny --
6 A It didn't start that way. It started out, you
7 know, I'm gonna do what I can do for these folks.
8 I was supposed to get some money at the beginning.
9 I didn't get any money. And I kept on doing my
10 job.
11 Q Did you do some drawings for them?
12 A Did drawings. Did preliminary drawings. Did
13 drawings. Did modifications to drawings. Was
14 doing drawings and changing drawings, you know, a
15 month after the closing.
16 Q Did that have any -- did those changes reflect any
17 sort of upcharges to the contract price?
18 A Well, I mean, they're addressed in her wanting,
19 you know, for the extension of time having
20 interest payments or whatever. But, you know, at
21 the beginning --
22 Q Let me ask you this: When you had contract, they
23 had an idea about you could build them a house for
24 X amount of dollars, correct?
25 A Well, no. They came in my office, what can you

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 A Oh, it's in the exhibit that's attached. Anything
2 over that amount they have to cover. So it looks
3 like to me that, you know, I didn't want to spend
4 any more money. She had no skin in the game. No
5 skin in the game whatsoever. It was all me. And
6 so I did say I'm not working anymore unless you
7 pay me. I absolutely said that because she wasn't
8 going to pay me. She wanted me to build the next
9 floor system. To order that floor system was
10 $55,000 more. And she did -- additionally, the
11 Prices asked me for the appliances and things that
12 they bought. They wanted to take those out of my
13 first draw. I didn't tell them to buy the
14 appliances ahead of time. They wanted the
15 elaborate driveway. They wanted me to eat that
16 out of the first draw. I needed money to pay me
17 back for the first draw. So, no, I didn't want to
18 work for them anymore. It became very toxic. You
19 know, I consulted with another contractor. And
20 the contractor said, you know, I would --
21
22 MR. JACKSON: Objection to what another
23 contractor said.
24 THE COURT: We'll strike that.
25 THE WITNESS: Sorry. I'm sorry.

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 A This is her handwriting on here. She marked this
2 up.
3 Q Okay.
4 A Just saying. In estimate, she dated 13
5 September 2003 as attached to this contact that
6 gives a cost estimate -- estimate for the work to
7 be done. The owner assumes responsibility for any
8 cost exceeding that cost in each description. The
9 only exception to be overhead job management which
10 will not exceed the amount of 6900 and 9354
11 respectively. So those were capped. But nothing
12 else was capped because it was an in-house design.
13 It was evolving, it was changing.
14 Q Okay. With regard to Eagle Harbor and Eagle
15 Harbor boys home and the subdivision around it,
16 have done any other subdivisions or developments
17 or anything like that?
18 A No. No.
19 Q Have any of your other folks?
20 A No. You know, it was a group of people that said,
21 hey, let set out to do something good. And how
22 can we do that? And like I said yesterday, it was
23 something that could be duplicated, you know,
24 social entrepreneurship, and we did it. And we
25 hired the right people. Maybe some of the people

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 yesterday that we took our money and we put it
2 into the children's home.
3 Q But this doesn't say half the net profit to Eagle
4 Harbor Children's Home, does it?
5 A No, it doesn't. It was my option, my choice to
6 do. Just like the --
7 Q But the answer to my question is it only says
8 Danny and Liz Gilbert, correct?
9 A Sure.
10 Q Okay. Now, let's talk about these DHEC letters
11 that Mr. Ferrara said were routine. I know I had
12 a specific exhibit on those. Here we go. this is
13 a collection of them. So I'm gonna ask -- this
14 may make it more convenient. So let's start with
15 the one in August of 2001.
16 A Sure.
17 Q Wouldn't it be fair to say as earlier as that time
18 you were advised by DHEC that your proposed site
19 for platted for the boys home, et cetera, had poor
20 soils for phase two?
21 A Yeah, absolutely.
22 Q Okay. So you knew it was marginal soils?
23 A I did.
24 Q Okay. And also it says here in the last sentence,
25 I visited the property -- and this would be the

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 MR. JACKSON: Your Honor, this is dated
2 October 27, 2005. And you may not have that as
3 part of that unless you have a copy of this entire
4 packet. I think have an extra copy.
5 THE COURT: Yeah. Why don't you share that
6 with me.
7 MR. JACKSON: I'll be glad to, Your Honor.
8 Here's the same packet that he's looking at.
9 THE COURT: Is this already in?
10 MR. JACKSON: Yes. And all these other
11 letters are in at various parts. But this is the
12 business custodian version. And it's a letter
13 dated October 27, 2005. I better keep it
14 together. So let's keep this together.
15 MR. FERRARA: I apologize, Derrick. What
16 number is that?
17 MR. JACKSON: This is the Plaintiffs' Exhibit
18 No. 42 and the compilation business records.
19
20 Q And let's just look at this letter together.
21 A Sure.
22 Q And it's a notice of violation.
23
24 THE COURT: Which date is that?
25 MR. JACKSON: This is the last -- October 27,

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 Q Sure. Sure. Take a look.
2 A Yeah. I see this letter.
3 Q Okay. And attached to that --
4 A What's the date on that?
5 Q It's the same date. They're all dated the same
6 date.
7 A The first one was 2001?
8 Q No. They're all dated -- oh, the first DHEC
9 letter. Right.
10 A Sure.
11
12 MR. FERRARA: Your Honor, respectively, these
13 documents are already in evidence. And I think
14 that Mr. Gilbert has already testified that he's
15 not aware of the contents of those documents. And
16 I would think that those documents being in
17 evidence speak for themselves.
18 THE COURT: I'll allow him to ask questions
19 about it. It's cross-examination.
20
21 Q Okay. And I would -- did you have a chance -- did
22 you review those findings of fact?
23 A Yeah. I see them.
24 Q Okay. So while you were cutting these roads you
25 were also fillig in wetlands?

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 Q Okay.
2 A I don't dispute that.
3 Q All right. I think Mr. Hubbard already asked you
4 about getting a permit. And I think you said,
5 well, I just went there and got one. But wasn't
6 the permit revoked?
7 A For what?
8 Q Your building permit. I should have clarified.
9 I'm sorry. Your building permit. The permit that
10 you had that the Prices hire you --
11 A Yeah. We got a building permit and then it got
12 revoked. Absolutely.
13 Q And why did it get revoked?
14 A My understanding is because it didn't have a DHEC
15 permit.
16 Q Okay. And who -- and whose responsibility in the
17 contract documents is it to get all required
18 permits?
19 A For a house?
20 Q Yeah.
21 A The builder.
22 Q Okay. And you were the builder, were you not?
23 A Yeah. Absolutely.
24 Q So it was your responsibility to get the septic
25 tank permit and the building permit, right?

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 is that your name?
2 A Danny Gilbert is my name, yeah.
3 Q Okay. So it doesn't say Heritage Classic Homes.
4 It doesn't say -- it says Danny Gilbert.
5 A Heritage Classic Homes had nothing to do with the
6 development at all.
7 Q Okay. All right. Now, publish for the Court
8 items 10 through 13 in this complaint. Now, you
9 had a chance to review the complaint, I assume,
10 and discussed with your attorney?
11 A No.
12 Q So you just told your attorney do whatever?
13 A No. I didn't tell my attorney just do whatever.
14 Q So you disagree what your attorney wrote?
15 A Wrote where?
16 Q Look at items 10 through 13 and see.
17 A Are you talking about this attorney or this
18 attorney over here?
19 Q I'm talking about this complaint.
20 A Well, you got to specify.
21 Q I just did.
22 A You want me to look at just 9 through 13?
23 Q Ten through 13, please.
24 A (Witness complies.) Okay.
25 Q Okay. You agree with those statements?

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 A You would have to break it down. You know --
2 Q Well, let me ask you this --
3
4 MR. FERRARA: Respectfully, Your Honor, this
5 bit of questioning is I don't think relevant for
6 this action. And that -- I don't believe that
7 complaint --
8 MR. JACKSON: Your Honor, we pled a violation
9 of breach fiduciary duty for the development of
10 the subdivision. He was one of the developers.
11 His name is on the complaint. This specifically
12 shows that he had knowledge that he violated the
13 wetlands. He didn't do a delineation, he dredged
14 fill, and they were fined for it. I think that's
15 relevant.
16 THE COURT: Is this a complaint regarding
17 property that was affected or part of the
18 development?
19 MR. JACKSON: Absolutely. This is --
20 absolutely. That was what the other letter
21 request for omissions involved.
22 THE WITNESS: It's after the sale.
23 THE COURT: Hang on. Hold on. I'll allow
24 the questions.
25 MR. JACKSON: Your Honor, I'll just offer

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 coming in as the next exhibit, Your Honor?
2 THE COURT: No objection to the copy of --
3 MR. JACKSON: Complaint.
4 THE COURT: -- complaint?
5 MR. HUBBARD: Yes, Your Honor.
6 THE COURT: And how will we number that one?
7 COURT REPORTER: This will be number 45.
8
9 (Whereupon, Plaintiffs' Exhibit No. 45,
10 Complaint, was received into evidence.)
11
12 Q So what did you do with the proceeds? Or how did
13 you divvy up the proceeds? I noticed that the
14 Foxes and the Winns and --
15 A No. It was put into an account at the bank under
16 Eagle Harbor Homeowner's Association, and it was
17 paid to a road contractor who patched the roads on
18 phase two.
19 Q Okay. Fair enough.
20 A Hundred percent.
21 Q All right. Now, were you aware of the requirement
22 to have a plat approved by DHEC before selling
23 lots?
24 A Yeah, I think so. Sure.
25 Q And do you recall when you actually had that plat

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 MR. JACKSON: This is part of this packet,
2 Your Honor, of the public business records
3 exhibit. And this is a May 18, 2004, letter
4 addressed to Mr. Gilbert.
5
6 Q Would this be the final date you had approval of
7 the plans by DHEC for phase two?
8 A I'm not sure. Was this even -- lot 17.
9 Q Okay.
10 A So I'm not sure.
11 Q Okay. You're not sure? Okay. Fair enough. But
12 it include Lot 20, doesn't it?
13 A I believe so.
14 Q Okay. Now, Lot 20 was sold before this plat was
15 approved, was it not? Before you received this
16 final approval?
17 A Let me see the date. I don't know when the lot
18 was sold.
19 Q You don't know when you sold the lot to the Prices
20 or enter into that agreement? I'll be glad to
21 show it to you.
22 A No, you can just give me --
23 Q Okay. Sure. Sure.
24 A And I'll believe you.
25 Q Okay.

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 Q Why did you need to get an encroachment permit?
2 A There had to be -- the way I understand it is that
3 the four lots that were pumping across the street
4 on the other side of Leisure had to go under
5 Leisure and had to be in a sleeve, a pipe sleeve.
6 Q Okay.
7 A And so you had put that pipe underneath the
8 ground, underneath the road.
9 Q Okay. And whose responsibility is it to secure
10 that type of permit?
11 A The engineer.
12 Q Okay. And so as developer, you have no
13 responsibility to secure permits for anything in
14 the neighborhood?
15 A Well, I would think as a developer you delegate
16 all those things and you have people do those
17 things. Apparently, this guy didn't do it.
18 Q Okay. And it was your job t make sure he got it
19 done?
20 A It was my job to make sure it got done when I was
21 aware of it, absolutely.
22 Q Okay. And you would concede that caused a delay
23 in the Prices being able to move forward?
24 A Would I concede? Yeah. No doubt.
25 Q Okay. Now, let me ask you about the entrance to

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 Mrs. Price contacted SCDOT. And then this came up
2 with, hey, we don't cannot have an official
3 permit. So I filled out this encroachment permit
4 so we could -- so we could, you know, satisfy that
5 particular need.
6 Q Well, you keep on blaming Mrs. Price for these
7 problems. But aren't they regulations that you
8 have to abide by as a subdivision?
9 A I don't know if they are.
10 Q You don't know. You developed a subdivision, you
11 don't know the regulations?
12 A Again, I just said, we delegated people to do the
13 things that they were supposed to do. That's what
14 we did. She delegated me to build her house. She
15 didn't -- you know, it's the same thing.
16 Q So did you ever do the things that DOT required
17 you to do?
18 A We brought pipe up there to install it. And then
19 we pulled back on the installation because were
20 having some issues with the pavement up there, and
21 we decided to wait until we resurfaced it.
22 Q Okay. Let me show you a copy of the report. I
23 believe if you will check, this corresponds --
24 it's dated -- it says road number and it matches
25 up to your permit number. Can you publish to the

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 MR. FERRARA: No objection, Your Honor.
2 THE COURT: Without objection. How are we
3 numbering these?
4 COURT REPORTER: The application for
5 encroachment will be 46, and the SCDOT document
6 will be 47, Plaintiffs' 47.
7 THE COURT: Okay.
8
9 (Whereupon, Plaintiffs' Exhibit No. 46,
10 Application for Encroachment Permit, was
11 received into evidence.)
12
13 (Whereupon, Plaintiffs' Exhibit No. 47,
14 Encroachment Permit Approval Form, was
15 received into evidence.)
16
17 Q Are you familiar with the Berkeley County
18 regulations as they relate to private streets?
19 A No. Not necessarily, no.
20 Q Okay. Who did you hire then to advise you about
21 the private streets?
22 A About the private streets?
23 Q Right.
24 A Stantec, Cornerstone, and Davis and Floyd
25 possibly.

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 A Sure.
2 Q And that's the requirement to have some kind of
3 maintenance agreement for the roads.
4 A Maintenance agreement with who?
5 Q In order to do a private street, you have to h ave
6 a maintenance system or agreement in place. I
7 would represent to you in subparagraph B(3).
8 A Yeah. Something like the homeowner's association.
9 Q Yeah. That's what --
10 A Sure.
11 Q You anticipated my question. So it was your
12 intent that the homeowner's association served as
13 the maintenance facility for the road?
14 A Yeah. And there was also -- at the closing for
15 each lot, there was X amount of dollars that were
16 supposed to go towards the original maintenance
17 escrow account.
18 Q Okay. And that was the other part I was going to
19 ask you about. You're supposed to have a thousand
20 dollars for each lot, right?
21 A I don't how much it was. But I know that the
22 attorney, the closing attorney should have taken
23 that out.
24 Q Okay. I represent to you that's also in B(3).
25 A Oh, that's fine. I mean, I agree with you on

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 Q Okay. And I believe the declarant -- and I don't
2 have -- I won't bother to try and track them
3 down -- but I believe the covenants list the
4 declarant as being Eagle Harbor, Inc.?
5 A Yes, sir.
6 Q Okay. And I believe it also refers to the
7 declarant as owning certain real property attached
8 in the plat. And the plat describes phase two of
9 Eagle Harbor. Is that correct?
10 A I don't know.
11 Q Well, I'll represent to you that's what the
12 evidence shows. And did Eagle Harbor, Inc., ever
13 own any part of phase two land?
14 A Yes.
15 Q Okay. What part of phase two land did it own?
16 A The two pits that were across the street from --
17 Q Okay. So we have two pits that might be subject
18 to the covenants. What about Lot 20?
19
20 MR. FERRARA: Objection, Your Honor. Move to
21 strike that last comment. It wasn't a question.
22 THE COURT: What about 20?
23 MR. JACKSON: I'll withdraw the comment.
24
25 Q Lot 20, did Eagle Harbor, Inc., ever own Lot 20 or

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 MR. FERRARA: Object to the form of the
2 question, Your Honor. Compound.
3
4 Q Okay. Have you ever had --
5
6 MR. JACKSON: I'm sorry. Please, Your Honor
7 it.
8 THE COURT: Go ahead and break it down.
9 MR. JACKSON: I will break it down.
10
11 Q Have you ever had Berkeley County code enforcement
12 cite you for a violation for not obtaining a
13 building permit?
14 A Not that I'm aware of.
15 Q Let me show you these documents and ask if you can
16 look at these and see if you recognize these at
17 all.
18 A Sure. (Witness complies.) It looks like it's for
19 the second house at the boys home.
20 Q Okay. May I have the exhibits back?
21 A Sure. Can I --
22 Q Sure. Please, take your time. Make sure you're
23 familiar with it.
24 A Well, it says it's on hold for planning,
25 engineering, and legal. I don't know why.

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 building.
2 Q Okay. So you weren't building the barn?
3 A No. It was JW Aluminum was building the barn.
4 Q Okay. But as a developer and having a barn built
5 on your land, you weren't responsible for trying
6 to ensure that it was properly done?
7 A Again, I did. I ensured it. I went to the County
8 and said hey, I've got a volunteer group that's
9 gonna build us a barn, what do we need to do? And
10 you got different stories from different people.
11 Originally, they said it's fine.
12 Q Okay. What about the second one? It says, "Terry
13 will give Mr. Gilbert a call to pick up the plans.
14 Permit application has been denied. Requested
15 information has never been submitted and the
16 application is six months old."
17 A Yeah. That was probably for electrical for --
18 what is it for? It's for something we never did.
19 That's why it's not turned on. I mean, you're
20 twisting this around.
21 Q Well, doesn't it show they were requesting
22 information that was never supplied?
23 A On a permit that was never picked up because the
24 work was never done.
25 Q Okay. So you applied --

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 Carolina Secretary of State?
2 A Yes.
3 Q And they require you to file certain audits and
4 reporting information?
5 A Yeah.
6 Q Okay. And that purports to be a notice of a
7 violation from them. Do you recall receiving
8 that?
9
10 MR. FERRARA: Your Honor, at this time I
11 would just object to referencing this document as
12 being properly authenticated. And I'm not sure of
13 the relevance.
14 MR. JACKSON: Well, I just asked him does he
15 recall the document. It's in the process of being
16 authenticated. It's addressed, I believe, to him.
17
18 A Yeah. I mean, it looks familiar. I mean, it
19 looks like something I could have read.
20 Q Did you file reports with the South Carolina
21 Secretary of State?
22 A Yeah. Yeah, we do.
23 Q Okay. And what's the purpose of those reports?
24 A To make sure we're a good charity.
25 Q Okay. And make sure they have up-to-date

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 THE COURT: How is that relevant to what
2 we're doing?
3 MR. JACKSON: Because Carl's already argued
4 that Heritage Classic has nothing to do with this
5 development. Yes, he's blending the two. He's
6 using Heritage Classic Homes for the office, for
7 the sell of Eagle Harbor stuff. He's building
8 homes out there. And this next exhibit, Your
9 Honor, I would proffer to the Court he has to
10 disclose some of those relationships.
11 THE COURT: So you're saying this letter
12 disclosing relationships which are relevant?
13 MR. JACKSON: Well, yeah. Your Honor, I'm
14 saying that it refers -- some corrections on the
15 document he supposed to file with the Secretary of
16 State. And I believe this next document I have
17 kind of shows what those are.
18 MR. FERRARA: Respectfully, Your Honor,
19 additionally, I would just urge the Court to not
20 allow admission of this document on the additional
21 basis, Your Honor, of hearsay. I do think that,
22 of course, Mr. Gilbert is free to testify about
23 his knowledge of the letter or his knowledge of,
24 you know, of those relationships.
25 THE COURT: I think he already testified that

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 Q And it's my understanding that that document wants
2 you to disclose certain things about that. Is
3 that correct?
4 A It looks like -- it looks like, you know, you got
5 a report here that says if you're gonna use the
6 truck or, you know, you're gonna use this vehicle,
7 you need, you know, show that you're using it. I
8 mean, that's what it looks like to me.
9 Q Okay.
10
11 MR. JACKSON: Here's the other document I was
12 referring to. That's part of the tax return
13 supplied -- Eagle Harbor. I think it's probably
14 an attachment to this. I think that addresses the
15 concerns that were raised.
16 THE COURT: I'm not sure I'm following the
17 connection. I see here the only connection would
18 be as to whether there's a mobile office that
19 Heritage Classic Homes used --
20 MR. JACKSON: Well, Your Honor, I believe --
21 THE COURT: Is that in dispute?
22 MR. JACKSON: Well, if I may, Your Honor,
23 approach. This is the next exhibit that I would
24 proffer. That's the correction there.
25 MR. FERRARA: Your Honor, I understand this

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 MR. JACKSON: Thank you, Your Honor.
2
3 BY MR. JACKSON (Continuing):
4 Q So you said you were the Executive Director of
5 Eagle Harbor?
6 A Yes, sir.
7 Q Does your wife has a role in the organization as
8 well?
9 A She's the cofounder. She's a director.
10 Q Is she also the assistant director?
11 A Yeah. I guess that's her title. I'm not certain.
12 Q And business manager?
13 A Yeah. That's correct.
14 Q Okay. What about Angie Johnson?
15 A She's a social worker.
16 Q Doe she help you with Heritage Classic Homes as
17 well?
18 A Angie has -- they have a seal. They can -- but,
19 yeah, but she's helped me with some documents.
20 Absolutely, yeah. On her time, not on the
21 company's time.
22 Q Do you know Troy Winn?
23
24 MR. HUBBARD: Can I see it?
25 MR. JACKSON: I'm sorry, Carl. I'm sorry.

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 THE WITNESS: It says that. I didn't say --
2 MR. JACKSON: Okay. Sure. Okay.
3 THE COURT: All right. So what document do
4 you have and what are you doing with it?
5 MR. JACKSON: Okay. This is a letter from
6 Troy Winn who was one of the partners he just
7 testify to. It raises some concerns that he has
8 about commingling funds being an executive
9 director in a profit business.
10 THE COURT: Yeah. I haven't heard the
11 authentication, I haven't heard that he understood
12 what was where or that it was to him. Maybe
13 mistaken, but I don't think you've was gotten
14 there yet.
15 MR. JACKSON: No, no. I'm not going to offer
16 it as an exhibit. I'm asking him about the facts
17 alleged in there.
18 THE COURT: Hold on to it then.
19 MR. JACKSON: Okay.
20
21 A Well, I'm not admitting to the facts.
22 Q Well, I'm not saying -- I'm just saying . . .
23
24 MR. JACKSON: I'll skip it, Your Honor.
25

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 did you -- you said before -- I think your
2 testimony was an agreement to -- did some attorney
3 gave that to you? That was the agreement to buy
4 and sell, just to save time?
5 A Yeah, I believe it was Jeff.
6 Q Okay. And who is Jeff Spell?
7 A Jeff Spell is a good friend. We had high school
8 sweethearts together. He was from James Island.
9 I was from Goose Creek.
10 Q Okay.
11 A Both dated girls on James Island.
12 Q All right. And was he involved in the
13 development?
14 A To what capacity?
15 Q Well, that's what I'm asking you.
16 A Not that I understand his role.
17 Q Okay. Let me show you this letter. (Brief
18 pause.) While he's looking that up and confirming
19 if he has any objections to it, I noticed on
20 agreement two it had Jeff Spells name preprinted
21 on that contract. You know who did that?
22 A Can you show me what you're talking about?
23 Q Sure.
24 A I might have it up here already. I don't know.
25 Q It would be 2, Plaintiffs' Exhibit No. 2, I think.

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 was the designated attorney for an escrow account
2 for South Carolina Housing Trust Fund. It was a
3 grant.
4 Q Okay.
5 A I think that's it. I'm -- relating to it.
6 Q Okay. So he was holding some funds that you were
7 accessing for the development and paying
8 construction costs.
9 A Yeah. You know, I don't what -- this is probably
10 not about the South Carolina Housing Trust Fund.
11 Obviously, it says Jerry left some money there.
12 And I've got to present something to somebody that
13 that money is for the subdivision. Yeah.
14 Q Okay. So it would be reasonable to assume that he
15 was holding money that was used in the
16 construction of Eagle Harbor subdivision?
17 A It would be reasonable to believe that he's got
18 some escrow money that Jerry gave them because
19 that's what is says.
20 Q Okay. Then when you'd ask for money, you'd ask
21 for a check from Mr. Spell?
22 A I can't recall how the disbursements were made.
23 That was 15 years ago.
24 Q Let's look at that last -- this letter, for
25 example.

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 THE COURT: The letters, are those in as 50?
2 MR. JACKSON: Okay.
3 THE COURT: Were they?
4 COURT REPORTER: Well, no. There was one I
5 marked 49. And then there's a separate one you
6 gave --
7 MR. JACKSON: Yeah. It was construction --
8 COURT REPORTER: It was 49 and 50. So I'll
9 just do this one as 51.
10 THE COURT: Let's make sure what's coming in.
11 MR. JACKSON: Yeah, okay. Sure. This is
12 Exhibit No. 51. And I was going to ask him some
13 questions and get him to identify it firs.
14
15 Q I think my question was did you -- did Jeff Spell
16 ever represent you personally? You said he tried
17 to. Do you remember that letter? Is that your
18 signature?
19 A Yeah. It's my signature, sure. Carbon copy to
20 Jeff Spell, Doug Cotton. Yeah.
21 Q Okay. So you remember writing that letter?
22 A I don't remember writing it, but it's obvious I
23 wrote it.
24 Q Okay. Now, can you publish the first line.
25 A "I received your fax this morning."

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 MR. FERRARA: No objection, Your Honor.
2 MR. JACKSON: -- he signed the letter.
3 MR. HUBBARD: No objection.
4 THE COURT: In without objection.
5
6 (Whereupon, Plaintiffs' Exhibit No. 51,
7 Letter, was received into evidence.)
8
9 Q We're about finished here. So I'll wind it up a
10 little bit. Now, you mentioned before about those
11 appliances. Isn't it true that the Prices bought
12 those appliances and stored them?
13 A We have a 4,000 square-foot storage building.
14 Yeah, and I let them store those in there.
15 Absolutely.
16 Q Okay. But they bought it, right?
17 A Yeah, yeah. Absolutely.
18 Q Okay. Now, I'm trying to find your attorney's --
19 defendant's exhibit that has a list of costs,
20 20-something thousand, whatever it was.
21
22 MR. JACKSON: Carl, do you know where you
23 left your exhibit?
24 MR. HUBBARD: I'm sorry -- I'm sorry?
25 MR. JACKSON: Trying to say where you left

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 building on top of that.
2 Q And you have a dollar figure? Do you know?
3 A Well, I think we discussed a dollar figure.
4 Q Okay.
5 A And then, that's all I know. They could've left
6 the other footings. I'm not sure.
7 Q Okay. Now, did you take out from here the
8 Knight's Redi-Mix expenses?
9 A They're not in there. Why would I take them out?
10 Q I though the copy I saw had some in there.
11 A Well, there's some concrete in there, but that's
12 for the footings. It's not for the slab.
13 Q Okay. So that's not -- so this Knight's Redi-Mix
14 invoices is not for the stuff that was at dispute?
15 A Right.
16 Q Okay. Now, you testified earlier that the Prices
17 didn't pay you. Now, did you recommend that they
18 use National City Mortgage? Did you have any
19 relationship to Patty Zerbst?
20 A Sure, I had a relationship with Patty Zerbst.
21 Q Okay. Did you suggest that they might want to use
22 National City Mortgage?
23 A Probably did. I found them to be real easy to
24 work with.
25 Q Okay. Let's look at that standard form contract.

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 Thank you. What time line are we looking at? How
2 much more you got?
3 MR. FERRARA: Your Honor, we have Mr. Michael
4 Parker whose a witness about the soil in the
5 neighborhood. And I don't anticipate his
6 testimony to be more than about ten minutes or 15
7 minutes tops with direct and cross.
8 THE COURT: All right. I need to be able
9 to -- there's folks in the courthouse here that I
10 don't have control over. I'd be more than happy
11 to stay if y'all were. But I don't have control
12 over everybody else, and they deserve to be able t
13 go home. So if you can wrap them up in ten
14 minutes, otherwise we're gonna have to -- they'll
15 have to figure out what to do to finish it up.
16 Okay?
17 MR. FERRARA: Yes, sir. Yes, sir. At this
18 time we would call Mr. Michael Parker to the
19 stand.
20 THE COURT: And if you think you can't, then
21 we'll sort it out. I don't want to rush you. All
22 right.
23 MR. FERRARA: Okay.
24 THE COURT: All right. Mr. Parker.
25 THE WITNESS: Your Honor.

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 A Danny called me to come out to look at some of the
2 lots that had been turned down by DHEC so they
3 could get the plat approved.
4 Q And let's go back real quick. If you can quickly
5 tell the Court, what is your current employment?
6 A I run Coastal Soil Evaluators.
7 Q And what is Coastal Soil Evaluators?
8 A It's a business to help individuals look for
9 suitable sites on their property for septic
10 systems.
11 Q And prior to running Coastal Soil Evaluators, did
12 you work for South Carolina DHEC?
13 A Yes.
14 Q In Berkeley County?
15 A 1972 until I retired in 1999.
16 Q Okay. That's a long time. So that's --
17 A Twenty-eight years.
18 Q Twenty-eight years. Okay. And so, do you have
19 firsthand knowledge of the soil conditions, sir,
20 of the phase two of Eagle Harbor? And I'll hand
21 you this plat to maybe assist you in making that
22 determination.
23 A Not overall. I mean, the soils on a lot of these
24 lots are terrible. And that's why a lot of them
25 had to be pumped offsite. So we had to go with

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 Close to Leisure Lane if you know where that is.
2 A Yes. A lot of them in there, like I say, you
3 know, we walked that weren't approved. And then
4 we found some sites on some, you know, so we could
5 get them approved. Then we got the health
6 department to come back and reevaluate them to get
7 approved.
8 Q Did you assist Mr. Gilbert and Eagle Harbor in
9 that process?
10 A Yes. We found some sites for some of the houses.
11 Q Do you know if -- or can you assist the Court in
12 opining whether a particular lot can be
13 subdivided?
14 A An existing lot?
15 Q Yes.
16 A It depends on, again, the soil conditions and what
17 we call the seasonal water tables. Each lot has
18 to be so big. And if there's a big enough area
19 where you could subdivide the lot, then you could
20 do so. Back then, it all had to be standard
21 systems. And if not, you know, they had to be,
22 you know, denied. Now you can get into what we
23 call engineered design systems which was started
24 in 2008 where you could -- a lot that was actually
25 denied, you could get the soil scientist and

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 approve it.
2 Q In your experience, sir, once the County approves
3 a plat for subdivision, is the process with DHEC
4 substantially completed with the County before a
5 plat --
6 A Normally, because they have to have DHEC approval
7 before they'll approve them.
8 Q Because the County, in your experience, is looking
9 for some confirmation from DHEC that the plat --
10 that their preliminarily approving is approved?
11 A Right.
12 Q Okay. And in your experience, did you have any
13 familiarity with reviewing plats for subdivision?
14 A Yeah. A lot of them I do from scratch.
15 Q Okay. All right. And you assisted Mr. Gilbert
16 and Eagle Harbor between 2000 and 2004? I
17 apologize. It's been a long time.
18 A I don't know the dates. But yes, I did a lot -- I
19 don't know when I started out there, but I spent
20 many hours out there hunting and pecking on lots
21 to find good sites.
22 Q Well, this might help. Was that before the roads
23 were in or after?
24 A I think one of the roads was possibly in partway
25 and in part with the other. Because I know we

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 MR. HUBBARD: No, Your Honor. We're done.
2 THE COURT: Anything in reply from the
3 Plaintiff?
4 MR. JACKSON: No, Your Honor.
5 THE COURT: Okay. So I'll take it that we
6 are complete for today and as to this portion of
7 the case. Is that right?
8 MR. JACKSON: I think so.
9 THE COURT: Okay. Good job. All right. So
10 what I'm going to do is ask y'all to double check
11 with the court reporter to make sure that we've
12 got all those in there properly identified and
13 marked. I think I've got copies of everything
14 already. If I need copies, I may have to rely on
15 hers' as well. But I just wanted to make sure
16 y'all get y'all's straight today before we leave.
17 Okay.
18 MR. JACKSON: Yes, sir.
19 THE COURT: And then what I'm going to do is
20 I'm going to review what I've got and then make
21 sure that I've got everything as far as the
22 records and so forth. If I need any follow up,
23 I'll get with y'all. In all likelihood, I'll
24 solicit a draft order from one or all or an in
25 part depending on what I eventually conclude.

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

1 putting this together. There's a lot of
2 information, a lot of documents. I appreciate
3 y'all's cooperation in moving it forward and being
4 such good advocates for your clients. Thank
5 y'all.
6 MR. JACKSON: Thank you, Judge.
7 - - - - -
8 (Whereupon, there being nothing further,
9 the trial concluded on Friday, May 4,
10 2018, 4:54 p.m.)
11
12
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25

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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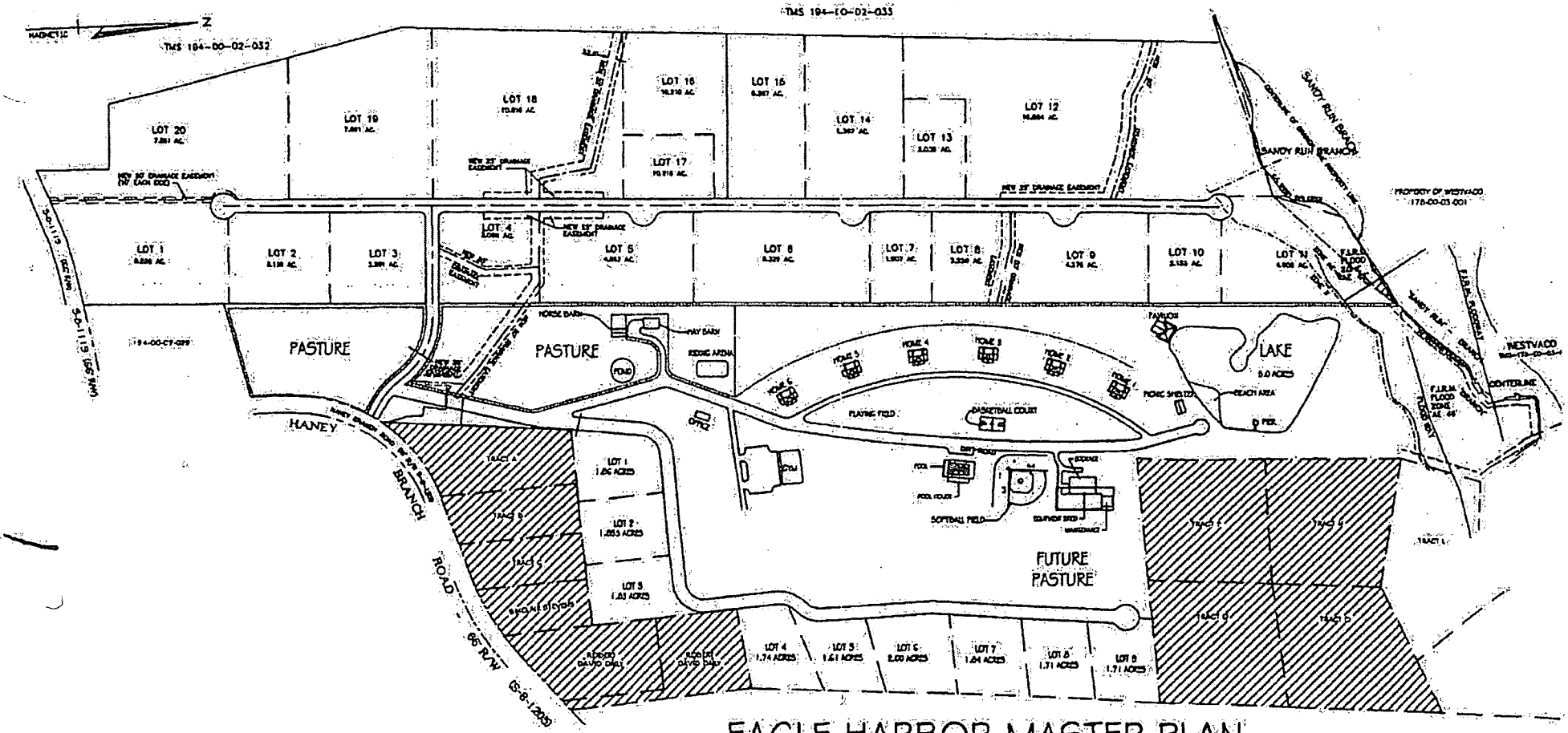


EAGLE HARBOR MASTER PLAN

1" = 200'-0"

TMS-178-00-03-051

EXHIBIT 1

WITNESS

DATE: 5/3/2018

REPORTER: H. LANDRY

00882

AGREEMENT TO BUY AND SELL
(GENERAL)

1. **PARTIES** This legally binding contract, entered into on this 15th 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 #194-00-02—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.

   P EXHIBIT 2
   WITNESS
   DATE: 5/3/2018
   REPORTER: H. LANDRY

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 _____ Seller For Belinda Fox

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:

1 of 2

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of the property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, escrow deposits and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee.

16. **PRORATIONS**: Property taxes and rent, as well as other expenses and in come of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in the month of closing. The amount of property taxes shall be estimated by closing attorney or agent, using best information available. Prorations at closing shall be final.

17. **RISK OF LOSS OR DAMAGE** to property by fire or other casualty until day of closing shall be the responsibility of the Seller. In such case, Seller shall have the option of restoring property to its present condition within 30 days after herein specified closing date, with date of closing and possession to be extended accordingly. If property is not restored within said period, either party shall have the right to terminate this contract by written notice to the other in such case both parties shall execute a written release of the other from this contract.

18. **DEFAULT** Buyer's or Seller's failure to perform any covenant of this contract constitutes default and subject to the agreement, if any, to resolve disputes through mediation as provided herein, the other may elect to seek any remedy provided by law or terminate this contract with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If termination is because of a default by Buyer, Seller shall have the option of pursuing any remedy provided by law, and, in addition, the Escrow Agent shall retain half the balance of the earnest money deposit (not to exceed the amount of commission due for this sale) and divide same equally with the cooperating firm. The remainder shall be paid to the Seller. If either Buyer or Seller refuses to execute release, Escrow Agent will hold earnest money in trust until said releases are executed or until the court dictates legal disposition, or the statute of limitations terminates the parties' cause for action.

19. **ACTUAL COSTS INCURRED shall include all costs and expenses incurred or obligated for by Buyer, or Seller in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, and title examination.**

20. **PERSONS BOUND** The benefits and obligations of this contract shall insure and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular shall included plural, and use of any gender shall include all.

21. **Contingent upon drain field site (soil test).**

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; or (d) any matter which is within the jurisdiction of a probate or family court. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

This is legally binding contract. Both Buyer and Seller should seek further assistance if the contents are not understood. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

Both Buyer and Seller acknowledge that they have read items #1-21 of this contract
FHA or VA Financing requires separate addendum

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Witness: [signature]	Date: 9/13/03	Buyer: [signature]	Date: 9/13/03
Witness: [signature]	Date: 9/13/03	Buyer: [signature]	Date: 9/13/03
Witness: [signature]	Date: 9/13/03	Seller: [signature] for Belinda Fox	Date: 9/13/03
Witness: _____	Date: _____	Seller: _____	Date: _____

Upon execution of this document Buyer will be consulting an attorney, as well as Jeff Spell, concerning "correctness" and duplication of items listed above.
If Buyer elects VA financing, the addendum indicated above will be provided as required.

2 of 2

EXHIBIT A-1
May 2007

OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

SETTLEMENT STATEMENT

B. TYPE OF LOAN: 1. FHA 2. FmHA 3. CONV. UNINS. 4. VA 5. CONV. INS.

5. FILE NUMBER: PRICE 03-11-021

7. LOAN NUMBER: 0002694089

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 "(POC)" 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:
Ronald E. Price and
Diana R.B. Price
Lot 20, Phase II, Eagle Harbor
SSN: 257-42-4993 459-84-5763

E. NAME AND ADDRESS OF SELLER:
Belinda Fox
SSN: 257-25-6561

F. NAME AND ADDRESS OF LENDER:
National City Mortgage Company
7400 CARMEL EXECUTIVE PARK STE 100
CHARLOTTE, NC 28226

G. PROPERTY LOCATION:
Lot 20, Phase II, Eagle Harbor
Berkeley County County
TMS # 194-00-02-031
Lot 20, Phase II
Eagle Harbor

H. SETTLEMENT AGENT: 88-2187500
Lowcountry Title Services, LLC

PLACE OF SETTLEMENT:
2183 Ashley Phosphate Road, Suite A
Charleston, SC 29406

I. SETTLEMENT DATE:
November 26, 2003

J. SUMMARY OF BORROWER'S TRANSACTION

100. GROSS AMOUNT DUE FROM BORROWER:	90,400.00
101. Contract Sales Price	
102. Personal Property	7,144.00
103. Settlement Charges to Borrower (Line 1400)	168,175.00
104. Construction undisbursed	
105.	
Adjustments For Items Paid By Seller in advance	
106. City/Town Taxes to	
107. County Taxes 11/26/03 to 01/01/04	96.49
108. Assessments to	
109.	
110.	
111.	
112.	
120. GROSS AMOUNT DUE FROM BORROWER	262,814.49
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:	
201. Deposit or earnest money	2,000.00
202. Principal Amount of New Loan(s)	261,700.00
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments For Items Unpaid By Seller	
210. City/Town Taxes to	
211. County Taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. TOTAL PAID BY/FOR BORROWER	263,700.00
300. CASH AT SETTLEMENT FROM/TO BORROWER:	
301. Gross Amount Due From Borrower (Line 120)	262,814.49
302. Less Amount Paid By/For Borrower (Line 220)	263,700.00
303. CASH (X FROM) (TO) BORROWER	10,114.49

K. SUMMARY OF SELLER'S TRANSACTION

400. GROSS AMOUNT DUE TO SELLER:	90,400.00
401. Contract Sales Price	
402. Personal Property	
403.	
404.	
405.	
Adjustments For Items Paid By Seller in advance	
406. City/Town Taxes to	
407. County Taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. GROSS AMOUNT DUE TO SELLER	90,400.00
500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
501. Excess Deposit (See instructions)	
502. Settlement Charges to Seller (Line 1400)	44,807.02
503. Existing loan(s) taken subject to	
504. Payoff of first Mortgage	
505. Payoff of second Mortgage	2,000.00
506. Deposit returned by seller	
507.	
508.	
509.	
Adjustments For Items Unpaid By Seller	
510. City/Town Taxes to	
511. County Taxes 01/01/03 to 11/26/03 to	572.65
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. TOTAL REDUCTION AMOUNT DUE SELLER	47,379.67
600. CASH AT SETTLEMENT TO/FROM SELLER:	
601. Gross Amount Due To Seller (Line 420)	90,400.00
602. Less Reductions Due Seller (Line 520)	47,379.67
603. CASH (X TO) (FROM) SELLER	43,020.33

The undersigned hereby acknowledge receipt of a completed 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
H.C. Attorney in fact.

Seller: Belinda Fox
Belinda Fox

EXHIBIT 3
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

L. SETTLEMENT CHARGES

		PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price $ @ %			
Division of Commission (line 700) as Follows:			
701. $ to			
702. $ to			
703. Commission Paid at Settlement			
704. to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN			
801. Loan Origination Fee 1.0000 %	to National City Mortgage Company	2,617.00	
802. Loan Discount %	to	300.00	
803. Appraisal Fee	to Robert Porter	18.00	
804. Credit Report	to CBC Mortgage Service		
805. Lender's Inspection Fee	to	600.00	
806. Lender Inspection Fee	to National City Mortgage Company	1,308.50	
807. Court Fee	to National City Mortgage Company	250.00	
808. Modification Fee	to National City Mortgage Company	17.00	
809. FLOOD CERT FEE	to FIRST AMERICAN FLOOD DATA	77.50	
810. TAX SERVICE FEE	to National City Mortgage Company	215.00	
811. UNDERWRITING Fee	to National City Mortgage Company		
812. YIELD SPREAD PD BY LENDER TO			
813. BROKER FEE			
814. BROKER PROCESSING FEE			
815. BROKER COURIER FEE			
816.			
817.		250.00	
818. Underground Utilities fee	to Belinda Fox		41,030.32
819. Consulting Fee	to Heritage Classic Homes		3,000.00
820. Settlement fee GB Fee/Net	to Ops One Cos		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE			
901. Interest From 11/25/03 to 12/01/03 @ $ /day (6 days %)			
902. Mortgage Insurance Premium for months to			
903. Hazard Insurance Premium for 1.0 years to			
904.			
905.			
1000. RESERVES DEPOSITED WITH LENDER			
1001. Hazard Insurance	months @ $ per month		
1002. Mortgage Insurance	months @ $ 176.11 per month		
1003. City/Town Taxes	months @ $ per month		
1004. County Taxes	months @ $ per month		
1005. Assessments	months @ $ per month		
1006.	months @ $ per month		
1007.	months @ $ per month	0.00	
1008. AGGREGATE ADJUSTMENT	months @ $ per month		
1100. TITLE CHARGES			
1101. Settlement or Closing Fee	to Lowcountry Title Services, LLC	300.00	
1102. Abstract or Title Search	to Lowcountry Title Services, LLC	175.00	
1103. Title Examination	to		
1104. Title Insurance Binder	to Lowcountry Title Services, LLC	75.00	
1105. Document Preparation	to Lowcountry Title Services, LLC POA/DEED PREP	150.00	150.00
1106. Wire Fee/EMAIL	to Lowcountry Title Services, LLC	40.00	
1107. Attorney's Fees	to		
(includes above item numbers)			
1108. Title Insurance	to INVESTORS TITLE INSURANCE COMPANY	858.50	
(includes above item numbers)			
1109. Lender's Coverage	$ 281,700.00 858.50		
1110. Owner's Coverage	$ 90,200.00 50.00		
1111.			
1112.			
1113.			
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES			
1201. Recording Fees: Deed $ 10.00; Mortgage $ 30.00; Releases $		40.00	
1202. City/County Tax/Stamps: Deed 100.10; Mortgage			100.10
1203. State Tax/Stamps: Deed Revenue Stamps 250.00; Mortgage			250.00
1204. Power of Attorney Recording to Berkeley County County RMD		15.00	
1205. Assignment Recording Fee			
1300. ADDITIONAL SETTLEMENT CHARGES			
1301. Survey to			
1302. Pest Inspection to			
1303. Courier Fee to Lowcountry Title Services, LLC PKG/POA OVERNIGHTS		70.00	
1304.			
1305.		7,144.00	44,897.02
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			

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

Lowcountry Title Services, LLC
Settlement Agent

Certified to be a true copy.

(PRICE 03-11-021 / PRICE 03-11-021 - 1) 1

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

PRICE 03-11-021

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY COUNTY)

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

4

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in any way incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantees, Ronald E. Price and Dana RB Price, their heirs and assigns forever.

And the Grantor does hereby bind them and their heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Ronald E. Price and Dana RB Price, their heirs and assigns, against them and their heirs, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set her Hand and Seal this 25 day of November, 2003 in the year of our Lord two thousand three and in the two hundred and twenty-seventh year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Nancy M. Allen
Witness #1

Peggy S. Hagood
Witness #2

Belinda Fox (Seal)
Belinda Fox

PRICE 03-11-021

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CHARLESTON)

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.

Nancy M. Allen
Witness #1

Peggy S. Hagan (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11-7-2012

PRICE 03-11-021
STATE OF SOUTH CAROLINA)
) *AFFIDAVIT*

Date of Transfer of Title
(Closing Date) November _ , 2003

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a
STIPULATED SUM

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN A TTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.
General Conditions of the Contract for Construction is adopted in this document by reference. Do not use with other general conditions unless this document is modified."

AGREEMENT

made as of the 13th day of September in the year of Two Thousand and Three

BETWEEN the Owner:
(Name and address)

Ronald E. and Diana R.B. Price
P.O. Box 285
New Memphis, Il 62266

and the Contractor:
(Name and address)

Danny Gilbert
Heritage Classic Homes
1044 Eagle Harbor Lane
Summerville, SC 29483

The Project is:
(Name and location)

Price Residence
Lot 20, Eagle Harbor Subdivision Phase 2
Summerville, SC, 29483

The Architect is:
(Name and address)

NA

The Owner and Contractor agree as set forth below.

P EXHIBIT 5
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

148

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 4
CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Dollars ($ 185,175), subject to additions and deductions as provided in the Contract Documents.

Atch 1

An estimate sheet dated 13 September, 2003 is attached to this contract that gives a cost estimate of work to be done. The Owner assumes responsibility for any cost exceeding that cost in each description.

The only exception to be: Overhead and Job Management, which will not exceed the amount of $6907 and $9354 respectively.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of such other alternates showing the amount for each and the date until which that amount is valid.)

4.3 Unit prices, if any, are as follows:

388

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 he 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.)

4/08 8

ARTICLE 6
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall he made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided In Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect or Lender; such final payment shall be made by the Owner not more than 5 days after the issuance of the Architect's or Lenders final Certificate for Payment, or as follows:

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents,
7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)
7.3 Other provisions:

Contractor has provided an allowance of $2500 for all appliances.

Contractor has provided an allowance of $3000 for all driveways and sidewalks.

Contractor has provided an allowance of $600 for all countertops

Contractor has provided an allowance of $1500 for all lighting fixtures.

Contractor offers a one year warranty on all work preformed, with exception to driveways and sidewalks and any damages attributed to weather.

ARTICLE 8
TERMINATION OR SUSPENSION

8.1 The Contract may he terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.
8.2 The Work may he suspended by the Owner as provided in Article 14 of the General Conditions,

5 of 8

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

9.1.5 The Drawings are as follows, and are dated 9-12-03 unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

Note: All construction drawings for the Price Residence will be completed by Contractor

9.1.6 The addenda, if any, are as follows:

Number	Date	Pages

Portions of addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

7588

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.

Ahet 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	CONTRACTOR
(Signature)	(Signature)
Ronald E. Price Dana R Price	Danny Colbert, Pres
(Printed name and title)	(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 o/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

Doug C. Cotton

2078

EXHIBIT F

IMPORTANT BUILDER INFORMATION!!!

DRAW PROCEDURES
CONSTRUCTION/PERM LOANS

Listed below are items that must be presented to the Construction Lending Department when requesting progress draw disbursements. We ask that you pay particular attention to the items required prior to the first and final draws as these items are NOT subject to exception. If you have any questions regarding these procedures, please contact the Construction Lending Department at 1-800-367-9305, ext. 4160 (local #910-4160) immediately.

ALL DRAWS: Before the Construction Lending Department will process a draw request, they will upon each request, make sure the construction loan interest payment is current. If it is not, they will follow-up with the builder/borrower to obtain the payment. The draw will not be processed until the interest payment has been made. Builder's risk insurance should be in effect at all times during construction. The expiration date on the Builder's Risk Insurance Policy will be checked to make sure it has not expired. If it has expired, the draw will be delayed until proof of coverage is received.

Request for a draw should be made by contacting NCM Construction Lending Department at 1-800-367-9305, ext. 4160 (local #910-4160).

All required draw paperwork should be faxed to 937-910-4085.
Original paperwork should then be sent to: National City Mortgage Co.
Attention: Construction Lending Dept.
3232 Newmark Drive
Miamisburg, OH 45342

FIRST DRAW: At the time of the first draw, the following items must be submitted by the Borrower/Builder:

- Copy of Building Permit
- Septic System Permit (if applicable)
- Termite Soil Treatment (if applicable)
- Request for Disbursement form. This form must be signed by the borrower(s) and builder. A supply of these forms will be given out at the closing.
- Any other paperwork required by the title company/closing attorney must also be completed. The title company/closing attorney will explain any additional paperwork that will be required at the time of closing.
- Foundation Survey stating that the primary improvements are within the lot lines and there are no apparent encroachments or visible easements unless otherwise shown. (NCM will order unless other instructions are given)
- Inspection of Property (NCM will order)
- Title Update (NCM will order if applicable)

Still requires [illegible]

Attch 1

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 92544-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)

[illegible]

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.

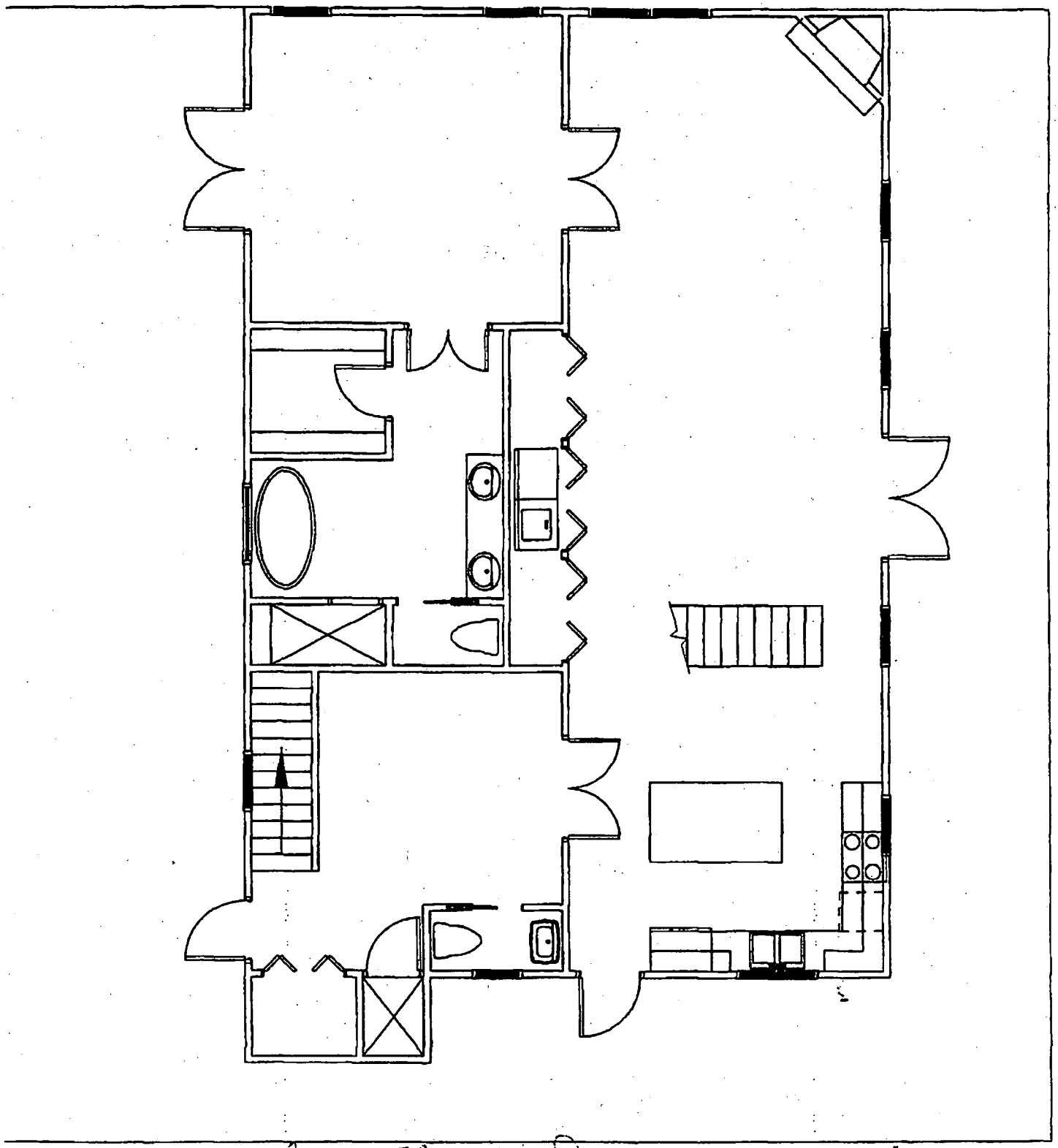
BE SURE YOU HAVE A SUPPLY OF THE FOLLOWING DRAW PAPERWORK:

- **REQUEST FOR DISBURSEMENT FORMS**
- **COMPLETION CERTIFICATION FORM (for final draw)**

Call the Construction Lending Department if you need a supply of these forms.

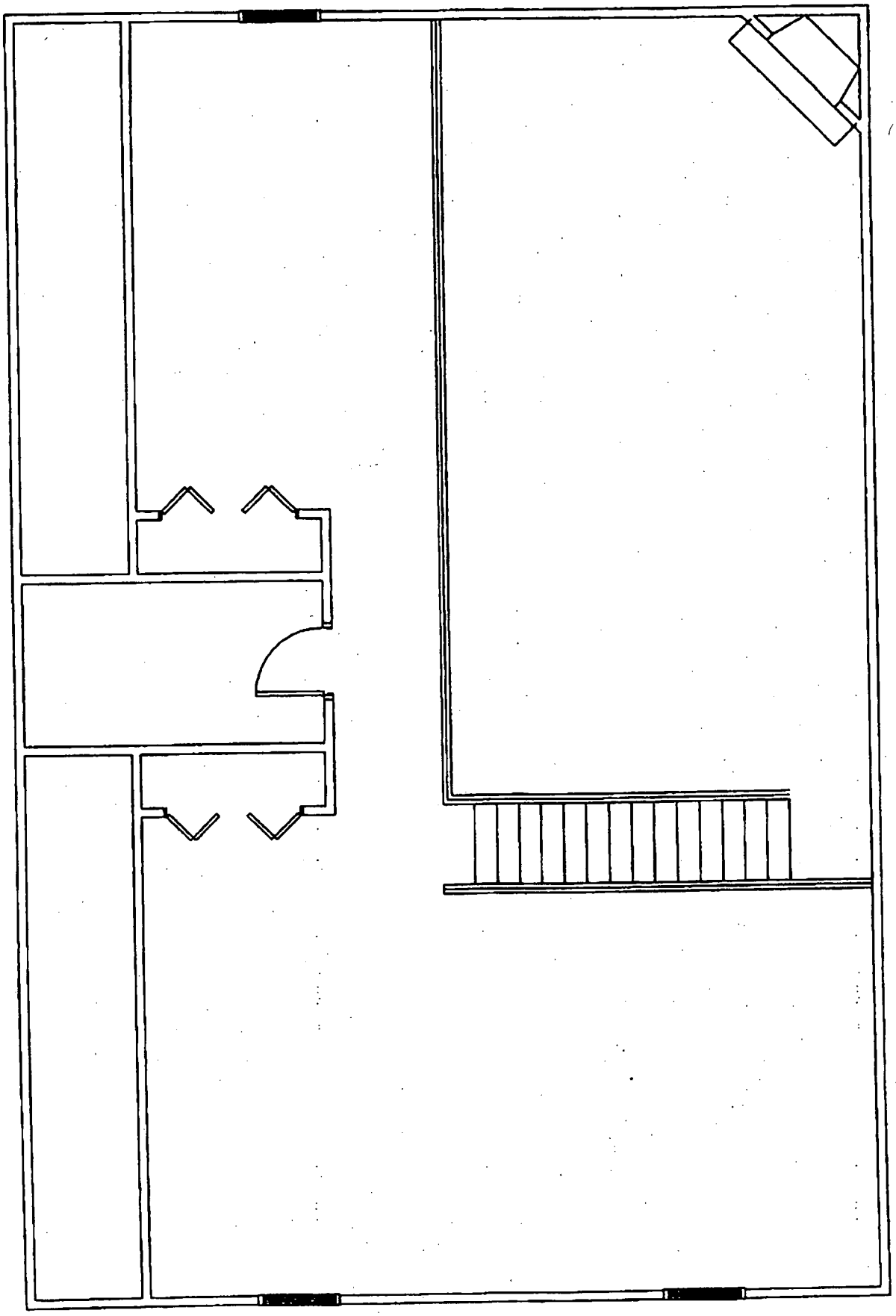
I hereby acknowledge receipt of these Draw Procedures and agree to comply with these requirements.

_____ Date_____
(Builder/Contractor)

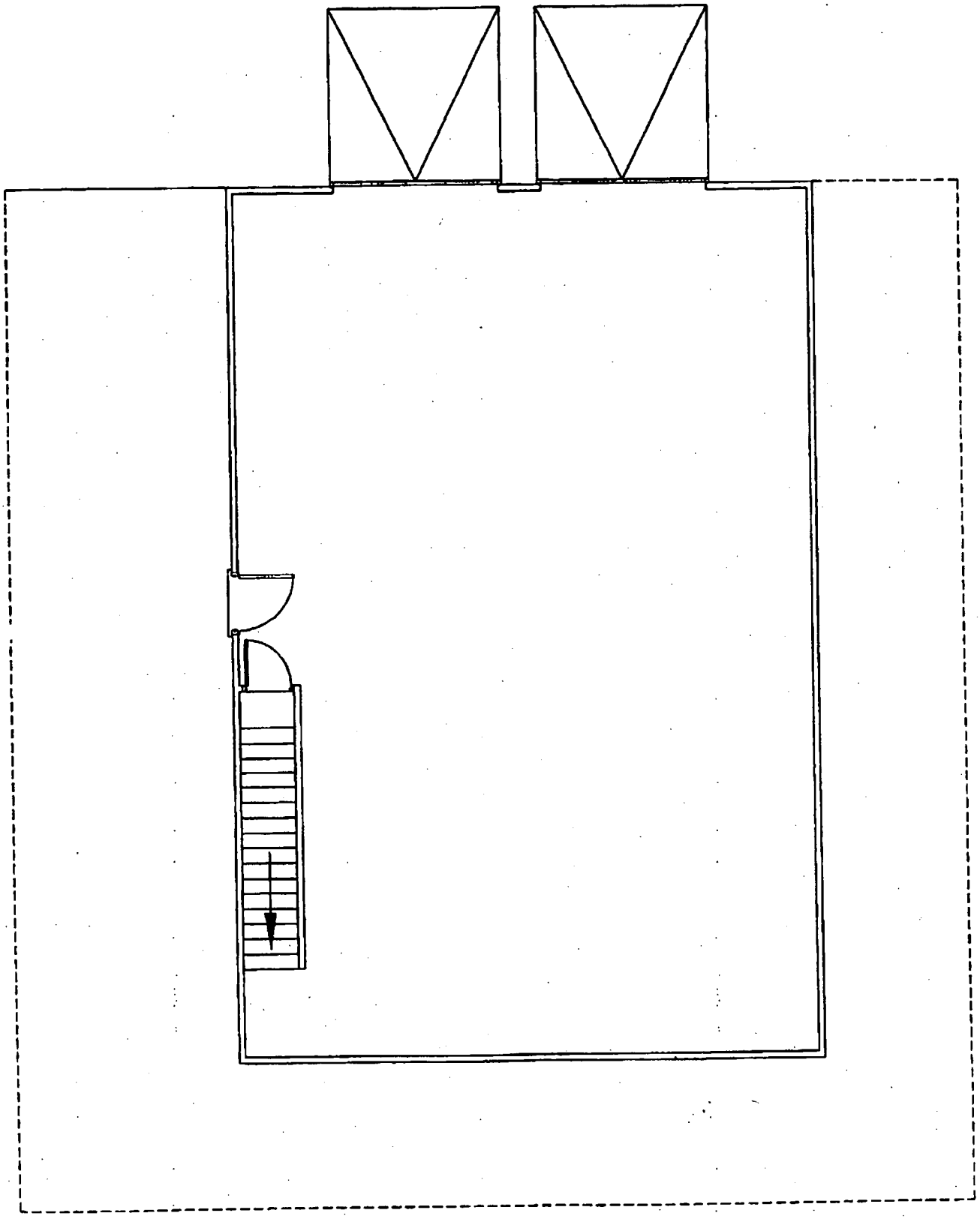


#13 - Computed sq ft [illegible] against 2500 for this floor and loft (sheets following).

Atch 7



Atch 3



Attach 1

ADO REPAIRS & REMODELING

8430 CREEKSTONE COURT
NORTH CHARLESTON, SC 29406
(843) 200-4877

Estimate

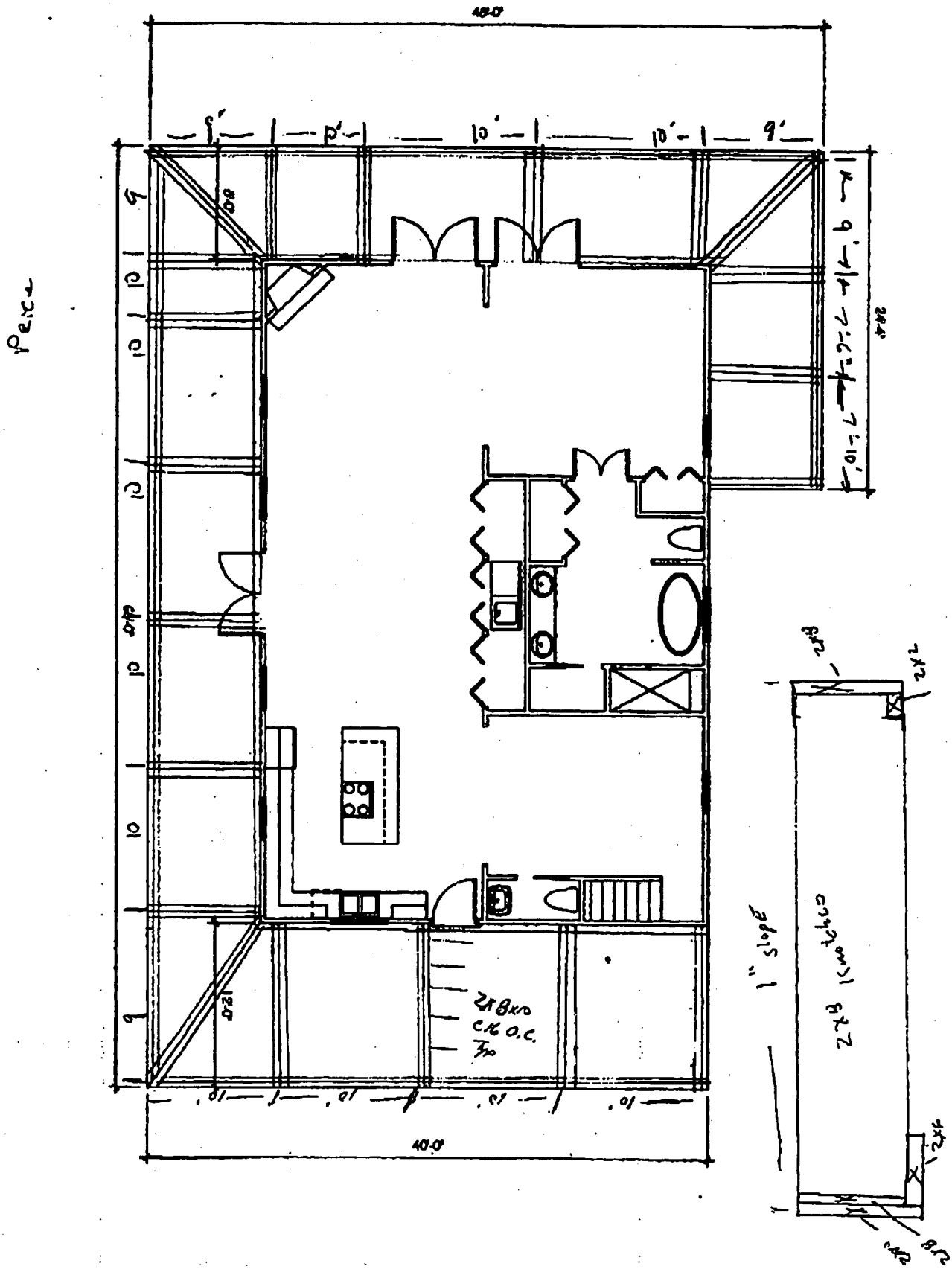
DATE	ESTIMATE NO.
9/9/2003	105

NAME / ADDRESS
Price Ranch

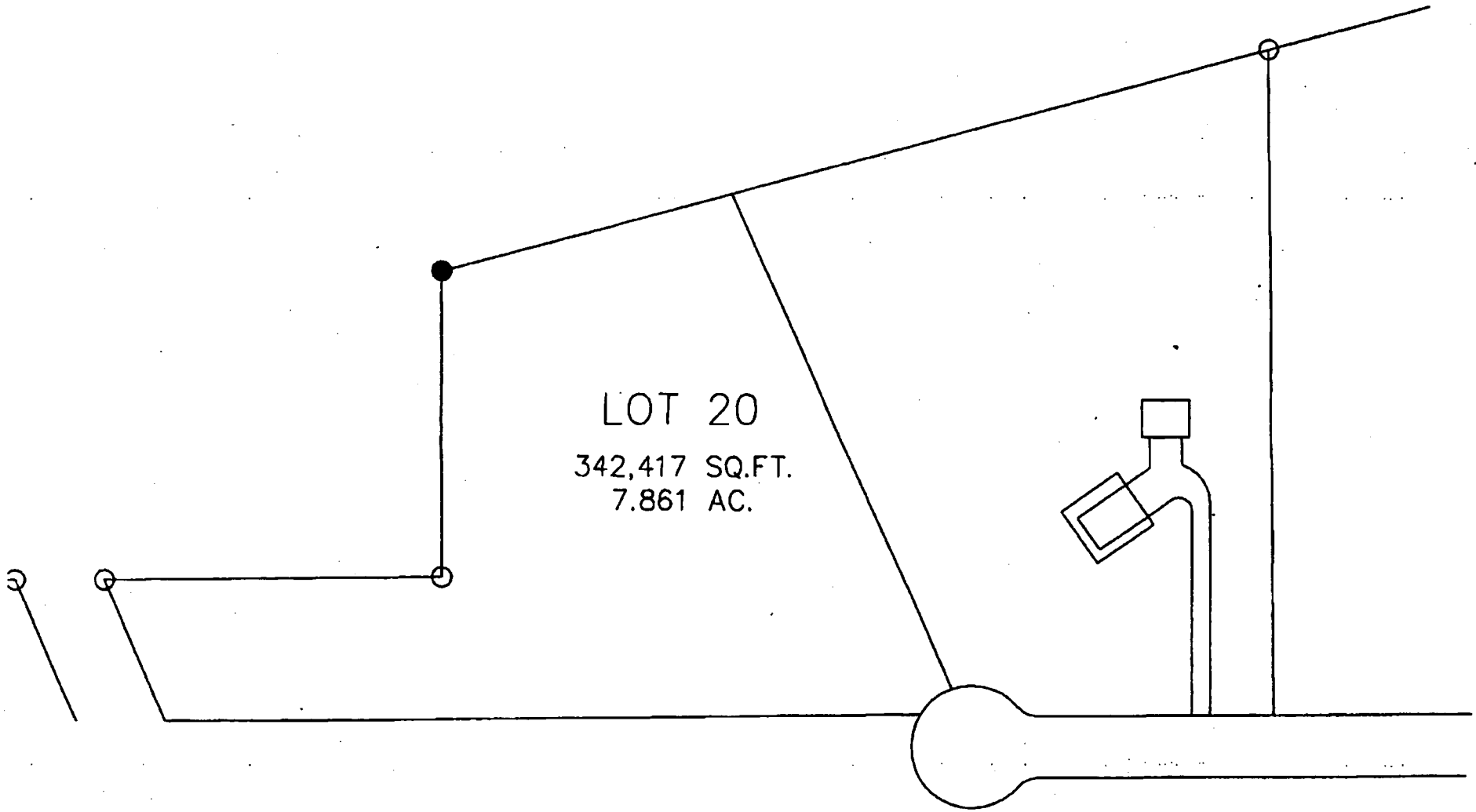
PROJECT

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

Ack



Attach 5-1



00905

September 13, 2003

COST ESTIMATE FOR:
Ron and Diana Price

ITEM	DESCRIPTION	MATERIALS	LABOR	COST	TOTAL
1	Design and Const Dwgs				1000
2	Permits			900	900
3	Reproductions			250	250
4	Builders Risk			500	500
5	General Liability			700	700
6	Survey/Plat				0
7	Porta John Rental			300	300
8	Dumpster Rental			600	600
9	Temporary Utilities				150
10	Lot Preparation			4000	4000 / 2000 labor
11	Well				4000
12	Septic				4000
13	Temporary Power Pole			150	150
14	Footings			2600	2600
15	Foundation			6072	6072
16	Soil Termite Treatment			700	700
17	Garage Slab				2500
18	Framing				23,400
19	Roofing				3000
20	Windows* P/O 16				0
21	Exterior Doors* P/O 16				0
22	Electrical			0	7000
23	HVAC				8000
24	Plumbing	3000	6300		9300
25	Siding				1500
26	Soffitt/Fascia				1162
27	Porches/Decks				17,000
28	Stucco				4000
29	Insulation				3700
30	Sheetrock				6000
31	Paint				3000
32	Fireplace				1000
33	Cabinets				5000
34	Hardwood ~ 2000 sf.				7500
35	Garage Doors	500	500		1000
36	Interior Doors	770	660		1430
37	Interior Trim				3900

Attch 7

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

Rec'd Out

AIA Document A201

General Conditions of the Contract for Construction

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION

1987 EDITION

TABLE OF ARTICLES

P EXHIBIT W
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

1. GENERAL PROVISIONS
2. OWNER
3. CONTRACTOR
4. ADMINISTRATION OF THE CONTRACT
5. SUBCONTRACTORS
6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7. CHANGES IN THE WORK
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE AND BONDS
12. UNCOVERING AND CORRECTION OF WORK
13. MISCELLANEOUS PROVISIONS
14. TERMINATION OR SUSPENSION OF THE CONTRACT

This document has been approved and endorsed by the Associated General Contractors of America.

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INDEX

Acceptance of Nonconforming Work 9.6.6, 9.9.3, 12.3
Acceptance of Work 9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3
Access to Work 3.16, 6.2.1, 12.1
Accident Prevention 4.2.3, 10
Acts and Omissions . . . 3.2.1, 3.2.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.2, 4.3.9, 8.3.1, 10.1.4, 10.2.5, 13.4.2, 13.7, 14.1
Addenda 1.1.1, 3.11
Additional Cost, Claims for 4.3.6, 4.3.7, 4.3.9, 6.1.1, 10.3
Additional Inspections and Testing 4.2.6, 9.8.2, 12.2.1, 13.5
Additional Time, Claims for 4.3.6, 4.3.8, 4.3.9, 8.3.2
ADMINISTRATION OF THE CONTRACT 3.3.3, 4, 9.4, 9.5
Advertisement or Invitation to Bid 1.1.1
Aesthetic Effect 4.2.13, 4.5.1
Allowances 3.8
All-risk Insurance 11.3.1.1
Applications for Payment . . 4.2.5, 7.3.7, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.8.3, 9.10.1, 9.10.3, 9.10.4, 11.1.3, 14.2.4
Approvals . . . 2.4, 3.3.3, 3.5, 3.10.2, 3.12.4 through 3.12.8, 3.18.3, 4.2.7, 9.3.2, 11.3.1.4, 13.4.2, 13.5
Arbitration 4.1.4, 4.3.2, 4.3.4, 4.4.4, 4.5, 8.3.1, 10.1.2, 11.3.9, 11.3.10
Architect 4.1
Architect, Definition of 4.1.1
Architect, Extent of Authority 2.4, 3.12.6, 4.2, 4.3.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.2.1, 7.3.6, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8.2, 9.8.3, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4
Architect, Limitations of Authority and Responsibility . 3.3.3, 3.12.8, 3.12.11, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 4.3.2, 5.2.1, 7.4, 9.4.2, 9.6.4, 9.6.6
Architect's Additional Services and Expenses 2.4, 9.8.2, 11.3.1.1, 12.2.1, 12.2.4, 13.5.2, 13.5.3, 14.2.4
Architect's Administration of the Contract . . 4.2, 4.3.6, 4.3.7, 4.4, 9.4, 9.5
Architect's Approvals 2.4, 3.5.1, 3.10.2, 3.12.6, 3.12.8, 3.18.3, 4.2.7
Architect's Authority to Reject Work 3.5.1, 4.2.6, 12.1.2, 12.2.1
Architect's Copyright 1.3
Architect's Decisions 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.2, 4.3.6, 4.4.1, 4.4.4, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.2, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4
Architect's Inspections 4.2.2, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1, 13.5
Architect's Instructions . 4.2.6, 4.2.7, 4.2.8, 4.3.7, 7.4.1, 12.1, 13.5.2
Architect's Interpretations 4.2.11, 4.2.12, 4.3.7
Architect's On-Site Observations 4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5
Architect's Project Representative 4.2.10
Architect's Relationship with Contractor 1.1.2, 3.2.1, 3.2.2, 3.3.3, 3.5.1, 3.7.3, 3.11, 3.12.8, 3.12.11, 3.16, 3.18, 4.2.3, 4.2.4, 4.2.6, 4.2.12, 5.2, 6.2.2, 7.3.4, 9.8.2, 11.3.7, 12.1, 13.5
Architect's Relationship with Subcontractors . . . 1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7
Architect's Representations 9.4.2, 9.5.1, 9.10.1
Architect's Site Visits 4.2.2, 4.2.5, 4.2.9, 4.3.6, 9.4.2, 9.5.1, 9.8.2, 9.9.2, 9.10.1, 13.5
Asbestos 10.1
Attorneys' Fees 3.18.1, 9.10.2, 10.1.4
Award of Separate Contracts 6.1.1
Award of Subcontracts and Other Contracts for Portions of the Work 5.2
Basic Definitions 1.1
Bidding Requirements 1.1.1, 1.1.7, 5.2.1, 11.4.1
Boiler and Machinery Insurance 11.3.2
Bonds, Lien 9.10.2
Bonds, Performance and Payment . 7.3.6.4, 9.10.3, 11.3.9, 11.4
Building Permit 3.7.1
Capitalization 1.4
Certificate of Substantial Completion 9.8.2
Certificates for Payment 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.8.3, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4
Certificates of Inspection, Testing or Approval 3.12.11, 13.5.4
Certificates of Insurance 9.3.2, 9.10.2, 11.1.3
Change Orders . 1.1.1, 2.4.1, 3.8.2.4, 3.11, 4.2.8, 4.3.3, 5.2.3, 7.1, 7.2, 7.3.2, 8.3.1, 9.3.1.1, 9.10.3, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2
Change Orders, Definition of 7.2.1
Changes 7.1
CHANGES IN THE WORK . . 3.11, 4.2.8, 7, 8.3.1, 9.3.1.1, 10.1.3
Claim, **Definition of** 4.3.1
Claims and Disputes 4.3, 4.4, 4.5, 6.2.5, 8.3.2, 9.3.1.2, 9.3.3, 9.10.4, 10.1.4
Claims and Timely Assertion of Claims 4.5.6
Claims for Additional Cost 4.3.6, 4.3.7, 4.3.9, 6.1.1, 10.3
Claims for Additional Time 4.3.6, 4.3.8, 4.3.9, 8.3.2
Claims for Concealed or Unknown Conditions 4.3.6
Claims for Damages . . . 3.18, 4.3.9, 6.1.1, 6.2.5, 8.3.2, 9.5.1.2, 10.1.4
Claims Subject to Arbitration 4.3.2, 4.4.4, 4.5.1
Cleaning Up 3.15, 6.3
Commencement of Statutory Limitation Period 13.7
Commencement of the Work, Conditions Relating to 2.1.2, 2.2.1, 3.2.1, 3.2.2, 3.7.1, 3.10.1, 3.12.6, 4.3.7, 5.2.1, 6.2.2, 8.1.2, 8.2.2, 9.2, 11.1.3, 11.3.6, 11.4.1
Commencement of the Work, Definition of 8.1.2
Communications Facilitating Contract Administration 3.9.1, 4.2.4, 5.2.1
Completion, Conditions Relating to 3.11, 3.15, 4.2.2, 4.2.9, 4.3.2, 9.4.2, 9.8, 9.9.1, 9.10, 11.3.5, 12.2.2, 13.7.1
COMPLETION, PAYMENTS AND 9
Completion, Substantial 4.2.9, 4.3.5.2, 8.1.1, 8.1.3, 8.2.3, 9.8, 9.9.1, 12.2.2, 13.7
Compliance with Laws . . . 1.3, 3.6, 3.7, 3.13, 4.1.1, 10.2.2, 11.1, 11.3, 13.1, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3
Concealed or Unknown Conditions 4.3.6
Conditions of the Contract 1.1.1, 1.1.7, 6.1.1
Consent, Written 1.3.1, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.5.5, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 10.1.3, 11.3.1, 11.3.1.4, 11.3.11, 13.2, 13.4.2
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS 1.1.4, 6
Construction Change Directive, Definition of 7.3.1
Construction Change Directives 1.1.1, 4.2.8, 7.1, 7.3, 9.3.1.1
Construction Schedules, Contractor's 3.10, 6.1.3
Contingent Assignment of Subcontracts 5.4
Continuing Contract Performance 4.3.4
Contract, Definition of 1.1.2
CONTRACT, TERMINATION OR SUSPENSION OF THE 4.3.7, 5.4.1.1, 14
Contract Administration 3.3.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating to 3.7.1, 3.10, 5.2, 9.2, 11.1.3, 11.3.6, 11.4.1
Contract Documents, The 1.1, 1.2.7
Contract Documents, Copies Furnished and Use of 1.3, 2.2.5, 5.3
Contract Documents, Definition of 1.1.1
Contract Performance During Arbitration 4.3.4, 4.5.3
Contract Sum 3.8, 4.3.6, 4.3.7, 4.4.4, 5.2.3, 6.1.3, 7.2, 7.3, 9.1, 9.7, 11.3.1, 12.2.4, 12.3, 14.2.4
Contract Sum, Definition of 9.1
Contract Time 4.3.6, 4.3.8, 4.4.4, 7.2.1.3, 7.3, 8.2.1, 8.3.1, 9.7, 12.1.1
Contract Time, **Definition of** 8.1.1

CONTRACTOR 3
Contractor, Definition of 3.1, 6.1.2
Contractor's Bid 1.1.1
Contractor's Construction Schedules 3.10, 6.1.3
Contractor's Employees 3.3.2, 3.4.2, 3.8.1, 3.9, 3.18, 4.2.3, 4.2.6, 8.1.2, 10.2, 10.3, 11.1.1, 14.2.1.1
Contractor's Liability Insurance 11.1
Contractor's Relationship with Separate Contractors and Owner's Forces 2.2.6, 3.12.5, 3.14.2, 4.2.4, 6.1.2, 12.2.5
Contractor's Relationship with Subcontractors 1.2.4, 3.3.2, 3.18.1, 3.18.2, 5.2, 5.3, 5.4, 9.6.2, 11.3.7, 11.3.8, 14.2.1.2
Contractor's Relationship with the Architect 1.1.2, 3.2.1, 3.2.2, 3.3.3, 3.5.1, 3.7.3, 3.11, 3.12.8, 3.16, 3.18, 4.2.3, 4.2.4, 4.2.6, 4.2.12, 5.2, 6.2.2, 7.3.4, 9.8.2, 11.3.7, 12.1, 13.5
Contractor's Representations 1.2.2, 3.5.1, 3.12.7, 6.2.2, 8.2.1, 9.3.3
Contractor's Responsibility for Those Performing the Work 3.3.2, 3.18, 4.2.3, 10
Contractor's Review of Contract Documents 1.2.2, 3.2.3, 3.7.3
Contractor's Right to Stop the Work 9.7
Contractor's Right to Terminate the Contract 14.1
Contractor's Submittals 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3.1, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 11.4.2, 11.4.3
Contractor's Superintendent 3.9, 10.2.6
Contractor's Supervision and Construction Procedures 1.2.4, 3.3, 3.4, 4.2.3, 8.2.2, 8.2.3, 10
Contractual Liability Insurance 11.1.1.7, 11.2.1
Coordination and Correlation 1.2.2, 1.2.4, 3.3.1, 3.10, 3.12.7, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications 1.3, 2.2.5, 3.11
Correction of Work 2.3, 2.4, 4.2.1, 9.8.2, 9.9.1, 12.1.2, 12.2, 13.7.1.3
Cost, Definition of 7.3.6, 14.3.5
Costs 2.4, 3.2.1, 3.7.4, 3.8.2, 3.15.2, 4.3.6, 4.3.7, 4.3.8.1, 5.2.3, 6.1.1, 6.2.3, 6.3, 7.3.3.3, 7.3.6, 7.3.7, 9.7, 9.8.2, 9.10.2, 11.3.1.2, 11.3.1.3, 11.3.4, 11.3.9, 12.1, 12.2.1, 12.2.4, 12.2.5, 13.5, 14
Cutting and Patching 3.14, 6.2.6
Damage to Construction of Owner or Separate Contractors 3.14.2, 6.2.4, 9.5.1.5, 10.2.1.2, 10.2.5, 10.3, 11.1, 11.3, 12.2.5
Damage to the Work 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.3, 11.3
Damages, Claims for 3.18, 4.3.9, 6.1.1, 6.2.5, 8.3.2, 9.5.1.2, 10.1.4
Damages for Delay 6.1.1, 8.3.3, 9.5.1.6, 9.7
Date of Commencement of the Work, Definition of 8.1.2
Date of Substantial Completion, Definition of 8.1.3
Day, Definition of 8.1.4
Decisions of the Architect 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.2, 4.3.6, 4.4.1, 4.4.4, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.2, 9.9.1, 10.1.2, 13.5.2, 14.2.2, 14.2.4
Decisions to Withhold Certification 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of 2.3, 2.4, 3.5.1, 4.2.1, 4.2.6, 4.3.5, 9.5.2, 9.8.2, 9.9.1, 10.2.5, 12, 13.7.1.3
Defective Work, Definition of 3.5.1
Definitions 1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1
Delays and Extensions of Time 3.5.1, 4.3.8.1, 4.3.8.2, 6.1.1, 6.2.3, 7.2.1, 7.3.1, 7.3.4, 7.3.5, 7.3.8, 7.3.9, 8.1.1, 8.3, 10.3.1, 14.3.1.4
Disputes 4.1.4, 4.3, 4.4, 4.5, 6.2.5, 6.3, 7.3.8, 9.3.1.2
Documents and Samples at the Site 3.11
Drawings, Definition of 1.1.5
Drawings and Specifications, Use and Ownership of 1.1.1, 1.3, 2.2.5, 3.11, 5.3
Duty to Review Contract Documents and Field Conditions 3.2
Effective Date of Insurance 8.2.2, 11.1.2
Emergencies 4.3.7, 10.3
Employees, Contractor's 3.3.2, 3.4.2, 3.8.1, 3.9, 3.18.1, 3.18.2, 4.2.3, 4.2.6, 8.1.2, 10.2, 10.3, 11.1.1, 14.2.1.1
Equipment, Labor, Materials and 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 11.3, 12.2.4, 14
Execution and Progress of the Work 1.1.3, 1.2.3, 3.2, 3.4.1, 3.5.1, 4.2.2, 4.2.3, 4.3.4, 4.3.8, 6.2.2, 7.1.3, 7.3.9, 8.2, 8.3, 9.5, 9.9.1, 10.2, 14.2, 14.3
Execution, Correlation and Intent of the Contract Documents 1.2, 3.7.1
Extensions of Time 4.3.1, 4.3.8, 7.2.1, 8.3, 10.3.1
Failure of Payment by Contractor 9.5.1.3, 14.2.1.2
Failure of Payment by Owner 4.3.7, 9.7, 14.1.3
Faulty Work (See Defective or Nonconforming Work)
Final Completion and Final Payment 4.2.1, 4.2.9, 4.3.2, 4.3.5, 9.10, 11.1.2, 11.1.3, 11.3.5, 12.3.1, 13.7
Financial Arrangements, Owner's 2.2.1
Fire and Extended Coverage Insurance 11.3
GENERAL PROVISIONS 1
Governing Law 13.1
Guarantees (See Warranty and Warranties)
Hazardous Materials 10.1, 10.2.4
Identification of Contract Documents 1.2.1
Identification of Subcontractors and Suppliers 5.2.1
Indemnification 3.17, 3.18, 9.10.2, 10.1.4, 11.3.1.2, 11.3.7
Information and Services Required of the Owner 2.1.2, 2.2, 4.3.4, 6.1.3, 6.1.4, 6.2.6, 9.3.2, 9.6.1, 9.6.4, 9.8.3, 9.9.2, 9.10.3, 10.1.4, 11.2, 11.3, 13.5.1, 13.5.2
Injury or Damage to Person or Property 4.3.9
Inspections 3.3.3, 3.3.4, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1, 13.5
Instructions to Bidders 1.1.1
Instructions to the Contractor 3.8.1, 4.2.8, 5.2.1, 7.1.2, 13.5.2
Insurance 4.3.9, 6.1.1, 7.3.6.4, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 11
Insurance, Boiler and Machinery 11.3.2
Insurance, Contractor's Liability 11.1
Insurance, Effective Date of 8.2.2, 11.1.2
Insurance, Loss of Use 11.3.3
Insurance, Owner's Liability 11.2
Insurance, Property 10.2.5, 11.3
Insurance, Stored Materials 9.3.2, 11.3.1.4
INSURANCE AND BONDS 11
Insurance Companies, Consent to Partial Occupancy 9.9.1, 11.3.11
Insurance Companies, Settlement with 11.3.10
Intent of the Contract Documents 1.2.3, 3.12.4, 4.2.6, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest 13.6
Interpretation 1.2.5, 1.4, 1.5, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4
Interpretations, Written 4.2.11, 4.2.12, 4.3.7
Joinder and Consolidation of Claims Required 4.5.6
Judgment on Final Award 4.5.1, 4.5.4.1, 4.5.7
Labor and Materials, Equipment 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.12.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 12.2.4, 14
Labor Disputes 8.3.1
Laws and Regulations 1.3, 3.6, 3.7, 3.13, 4.1.1, 4.5.5, 4.5.7, 9.9.1, 10.2.2, 11.3, 11.3.1, 13.6, 13.5.1, 13.5.2, 13.6
Liens 2.1.2, 4.3.2, 4.3.5.1, 8.2.2, 9.3.3, 9.10.2
Limitation on Consolidation or Joinder 4.5.5
Limitations, Statutes of 4.5.4.2, 12.2.6, 13.7
Limitations of Authority 3.3.1, 4.1.2, 4.2.1, 4.2.3, 4.2.7, 4.2.10, 5.2.2, 5.2.4, 7.4, 11.3.10

Limitations of Liability 2.3, 3.2.1, 3.5.1, 3.7.5, 3.12.8, 3.12.11, 3.17, 3.18, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.10.4, 10.1.4, 10.2.5, 11.1.2, 11.2.1, 11.3.7, 13.4.2, 13.5.2

Limitations of Time, General 2.2.1, 2.2.4, 3.2.1, 3.7.5, 3.8.2, 3.10, 3.12.5, 3.15.1, 4.2.1, 4.2.7, 4.2.11, 4.3.2, 4.3.3, 4.3.4, 4.3.6, 4.3.9, 4.5.4.2, 5.2.1, 5.2.3, 6.2.4, 7.3.4, 7.4, 8.2, 9.5, 9.6.2, 9.8, 9.9, 9.10, 11.1.3, 11.3.1, 11.3.2, 11.3.5, 11.3.6, 12.2.1, 12.2.2, 13.5, 13.7

Limitations of Time, Specific 2.1.2, 2.2.1, 2.4, 3.10, 3.11, 3.15.1, 4.2.1, 4.2.11, 4.3, 4.4, 4.5, 5.3, 5.4, 7.3.5, 7.3.9, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.6.1, 9.7, 9.8.2, 9.10.2, 11.1.3, 11.3.6, 11.3.10, 11.3.11, 12.2.2, 12.2.4, 12.2.6, 13.7, 14

Loss of Use Insurance **11.3.3**

Material Suppliers 1.3.1, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3.1, 9.3.1.2, 9.3.3, 9.4.2, 9.6.5, 9.10.4

Materials, Hazardous 10.1, 10.2.4

Materials, Labor, Equipment and 1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.12.2, 3.12.3, 3.12.7, 3.12.11, 3.13, 3.15.1, 4.2.7, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 12.2.4, 14

Means, Methods, Techniques, Sequences and Procedures of Construction 3.3.1, 4.2.3, 4.2.7, 9.4.2

Minor Changes in the Work 1.1.1, 4.2.8, 4.3.7, 7.1, **7.4**

MISCELLANEOUS PROVISIONS **13**

Modifications, Definition of 1.1.1

Modifications to the Contract 1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7

Mutual Responsibility **6.2**

Nonconforming Work, Acceptance of **12.3**

Nonconforming Work, Rejection and Correction of 2.3.1, 4.3.5, 9.5.2, 9.8.2, 12, 13.7.1.3

Notice 2.3, 2.4, 3.2.1, 3.2.2, 3.7.3, 3.7.4, 3.9, 3.12.8, 3.12.9, 3.17, 4.3, 4.4.4, 4.5, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.6.1, 9.7, 9.10, 10.1.2, 10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14

Notice, Written 2.3, 2.4, 3.9, 3.12.8, 3.12.9, 4.3, 4.4.4, 4.5, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.7, 9.10, 10.1.2, 10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, **13.3**, 13.5.2, 14

Notice of Testing and Inspections 13.5.1, 13.5.2

Notice to Proceed 8.2.2

Notices, Permits, Fees and 2.2.3, **3.7**, 3.13, 7.3.6.4, 10.2.2

Observations, Architect's On-Site 4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5

Observations, Contractor's 1.2.2, 3.2.2

Occupancy 9.6.6, 9.8.1, 9.9, 11.3.11

On-Site Inspections by the Architect 4.2.2, 4.2.9, 4.3.6, 9.4.2, 9.8.2, 9.9.2, 9.10.1

On-Site Observations by the Architect 4.2.2, 4.2.5, 4.3.6, 9.4.2, 9.5.1, 9.10.1, 13.5

Orders, Written 2.3, 3.9, 4.3.7, 7, 8.2.2, 11.3.9, 12.1, 12.2, 13.5.2, 14.3.1

OWNER **2**

Owner, **Definition of** **2.1**

Owner, Information and Services Required of the **2.1.2, 2.2**, 4.3.4, 6, 9, 10.1.4, 11.2, 11.3, 13.5.1, 14.1.1.5, 14.1.3

Owner's Authority 3.8.1, 4.1.3, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 7.3.1, 8.2.2, 9.3.1, 9.3.2, 11.4.1, 12.2.4, 13.5.2, 14.2, 14.3.1

Owner's Financial Capability 2.2.1, 14.1.1.5

Owner's Liability Insurance **11.2**

Owner's Loss of Use Insurance 11.3.3

Owner's Relationship with Subcontractors 1.1.2, 5.2.1, 5.4.1, 9.6.4

Owner's Right to Carry Out the Work 2.4, 12.2.4, 14.2.2.2

Owner's Right to Clean Up **6.3**

Owner's Right to Perform Construction and to Award Separate Contracts **6.1**

Owner's Right to Stop the Work **2.3**, 4.3.7

Owner's Right to Suspend the Work 14.3

Owner's Right to Terminate the Contract 14.2

Ownership and Use of Architect's Drawings, Specifications and Other Documents **1.1.1, 1.3**, 2.2.5, 5.3

Partial Occupancy or Use **9.6.6, 9.9**, 11.3.11

Patching, Cutting and **3.14**, 6.2.6

Patents, Royalties and **3.17**

Payment, Applications for 4.2.5, 9.2, **9.3**, 9.4, 9.5.1, 9.8.3, 9.10.1, 9.10.3, 9.10.4, 14.2.4

Payment, Certificates for 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.8.3, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Payment, Failure of 4.3.7, 9.5.1.3, **9.7**, 9.10.2, 14.1.1.3, 14.2.1.2

Payment, Final 4.2.1, 4.2.9, 4.3.2, 4.3.5, 9.10, 11.1.2, 11.1.3, 11.3.5, 12.3.1

Payment Bond, Performance Bond and 7.3.6.4, 9.10.3, 11.3.9, **11.4**

Payments, Progress 4.3.4, 9.3, 9.6, 9.8.3, 9.10.3, 13.6, 14.2.3

PAYMENTS AND COMPLETION **9**, 14

Payments to Subcontractors 5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 11.3.8, 14.2.1.2

PCB 10.1

Performance Bond and Payment Bond 7.3.6.4, 9.10.3, 11.3.9, 11.4

Permits, Fees and Notices 2.2.3, **3.7**, 3.13, 7.3.6.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF **10**

Polychlorinated Biphenyl 10.1

Product Data, Definition of 3.12.2

Product Data and Samples, Shop Drawings 3.11, **3.12**, 4.2.7

Progress and Completion 1.2.2, 4.3.4, **8.2**

Progress Payments 4.3.4, 9.3, **9.6**, 9.8.3, 9.10.3, 13.6, 14.2.3

Project, Definition of the **1.1.4**

Project Manual, Definition of the **1.1.7**

Project Manuals 2.2.5

Project Representatives 4.2.10

Property Insurance 10.2.5, **11.3**

PROTECTION OF PERSONS AND PROPERTY **10**

Regulations and Laws 1.3, 3.6, 3.7, 3.13, 4.1.1, 4.5.5, 4.5.7, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14

Rejection of Work 3.5.1, 4.2.6, 12.2

Releases of Waivers and Liens 9.10.2

Representations 1.2.2, 3.5.1, 3.12.7, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Resolution of Claims and Disputes **4.4**, 4.5

Responsibility for Those Performing the Work 3.3.2, 4.2.3, 6.1.3, 6.2, 10

Retainage 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor **1.2.2, 3.2**, 3.7.3, 3.12.7

Review of Contractor's Submittals by Owner and Architect 3.10.1, 3.10.2, 3.11, 3.12, 4.2.7, 4.2.9, 5.2.1, 5.2.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor 3.12.5

Rights and Remedies 1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.6, 4.5, 5.3, 6.1, 6.3, 7.3.1, 8.3.1, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14

Royalties and Patents **3.17**

Rules and Notices for Arbitration **4.5.2**
Safety of Persons and Property **10.2**
Safety Precautions and Programs 4.2.3, 4.2.7, **10.1**
Samples, Definition of 3.12.3
Samples, Shop Drawings, Product Data and ... 3.11, **3.12**, 4.2.7
Samples at the Site, Documents and **3.11**
Schedule of Values **9.2**, 9.3.1
Schedules, Construction 3.10
Separate Contracts and Contractors 1.1.4, 3.14.2, 4.2.4, 4.5.5, 6, 11.3.7, 12.1.2, 12.2.5
Shop Drawings, Definition of 3.12.1
Shop Drawings, Product Data and Samples .. 3.11, **3.12**, 4.2.7
Site, Use of **3.13**, 6.1.1, 6.2.1
Site Inspections 1.2.2, 3.3.4, 4.2.2, 4.2.9, 4.3.6, 9.8.2, 9.10.1, 13.5
Site Visits, Architect's 4.2.2, 4.2.5, 4.2.9, 4.3.6, 9.4.2, 9.5.1, 9.8.2, 9.9.2, 9.10.1, 13.5
Special Inspections and Testing 4.2.6, 12.2.1, 13.5
Specifications, Definition of the **1.1.6**
Specifications, The 1.1.1, **1.1.6**, 1.1.7, 1.2.4, 1.3, 3.11
Statutes of Limitations 4.5.4.2, 12.2.6, 13.7
Stopping the Work 2.3, 4.3.7, 9.7, 10.1.2, 10.3, 14.1
Stored Materials 6.2.1, 9.3.2, 10.2.1.2, 11.3.1.4, 12.2.4
Subcontractor, Definition of 5.1.1
SUBCONTRACTORS **5**
Subcontractors, Work by 1.2.4, 3.3.2, 3.12.1, 4.2.3, 5.3, 5.4
Subcontractual Relations **5.3**, 5.4, 9.3.1.2, 9.6.2, 9.6.3, 9.6.4, 10.2.1, 11.3.7, 11.3.8, 14.1.1, 14.2.1.2, 14.3.2
Submittals 1.3, 3.2.3, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3.1, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 11.1.3
Subrogation, Waivers of 6.1.1, 11.3.5, **11.3.7**
Substantial Completion 4.2.9, 4.3.5.2, 8.1.1, 8.1.3, 8.2.3, **9.8**, 9.9.1, 12.2.1, 12.2.2, 13.7
Substantial Completion, Definition of 9.8.1
Substitution of Subcontractors 5.2.3, 5.2.4
Substitution of the Architect 4.1.3
Substitutions of Materials 3.5.1
Sub-subcontractor, Definition of 5.1.2
Subsurface Conditions 4.3.6
Successors and Assigns **13.2**
Superintendent **3.9**, 10.2.6
Supervision and Construction Procedures 1.2.4, **3.3**, 3.4, 4.2.3, 4.3.4, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 10, 12, 14
Surety 4.4.1, 4.4.4, 5.4.1.2, 9.10.2, 9.10.3, 14.2.2
Surety, Consent of 9.9.1, 9.10.2, 9.10.3
Surveys 2.2.2, 3.18.3
Suspension by the Owner for Convenience **14.3**
Suspension of the Work 4.3.7, 5.4.2, 14.1.1.4, 14.3
Suspension or Termination of the Contract 4.3.7, 5.4.1.1, 14
Taxes **3.6**, 7.3.6.4
Termination by the Contractor **14.1**
Termination by the Owner for Cause 5.4.1.1, **14.2**
Termination of the Architect 4.1.3
Termination of the Contractor 14.2.2
TERMINATION OR SUSPENSION OF THE CONTRACT **14**
Tests and Inspections 3.3.3, 4.2.6, 4.2.9, 9.4.2, 12.2.1, **13.5**
TIME **8**
Time, Delays and Extensions of 4.3.8, 7.2.1, **8.3**
Time Limits, Specific 2.1.2, 2.2.1, 2.4, 3.10, 3.11, 3.15.1, 4.2.1, 4.2.11, 4.3, 4.4, 4.5, 5.3, 5.4, 7.3.5, 7.3.9, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.6.1, 9.7, 9.8.2, 9.10.2, 11.1.3, 11.3.6, 11.3.10, 11.3.11, 12.2.2, 12.2.4, 12.2.6, 13.7, 14
Time Limits on Claims 4.3.2, **4.3.3**, 4.3.6, 4.3.9, 4.4, 4.5
Title to Work 9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK **12**
Uncovering of Work **12.1**
Unforeseen Conditions 4.3.6, 8.3.1, 10.1
Unit Prices 7.1.4, 7.3.3.2
Use of Documents 1.1.1, 1.3, 2.2.5, 3.12.7, 5.3
Use of Site **3.13**, 6.1.1, 6.2.1
Values, Schedule of **9.2**, 9.3.1
Waiver of Claims: Final Payment **4.3.5**, 4.5.1, 9.10.3
Waiver of Claims by the Architect 13.4.2
Waiver of Claims by the Contractor 9.10.4, 11.3.7, 13.4.2
Waiver of Claims by the Owner 4.3.5, 4.5.1, 9.9.3, 9.10.3, 11.3.3, 11.3.5, 11.3.7, 13.4.2
Waiver of Liens 9.10.2
Waivers of Subrogation 6.1.1, 11.3.5, 11.3.7
Warranty and Warranties **3.5**, 4.2.9, 4.3.5.3, 9.3.3, 9.8.2, 9.9.1, 12.2.2, 13.7.1.3
Weather Delays 4.3.8.2
When Arbitration May Be Demanded **4.5.4**
Work, Definition of 1.1.3
Written Consent 1.3.1, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.5.5, 9.3.2, 9.8.2, 9.9.1, 9.10.2, 9.10.3, 10.1.2, 10.1.3, 11.3.1, 11.3.1.4, 11.3.11, 13.2, 13.4.2
Written Interpretations 4.2.11, 4.2.12, 4.3.7
Written Notice 2.3, 2.4, 3.9, 3.12.8, 3.12.9, 4.3, 4.4.4, 4.5, 5.2.1, 5.3, 5.4.1.1, 8.2.2, 9.4.1, 9.5.1, 9.7, 9.10, 10.1.2, 10.2.6, 11.1.3, 11.3, 12.2.2, 12.2.4, **13.3**, 13.5.2, 14
Written Orders 2.3, 3.9, 4.3.7, 7, 8.2.2, 11.3.9, 12.1, 12.2, 13.5.2, 14.3.1

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, equipment, 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

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Work without the specific written consent of the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.5 INTERPRETATION

1.5.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE 2

OWNER

2.1 DEFINITION

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the request of the Contractor, prior to execution of the Agreement and promptly from time to time thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. *[Note: Unless such reasonable evidence were furnished on request prior to the execution of the Agreement, the prospective contractor would not be required to execute the Agreement or to commence the Work.]*

2.2.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a second seven-day period. If the Contractor within such second seven-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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;

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.3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;

.4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent schedules.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

3.12.5 The Contractor shall review, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the

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 Architect'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-

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tractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Decision of Architect. Claims, including those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 4.4. A decision by the Architect, as provided in Subparagraph 4.4.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 4.4.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

4.3.3 Time Limits on Claims. Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

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.

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4.5.2 Rules and Notices for Arbitration. Claims between the Owner and Contractor not resolved under Paragraph 4.4 shall, if subject to arbitration under Subparagraph 4.5.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.5.3 Contract Performance During Arbitration. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 4.3.4.

4.5.4 When Arbitration May Be Demanded. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) any of the five events described in Subparagraph 4.3.2.

4.5.4.1 When a written decision of the Architect states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

4.5.4.2 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.5.1 and 4.5.4 and Clause 4.5.4.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.5.5 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

4.5.6 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. When a party fails to include a Claim through oversight, inadvertence or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

4.5.7 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such change.

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.

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ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

.1 a change in the Work;

.2 the amount of the adjustment in the Contract Sum, if any; and

.3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

7.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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

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Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or desig-

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.

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ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 4

10.1.3 The Contractor shall not be required pursuant to Article " to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB)

10.1.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, 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 in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, 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 Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner 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 Subparagraph 10.1.4.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article ".

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

.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.

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11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.3.7 for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

11.3.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.5. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 4.5. The Owner as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.3.11 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's observation and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date

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.

The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

.1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 **Between Substantial Completion and Final Certificate for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 **After Final Certificate for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction;

.2 an act of government, such as a declaration of national emergency, making material unavailable;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;

.4 if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less; or

.5 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Subparagraph 2.2.1.

14.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.3 If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to jus

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.

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EXHIBIT P 1
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

October 9, 2003

Description of Materials

Price Residence
Lot 20, Eagle Harbor Subdivision, Phase 2, TMS # 194-00-02-122
Saddlehorn Road, Summerville, SC, 29483

1. Excavation
Bearing soil, type *To be determined by Builder if suitable for construction*

2. Foundations
Footings *poured concrete* Strength psi *3000 p.s.i.* Reinforcing *2 # 5 rods*
Foundation wall material *continuous block* Reinforcing *verticals as per code*
Interior foundation wall material *concrete block* Columns material and sizes *concrete block*
Piers material and reinforcing ____ Sills material *P.T. 2 x 8*
Waterproofing *6 mil poly* Termite protection *5 year bonded treatment*
Crawl space ground cover ____ insulation ____ foundation vents *8 x 16*
Special foundations ____
Additional information:

3. Chimneys
Material *NA* Prefabricated (make and size) *See Plan*
Flue lining material ____ Heater flue size ____ Fireplace flue size ____
Vents (material and size) gas or oil heater *Gas* Water heater vent *NA*
Additional information:

4. Fireplaces
Type solid fuel gas-burning circulator (make and size) *42" wood burning*
Ash dump and clean-out *NA* Fireplace facing *Wood/ Marble or Equal* lining *Fire Brick*
hearth *Marble or Equal* mantel *Wood as per owner specs*
Additional information:

5. Exterior Walls
Wood frame wood grade, and species *2 x 4 #2 YP* Building paper or felt *House Wrap*
Sheathing *O.S.B.* thickness *15/32"* width *8'-0* height *4'-0"* direction *Horz.*
Siding *Vinyl* grade *lapped* type ____ size *7"* exposure *6"*
fastening *Nails/Staples* Stucco *Tabby* thickness *1/4"* Lath *1/4"* weight ____ lb.
Masonry veneer *NA* Sills ____ Lintels ____
Base flashing ____ Exterior painting material ____ number of coats ____
Gable wall construction same as main walls other construction ____
Additional information:

6. Floor Framing
Joists wood, grade, and species *Open Web Trusses* other ____ bridging ____ anchors *Glue/Nails*
Concrete slab *Storage* floor first floor ____ ground supported ____ self-supporting mix ____
thickness *4"* reinforcing *Concrete with fiber*
insulation ____ membrane ____
Fill under slab material *Treated Earth* thickness ____
Additional information:

7. Subflooring (Describe underflooring for special floors under item 21)
Material grade and species O.S.B. size 3/4" type T & G
Laid first floor Yes Laid second floor _____ Laid attic Yes sq. ft. Approx. 500
Additional information

8. Finish Flooring (Wood only. Describe other finish flooring under item 21)

9. Partition Framing
Studs wood, grade, and species #2 Y.P. size and spacing 2 x 4 @ 16" O.C.
Other _____
Additional information:

10. Ceiling Framing
Joists wood, grade, and species #2 Y.P. Other _____
Bridging 2 x 4 and 2 x 6 strongback
Additional information:

11. Roof Framing
Rafters wood, grade, and species #2 Y.P. 2 x 6
Roof trusses (see detail) grade and species See Drawings
Additional information:

12. Roofing
Sheathing wood, grade, and species 15/32" O.S.B. solid spaced _____ O.C.
Roofing Asphalt Shingle grade 30 yr size 5" reveal type Architectural
Underlay Asphalt Felt weight or thickness 15 lb size 36" roll fastening Galv. nails w/caps
Flashing material See Drawings gage or weight _____
Additional information:

13. Gutters and Downspouts
Gutters material Aluminum gage or weight _____ size 5" shape Boxed
Downspouts material Aluminum gage or weight _____ size 5" shape Boxed
Downspouts connected to: Storm sewer _____ sanitary sewer _____ dry-well _____
Splash blocks material and size _____
Additional information: Owner installed

14. Lath, Plaster and Gypsum Board
Lath & Plaster: walls NA ceilings NA material _____ weight or thickness _____
Plaster coats _____ finish _____
Dry-wall walls ceilings material _____ thickness 1/2" finish Smooth
Joint treatment Tape / Fill / 3 coats
Additional information:

15. Decorating (Paint, wallpaper, etc.)

Rooms	Wall Finish	Material and Application	Ceiling Finish	Material and Application
Kitchen	Smooth	Paint	Smooth	Paint
Powder Room	Smooth	Paint	Smooth	Paint
Family Room	Smooth	Paint	Smooth	Paint
Study	Smooth	Paint	Smooth	Paint
Utility	Smooth	Paint	Smooth	Paint
M. Bath	Smooth	Paint	Smooth	Paint
M. Bedroom	Smooth	Paint	Smooth	Paint
Bedroom 2	Smooth	Paint	Smooth	Paint
Bedroom 3	Smooth	Paint	Smooth	Paint
Bedroom 4	Smooth	Paint	Smooth	Paint
Bath 3	Smooth	Paint	Smooth	Paint

Additional information:

16. Interior Doors and Trim

Doors type *4 panel* material *Masonite* thickness *1-3/8"*
Door trim type *1 x 4* material *Wood* size *3-1/2"*
Base type *Typical* material *Wood* size *5"*
Crown type *Typical* material *Wood* size *5"*
Crown locations *Crown located throughout entire home*
Chair rail type *3"* material *Wood* locations *Dining Room*
Additional information: Owner installed

17. Windows

Windows type *Dbl Hung* make *Betterbilt* material *Vinyl*
Glass wind rating *Code* Glass insulation *Code*
Trim type *Vinyl* material *Vinyl* Paint _____ number coats _____
Weather stripping type _____ material _____
Screens full half type *Half Screens* number _____ screen cloth material *Vinyl*
Special windows *Awning on rear of home*
Additional information:

18. Entrances and Exterior Detail

Main entrance door material *Metal/Glass* sidelites *1/2 glass* width *3'-0* thickness *1-3/4"*
Frame material *Wood* thickness _____ Transom type _____
Other entrance doors material *Metal/Glass* width *3'-0"* thickness *1-3/4"*
Frame material *Wood* thickness _____
Head flashing *Bitchathane* Weatherstripping type *Alum/Vinyl* saddles *Alum/Vinyl*
Screen doors thickness *NA* number _____ screen cloth material *NA*
Storm doors thickness *NA* number _____ material _____
Combination storm and screen doors thickness _____ number _____ screen cloth material _____
Shutters: hinged _____ fixed *X* Railings _____ Attic louvers *Vinyl*
Exterior millwork grade and species _____ Paint _____ number coats _____
Additional information:

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
Exterior2	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	¾"	3"				
Powder Room	Oak	¾"	3"				
Family Room	Oak	¾"	3"				
Study	Oak	¾"	3"				
Utility	Oak	¾"	3"				
M. Bath	Oak	¾"	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	

Lavatory 3	Pedestal	
Lavatory 3 Faucet	Owner Specified	
Water closet 3	American Standard	
Bathtub 3	1 piece fiberglass	
Water Heater	80 gallon electric	

Additional information:

Bathroom accessories

	Description	Allowance
Towel Bars	Owner specified	Owner supplied

Water supply: public community system individual (private) system* X
Sewage disposal: community system individual (private) system* X
House drain (inside) PVC House sewer (outside) PVC
Water piping galvanized steel copper tubing other PEX
Domestic water heater type _____ make and model _____
Additional information:

23. Heating

Location	Type	Mfg	Size	Seer	Duct type	Thermostat
First Floor	Heat Pump	Carrier or Eq		12 Seer		

Additional information:

Ventilating equipment attic fan, make and model _____ capacity _____ cfm.
Kitchen exhaust fan, make and model _____
Other heating, ventilating, or cooling equipment _____
Additional information:

24. Electric Wiring
Service: overhead underground X Panel: Mfg. Square D Size 200 amp
Wiring: conduit armored cable nonmetallic cable X knob and tube other _____
Special outlets: range X water heater other _____
Doorbell Chimes Push-button locations _____
Additional information:

25.Lighting Fixtures
Total number of fixtures See Plan Total allowance for fixtures, typical installation, $ $1500
Non-typical installation _____
Additional information:

26. Insulation

Location	Thickness	Material Type	Installation	Vapor Barrier
Roof	6"	Fiberglass	Rolled	Paper
Ceiling	12"	Recycled Paper	Blown	NA
Wall	3-1/2"	Fiberglass	Rolled	Paper
Floor	6"	Fiberglass	Rolled	Paper

Additional information:

27. Miscellaneous: (Describe any main dwelling materials, equipment, or construction items not shown elsewhere; or use to provide additional information where the space provided was inadequate. Always reference by item number to correspond to numbering used on this form.)

Hardware (make, material, and finish.)

Special Equipment (State material or make, model and quantity. Include only equipment and appliances which are acceptable by local law, custom and applicable FHA standards. Do not include items which, by established custom, are supplied by occupant and removed when he vacates premises or chattles prohibited by law from becoming realty.)

Porches *Porches built using P.T. post and rail system, Decking to be 5/4 P.T. or equal*

Terraces

Garages

Walks and Driveways

Driveway: width *30'* length *30'* base material *Compacted Earth*
thickness *NA* surfacing material *Concrete* thickness *4"*
Front walk: width *4'-0"* length *35'* material *Concrete* thickness *4"*
Service walk width _____ length _____ material _____ thickness _____

Other Onsite Improvements
(Specify all exterior onsite improvements not described elsewhere, including items such as unusual grading, drainage structures, retaining walls, fence, railings, and accessory structures.)

Landscaping, Planting, and Finish Grading
Allowance _____
Topsoil _____ thick front yard side yards rear yard to _____ feet behind main building _____
Lawns (seeded, sodded, or sprigged) front yard _____ side yards _____ rear yard _____
Planting as specified below: *Owner supplied and specified*

Hotmail® ehdlgilbert@msn.com

Inbox | Previous Page

EXHIBIT 8
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

From : "Price, Ronald E. CIV SPAWAR" <Ronald.Price@navy.mil>
To : <ehdlgilbert@msn.com>
CC : <drbprice@msn.com>
Subject : House construction
Date : Mon, 1 Dec 2003 08:10:58 -0500

Danny,

DO NOT DELETE THIS EMAIL LIKE YOU DID ALL OF DIANA's AND DO NOT PROCEED UNTIL I HAVE EMAIL CONFIRMATION FROM YOU AND GIVE YOU A GO !!!

Now that the closing has taken place, we are readuy to press on with getting this house built. However, with all the mistakes that have taken place to this point, I am going to take a very active role in ensuring that this house is built to our needs, in the time allotted, with the lowest cost possible. To that end, here are the some things I want done.

- Move the front of the house out four (4) feet. (new dimensions 36' x 48') that means the house from the interior wall (interior wall does not move) just moves four (4) feet. Since Boozer does not have the correct floor plan drawings from you anyway, and the foundation hasn't been done, and the preparation for the foundation is incomplete, I don't see this as a major problem. I want to see what we are sending to Boozer and would like the contact number for their representative.

  -- The kitchen door will still be next to the interior wall.
  -- The Great Room door on the NW side will move four (4) feet with the wall.
  -- The kitchen window on the SE side will be increased in width by two(2) feet going towards the kitchen door.
  -- The frame will be increased appropriatley and the garage doors will still be centered within their halves of the NW end.
  -- The window on the second floor of theNW end will follow the placement of the Great Room door
  -- The window beneath the kitchen windoe will be centered on the the kitchen window

- The upstairs closet still needs to have two separate closet doors, as we have discussed, vice the single cased opening in the drawing. You would walk through that opening (opening size to match the window) that is drawn and face left to enter one door, and face right to enter the other door.

- The master bathroom window should be as tall as the other widows on that floor on that SW side. We are using a clawed tub that is not connected to the wall and want that window to be approximately tub height--up.

- I still want a schedule of events as to how this house is to go together. I need to understand the sequence to make sure it goes together properly.

For example:
1. Land properly cleared and leveled
2. Fill placed on home site, leveled and packed
3. Foundation dug and poured
4. Plumbing and power access routed under foundation in preparation for pouring slab
5. Driveway put in
6. Well put in
7. Septic put in
8. Temp power installed
9. Frame-up accomplished

This sequence is not the correct sequence I know. I do want to know what the correct sequence is and when we should expect those things to happen.

We have 90 days from the 24th of Nov to move in. That means we will need some of your time and attention, that is not interupted by other things, to get this job done, done right, and done on time.

Thanks, I look forward to working with you on this project and intend for both you and me to keep better written records as to what is agreed to. By-the-way, I am your decision contact point. Diana will probably have questions and you should answer them. But I am the one who will make the decisions and provide you with the direction.

Ron

msn Hotmail

ehdlgilbert@msn.com

Printed: Wednesday, July 19, 2006 6:27 PM

From : DIANA BRZOZOWSKI PRICE <drbprice@msn.com>
Sent : Tuesday, December 30, 2003 8:59 AM
To : ehdlgilbert@msn.com
Subject : RE: Home

Thanks for the update.

I am concerned about the timeline. Lot preparation must not take very long if the footings are to be dug on the 6th. Will they be poured on the 7th then? When is the block work scheduled for?
Does that mean all the concrete and block work will be cured and ready for the 12 Jan frameup?

Keep us posted, I will be back there on the 5th and will drop by.

We had a good Christmas and hope yours was as good.

Ron & Diana

P EXHIBIT 9
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

From: "Danny Gilbert" <ehdlgilbert@msn.com>
To: drbprice@msn.com
Subject: Home
Date: Mon, 29 Dec 2003 12:15:43 -0500

Ron and Diana,

The following is an update on your project and answers to your questions prior to Christmas.

Verification of windows from Boozer is being done hopefully today. It is important to them as it is to you to get this right because these are special order items. I spoke to Boozer at 11:45 AM today and I am expecting a fax with all window and door information for my approval.

I received the framing plans last week. I have reviewed and hand delivered the approvals back to Boozer.

The new price just came in on the fax: $55,732

Tim Blakely (Dirt Man) walked your lot this morning and still thinks we need to let it dry a little longer. I am going to walk it this afternoon for my own opinion.

Footings are scheduled to be dug Tuesday the 6th.

The building permit has been approved but not picked up yet. I will do that the day before I call for my first inspection. The permit was submitted by me. The permit # is BP2003-1517 for 1104 Saddlehorn Road, TMS #194-00-02-122.

The septic tank will be put in by a different company, I gave many opportunities to the first company and was continually stood up. Currently we are waiting for the design of your septic tank system to by completed by DHEC.

The pictures and the different elevations are in the mail.

Although we have a good chance to make up time, we have experienced a delay on the lot prep and footings due to the rain in the area and the lack of the proper climate to help dry out your lot. Others have experienced the same delays on other jobs, which in turn, sets everyone back.

msn Hotmail

ehdgilbert@msn.com Printed: Wednesday, July 19, 2006 6:18 PM

From : Price, Ronald E. CIV SPAWAR <Ronald.Price@navy.mil>
Sent : Friday, January 9, 2004 9:08 AM
To : "Danny (E-mail)" <ehdgilbert@msn.com>
CC : "DIANA BRZOZOWSKI PRICE (E-mail)" <drbprice@msn.com>
Subject : Price Residence

Danny,

We need to know where you stand in preparation for the first draw. Is this weather changing your expectations of next week. Diana plans to come down so we can sign the authorization together, and she can look over the progress.

We're using the contract, the attached Sept 13th cost estimate, the attached draw procedures information you gave us from National City Mortgage, and the draw schedule as a basis for our expectations with this first draw.

We are expecting copies of the following:

— Document and receipts for–permits (building and septic), builders risk & gen liability insurance, and termite treatment.

— Invoices and receipts for work done, such as:
lot preparation,
porta john rental,
dumpster rental,
temporary utilities
temporary power pole,
footings,
foundation,
garage slab

We believe we're finally getting a handle on how this construction/draw thing goes...it's great to know the Mortgage Company has such strict procedures protecting you, us, and them. That makes us much more comfortable concerning the biggest investment (this home construction) we have or ever will make.

As long as you are getting work done, keeping us informed and producing receipts, we'll eagerly sign for authorizations. We have taken care of the driveway, and it appears we are taking care of some lot prep, which is already in the cost estimate...we'll get this all worked out when we're reviewing bills & receipts for authorizing the draw.

We ask that you are more attentive to keeping us informed during the rest of the construction. It's especially critical now because of scheduling Diana to be here–not wasting a plane ticket. She's trying to get our house in
Ohio ready for sale and we have some family medical situations to deal with too.

Looking forward to showing Diana the progress made.

v/r
Ron Price
SPAWAR-Chas code 741rp
843.218.4981

P EXHIBIT 10
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

msn Hotmail

ehdlgilbert@msn.com Printed: Wednesday, July 19, 2006 6:15 PM

From : DIANA BRZOZOWSKI PRICE <drbprice@msn.com>
Sent : Tuesday, January 13, 2004 1:17 AM
To : zerbstp@compuserve.com, wigginsch@compuserve.com
CC : ehdlgilbert@msn.com, closing@lowcountrytitle.com', Ronald.Price@navy.mil
Subject : First Draw & Plan to completion

Patty (National City Mortgage), and assistant: Charity

In anticipation of the first phase of the construction period, as defined by the draw schedule, we want to be sure "we're all singing from the same sheet of music". We have researched requirements and responsibilities and finally feel we're getting a handle on how these construction projects work, protection for all parties, and obligations of all parties--one to another.

The following is how we see Owner/Borrower expectations/responsibilities; Builder/Contractor and Lender requirements/responsibilities. Please correct us if we are mistaken in any aspect.

1. We understand Danny will be ready with all applicable documents submitted to you and the first phase of construction completed by Jan 16th. We further understand the "critical" aspect of this initial draw and want to perform it exactly by YOUR rules: "IMPORTANT BUILDER INFORMATION, DRAW PROCEDURES, CONSTRUCTION LOANS", the draw schedule and Contractor's rules defined in our Contract with Danny.

2. On Jan 20, after receiving & reviewing our copies of bldg/septic permits, termite treatment, builders's risk/general liability insurance, receipts and invoices for work (material and labor breakdown), a copy of the "frame up" contract, and the request for authorization from Danny, we will sign it. We understand if we do not ensure all actions/documents are in order, we take the chance of a "failed" inspection--resulting in delay of disbursement, additional cost to contractor, and delay in construction. We do not want to take any unnecessary risks.

3. Jan 16 - 20, after you have received all required documents mentioned previously you will order:

--The inspection/appraisal
--Foundation survey
--Title update (on Jan 8th Sue at Lowcountry was notified of draw)

4. On Jan 26th, as per our contract with Danny and outlined in disbursement authorization, a check will be cut.

5. In February we expect at least 2 subsequent draws. With draw #4 on March 1 and the final draw on March 15th.

6. On Mar 15th we expect to lock in our mortgage and be completely moved in by Mar 31st. These dates take into consideration delays in this first phase of construction, without future delay, except for weather--and we have faith the Lord will give us great weather and good will to work together until completion.

Please let us know if our expectations are out of order or if we have misunderstood any requirement or procedure. We need your "expertise"!

Ron & Diana

P EXHIBIT 11
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

EXHIBIT 12
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

JAN 22, 2004

TO: DANNY GILBERT

FROM: RONALD AND DIANA PRICE

SUBJECT: NEGLIGENCE

- *AFTER OUR MEETINGS OF THE LAST 2 DAYS (JAN 20 AND 21ST) THE FOLLOWING ITEMS NEED TO BE "MADE GOOD" BY YOU. YOU NEED TO TELL US NOW (1) HOW THESE THINGS WILL BE TAKEN CARE OF, (2) HOW YOU WILL PREVENT FUTURE INCIDENTS OF THIS NATURE, (3) WHY WE SHOULD KEEP YOU ON AS OUR CONTRACTOR, AND (4) HOW YOU ARE GOING TO STAY WITHIN OUR BUDGET OF $185,000—THIS IS NOT NEGOTIABLE.*

1. *RECEIPTS/INVOICES OF COSTS VS. FIRM QUOTES, AND UNREASONABLE % INCREASES FROM ESTIMATE LISTS DATED SEPTEMBER AND/OR OCTOBER 2003.*

   A. *BOOZER BUILDING SYSTEMS...$23,000, TO $47,000, TO $55,000*

      144% INCREASE IN PRICE

   B. *BUILDERS RISK INSURANCE....$500, TO $694*

      38% INCREASE (AND WITHOUT 6 WKS OF WORK)

   C. *FOOTINGS....(FIRM QUOTE IN OCT OF $2600), TO $3600 ON JAN 6, 2004, TO A BILL OF $5086 ON JAN 8*

      INCREASE OF 38% AND THEN ANOTHER 41%.

   D. *BUILDING PERMITS...$900, TO $1318*

      46% INCREASE (THE COUNTY TELLS ME PRICES HAVE NOT INCREASED IN OVER A YEAR)

   E. *BLOCK WORK...(FIRM QUOTE IN OCT OF $6072), TO $6957 AS OF Jan 20th, which does not appear to be complete.*

000103

15% INCREASE – ACCEPTABLE AS LONG AS NO OTHER COSTS ACCUMULATED!

F. LOT PREP...$4000, TO $2000—LABOR ONLY, TO _____????

WE'RE NOT SURE EXACTLY WHAT TO DO WITH THIS... WE WERE FORCED BY YOU TO GET INVOLVED WITH PAYING FOR A DRIVEWAY, A DEAL WITH A SUBCONTRACTOR, WHICH WE SHOULD NOT HAVE BEEN INVOLVED UNTIL ALMOST COMPLETION OF OUR HOME. YOU WERE "UNWILLING" TO PAY FOR A SUITABLE DRIVE FOR YOUR CONSTRUCTION TO CONTINUE AND FORCED US INTO THIS SITUATION.

WE'VE PAID $4620, OUT OF POCKET...YOU HAVE PAID $1300, AND OWE $850...NOW WHAT ARE YOU GOING TO DO TO FIX THE MESS WE HAVE WITH OUR DRIVEWAY AND COVER THOSE COSTS?

2. YOUR DELIBERATE IGNORING OUR REQUIREMENT FOR SEPTIC PERMIT TO BE DONE PRIOR TO THE FIRST DRAW OF FUNDS:

A. A SEPTIC PERMIT IS REQUIRED BY LAW BEFORE A BUILDERS PERMIT CAN BE OBTAINED. SEE ATTACHED CORRESPONDENCE FROM BERKELY COUNTY.

B. I HAVE APPLIED FOR THE SEPTIC PERMIT, WHICH YOU WERE REQUIRED TO OBTAIN PRIOR TO ANY BUILDING AND NOW DELAYS ANY FUTURE CONSTRUCTION UNTIL IT IS COMPLETE. COST: $100 AND POSSIBLY 3-4 WEEKS IN CONSTRUCTION.

C. ALL PERMITS ARE ON HOLD UNTIL THE SEPTIC PERMIT IS APPROVED. THE PLUMBING PERMIT WAS NOT PICKED UP PRIOR TO YOUR SUBCONTRACTOR PERFORMING PLUMBING ON OUR HOUSE–YOUR RESPONSIBILITY TO ENSURE HIS RESPONSIBILITY BEFORE HE PERFORMED ANY SUCH WORK. THERE IS

NOW A "DOUBLE COST" FOR THAT PERMIT, WHEN IT CAN BE PICKED UP.

WE ARE PREPARED TO LISTEN TO HOW YOU WILL FIX THESE PROBLEMS, ACHIEVE TIMELY PROGRESSION, ENSURE NO SUCH REOCCURENCES AND GUARANTEE OUR HOUSE IS BUILT FOR $185,000--- $25,000 OVER YOUR COSTS ESTIMATE OF SEPTEMBER 13TH, WHICH WE ATTACHED TO OUR CONTRACT WITH YOU.

WE HOPE YOU UNDERSTAND THIS IS NOT "PERSONAL". ON NUMEROUS OCCASIONS, WE HAVE MADE IT CLEAR TO YOU (1)OUR REQUIREMENTS, (2)OUR NEED TO BE KEPT INFORMED, AND (2)WE MUST APPROVE YOUR EXPENDITURES—FINANCIAL COMMITMENTS, FOR WHICH WE PAY BACK THROUGH OUR LENDER. WE DO NOT HAVE "UNLIMITED" FUNDS OR TIME TO ALLOW SUCH OCCURANCES AS THESE.

DIANA R. B. PRICE

ATTACHED: BERKLEY COUNTY PERMIT/HEALTH DEPARTMENT DOCUMENTS

BERKELEY COUNTY
Permitting Department

January 22, 2004

P EXHIBIT 13
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Danny Gilbert
C/O Heritage Classic Homes
1044 Eagle Harbor Lane
Summerville, SC 29483

Re: 1104 Saddlehorn Road (BP2003-1517)

Dear Mr. Gilbert,

It has come to our attention that a septic tank approval letter has not been issued by the Department of Health and Environmental Control for the above referenced project.

Pursuant to S.C. Code of Regulations §61-56 Section III. C. The general contractor (or prime contractor, or person constructing the building) shall not begin construction of the building until a permit to construct an individual sewage treatment and disposal system is issued by the Health Authority. ***If it is discovered that you do not have your own individual septic tank system and are not connected to an approved sewage system, you will be found in violation of this regulation and will be punished in accordance with Section 44-1-150, code of Laws of South Carolina, 1976, with each day being deemed a violation and treated as a separate offense; the maximum punishment for which is 30 days in jail or a fine of $200.00.***

Please be advised that you are to immediately stop construction on this project until you receive the proper permit for construction of the septic tank required by DHEC.

It has also come to our attention that the sub-contractor hired to install the plumbing did not pick up or apply for his permit on this project. The fee has been doubled for the permit and if they have not picked up their Permit Authorization Card, that too, will be double fees. The sub-contractors for the electrical and mechanical work have not picked up their permits, either. Those permits will not be double fees unless work began without their permits. This must also be rectified before construction can resume.

223 North Live Oak Drive • Moncks Corner, South Carolina 29461-3707
Moncks Corner (843) 719-4292 • Charleston (843) 723-3800 • St. Stephen (843) 567-3136

BERKELEY COUNTY
Permitting Department

Thank you in advance for your cooperation with this matter. If you have any questions, please feel free to give me a call.

Sincerely,

Bonni Watson
Permitting Manager

BMW/bmw

Cc: Mr. And Mrs. Price
File

223 North Live Oak Drive • Moncks Corner, South Carolina 29461-3707
Moncks Corner (843) 719-4292 • Charleston (843) 723-3800 • St. Stephen (843) 567-3136

$100.00

D H E C

PROMOTE PROTECT PROSPER

Application for Permit to Construct an Individual Sewage Treatment and Disposal System

Home Phone No.: 419 694 2175 Work Phone No.: 618 789 0961 Application No.: _____

I, Diana R. B. Price (Name), PO Box 191 (Mailing Address)

Mount Blanchard (City/Town) Oh (State) 45867 (Zip Code)

hereby make application for a Permit to Construct an Individual Sewage Disposal System to serve a:

House: _____ Mobile Home: _____ Other (Specify): _____

If in subdivision, give name: Eagle Harbor, Lot #: 20

Street: 1104 Saddlehorn Rd Tax Map #: 194-00-02-122

Lot Identification

In order for your application to be processed, stake the corners of the proposed building and center of the lot with distinctive markers. Place site locator card on front of property in a conspicuous location. Contact the Health Department when the lot is staked, house site located, and lot posted. You can prevent delays in the evaluation by flagging all the property corners.

Please Give Exact Directions To Lot

I 26 W
Exit 194 to Starlite
- Turn Right to Candle
- Ref. Conversation
with Brandon on Jan 21, 2004!

Applicant's Sketch Of Proposed Installation On Lot

Sketch must show dimensions, proposed and existing structures, proposed pool, proposed or existing wells (including wells on adjoining property), proposed septic tank location, proposed drive, and indicate distance from proposed building to road and property lines. Attach copy of deed describing boundaries or plat.

P EXHIBIT 14
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

No. Bedrooms: 4

Basement: Full ☐ Partial ☐ None: ☒

Plumbing in Basement: Yes ☐ No ☒

Well: Existing ☐ Proposed ☒ None ☐

Public Water: Yes ☐ No ☐

If commercial establishment, answer following:

Type of Business: _____

Number of Occupants: _____ Number of Employees: _____

Other: _____ (i.e. seating capacity, meals per day)

Public Restrooms: _____ Number of Hours of Daily Operation: _____

Information not in conformance with actual conditions on the property will void the Permit to Construct.

"Permission is hereby granted for health department representatives to enter the above-described property at reasonable hours for the purpose of septic tank inspection and/or site evaluation."

Jan 22, 2004 — Date

Diana Price — Property Owner or Agent's Signature

DHEC 1740 (01/1997)

Berkeley County
Environmental Health Division

YOU MUST CALL TO ACTIVATE YOUR APPLICATION.

Call (843) 719-4649 when your yellow site locator card is posted and your property corners and proposed building structure have been staked out. Please be prepared to give your tax map number when you call. **After we receive your call** stating you have completed the above mentioned, your property will then be scheduled for evaluation.

If you have any questions in this matter, please call.

BERKELEY COUNTY ENVIRONMENTAL HEALTH SERVICES

When an application is completed, including good directions to the property to be evaluated, the following is necessary for the field technician to perform the soil boring:

A. The **Tax Map Number, a Tax Map and Deed, or a Boundary Plat**, from the RMC Office, specifying the lot size and it's boundaries, shall be furnished by the property owner or their agent, and attached to the application before the evaluation can be performed.

B. Prior to a site evaluation of the lot, the applicant must properly STAKE OFF the area.

1. Place the Yellow Site Location Card out by the road, and/or at the beginning of the lot so it is VISIBLE.
2. STAKE the four (4) corners of the property.
3. STAKE the four corners of the proposed house/mobile home/building.
4. Place a stake or flagging at the proposed well location. (A minimum of 50 feet from septic tank and drainfield; FHA/VA may require 100 feet)
5. If the property is thickly overgrown with weeds, underbrush, etc., clear a path to the site that is to be inspected.

C. If the field technician can't locate the property, you will receive a letter requesting better directions.

D. If the property is not properly staked off, the inspector cannot make an evaluation. Your application will be considered PENDING until you contact our office that it has been staked/flagged.

NOTE: Your cooperation in getting the above mentioned done will speed up this process. The WAITING period can vary from **two to four** weeks. **This is an estimate!** If the property is not staked off, this only causes us to get backed up even further.

The application Fee is $100.00 (for EACH septic permit) and is payable at the time the application if filed. If the fee is not paid, the application will not be processed. Checks should be made payable to S.C. DHEC and include driver's license number on the check.

719-4649 Moncks Corner 723-5355 Charleston Line 567-3136 St. Stephen

D H E C

PROMOTE PROTECT PROSPER

NOTICE OF INTENT (NOI)

CONSTRUCTION OF INDIVIDUAL RESIDENTIAL OR IRRIGATION WELL UNDER THE SOUTH CAROLINA GENERAL PERMIT # SCW00000000

SEE REVERSE FOR INSTRUCTIONS

Submission of this Notice of Intent constitutes notice that the party identified in Section III of this form intends to be authorized by a permit issued for construction of an individual residential or irrigation well in the location identified in Section II of this form. Becoming a permittee obligates the construction to comply with the terms and conditions of the permit. ALL NECESSARY INFORMATION MUST BE PROVIDED ON THIS FORM. A FEE OF $70 FOR INDIVIDUAL RESIDENTIAL WELLS OR $50 FOR IRRIGATION WELLS IS REQUIRED FOR COVERAGE UNDER THIS PERMIT. KEEP A COPY OF THIS NOI AT THE DRILLING SITE.

SCW ___ — ___ Permit Number

I. Well Owner Information *(mailing address)*

Name: _____ last _____ first

Address: _____ Phone: ( ) _____

City: _____ State: ___ Zip: ___ — ___

II. Well/Site Location Information

COUNTY: _____ Proposed Start Date: ___ / ___ / ___ month day year

Name: _____ last _____ first

Address: _____ ☐ No Address Exists Location Map Attached

City: _____ State: S C Zip: ___ — ___

☐ RESIDENTIAL ☐ IRRIGATION (livestock, chicken house, pond) ☐ REPLACEMENT (see instructions) ☐ EMERGENCY

III. Well Driller Information

Well Drillers Name: _____ last _____ first SC Cert No: ____

Company Name: _____

Company Address: _____

City: _____ State: ___ Zip: ___ — ___

Phone: ( ) ___ — ___

Fax: ( ) ___ — ___

Please note: the driller must have a copy of this NOI at the drill site.

IV. Fee Information

Method of Payment: Check (# _____) Cash Money Order Visa MasterCard (Provide credit card numbers by phone only)

Transfer from: name _____ permit# SCW _____

If the NOI was faxed to SCDHEC, record the date: ___ / ___ / ___ month day year and _____ time the fax was sent.

V. Certification:

I certify that this document and all attachments were prepared under my direction or supervision and the information submitted is, to the best of my knowledge and belief, true, accurate and complete.

Print Name: _____ Title: _____

Signature: _____ Date: _____

COPY 1 TO SCDHEC COPY 2 TO WELL OWNER COPY 3 TO WELL DRILLER

D H E C

PROMOTE PROTECT PROSPER

South Carolina Department of Health and Environmental Control

SITE LOCATION

NAME _____

SUBDIVISION _____

~~ADDRESS/LOT~~ NO. _____

~~APPLICATION~~ NO. _____

SEE BACK OF CARD FOR IMPORTANT INSTRUCTIONS

00951

1. Please post this card in front of the property where structure is to be located.

2. A permit for construction of the sewage disposal system must be issued by the county health department before beginning of any construction or the moving of a mobile home onto this property.

3. Place stakes with some identification as to what they mean at the following locations:

   a) [on property of less than 5 acres] at each property line corner.
   b) at the 4 corners of the proposed building or dwelling.
   c) at the proposed or existing water well location.
   d) at the proposed point of plumbing stubout.

FAILURE TO FOLLOW THE ABOVE INSTRUCTIONS WILL CAUSE DELAY IN PROCESSING YOUR APPLICATION

National City Mortgage

National City Mortgage Co.
7301 Rivers Ave, Suite 241
N. Charleston, SC 29406
Telephone: (843) 553-0410
Fax: (843) 824-9269

1/9/03

Dear Mrs. Price,

Per your request, I am sending this letter in regards to your concerns of the capped rate on your construction perm loan. If everything is complete –i.e. the house is done and all paperwork is complete and finalized-by May 24,2004 your rate will be no higher than 6.75%. However, if you miss the target date of May 24th, you will be charged an interest rate of 11.75% on the remaining principal balance owed. We can not change the paperwork that has already been submitted to post closing. You can, however, accept this letter as guarantee that if all criteria is met by May 24th, 2004 your capped rate will be 6.75%.

Sincerely,
Patty Zerbst
Patty Zerbst
Loan Officer

Rec'd updated Jan 22, 2004 Meeting w/ P, Atty + Brent Hyde

EXHIBIT 15
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Jan 30, 2004

To: Heritage Classic Homes
Danny Gilbert
1044 Eagle Harbor Lane
Summerville, SC 29483

From: Ronald and Diana Price, Lot 20, Eagle Harbor
1104 Saddlehorn Rd
Summerville, SC 29483
Phones: 843 729 6050, 843 860 1055

Subject: Contract Termination—In accordance with our Contract of September 13, 2003, Standard Form of Agreement Between Owner and Contractor--Article 8 and 9, and Article 14 (14.2.1 and 14.2.2) of Contract Document, A1A Document A201, 1987 Edition, General Conditions of the Contract for Construction

1. This written notice is follow up to our brief discussion and verbal termination of the Contract on Jan 26, 2004, after you refused to discuss your negligence as our contractor (reference letter to you on Jan 22, 2004) and you said "I am done."

2. Under Article 14.2.1 (referenced above) and as Owners in the Contract referenced above, we terminate the Contract for Cause.

3. Under Article 5.4.1 of the A1A Document A201, we request subcontractor information and assignment as appropriate.

RONALD E. PRICE

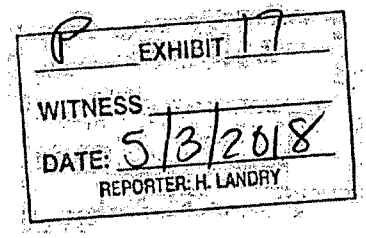
DIANA R.B. PRICE

P EXHIBIT 116
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Deck 3

Feb 9, 2004

Diana and Ronald Price
1104 Saddlehorn Rd
Summerville, SC 29483



Danny Gilbert
Heritage Classic Homes
1044 Eagle Harbor Lane
Summerville, SC 29483

Dear Danny,

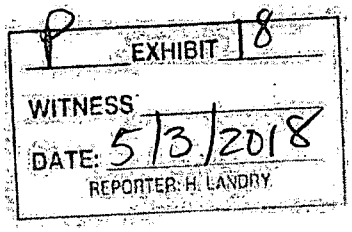
In reference to our brief dialogue on Jan 31 and messages between us:

1. We have contacted our insurance company—we have Builder's Risk.
2. I discussed the possibly of transferring your "building permit" with County Permitting. It cannot be done, it is not a "invalid" permit.
3. Please remove the power pole…it wasn't connected and never should have been set up, due to the permit requirements.
4. We have informed the Homeowners Association of termination of our contract and the need to proceed in getting another Contractor and the building of our home. We request your assistance and cooperation.
5. Please carefully review the Contract Documents, particularly those provisions concerning "owner termination for cause" and Contractor responsibility when proceeding with construction without getting the proper permits. Then give us your assessment (payment due you) based on the Contract and your responsibilities in abiding by our Contract, as well as how those measure/balance out against the 10 week delay/s in construction you have caused. We, likewise, are making our list of what we consider "fair payment" under these circumstances.
6. Your threat of a lien: If you have disclosed all circumstances surrounding the reasons you have not yet been paid, to legal counsel, filing a lien against our property is out of line. It would look like you are trying to threat or provoke the situation into litigation. The Lender is NOT paying anything until the construction is resumed and a draw can be made—we could not pay if we wanted to.

That "careful" review of the Contract, should also take into consideration the fact that "damages" to you do not overshadow the damages you have caused us. Please do not try to create obstacles in us proceeding with our Home. We have done nothing but "trust" you until it was obvious you were not being honest in your dealings with us and you had your own agenda. It is not a question of who's fault it is. The question is what are you willing to do about it, as we attempted to find out prior to terminating the Contract?

Diana R. B. Price

February 19, 2004



Mr. and Mrs. Ronald Price
P.O. Box 191
Mount Blanchard, Ohio 45867

Reference: Eagle Harbor Community Association

Mr. and Mrs. Price

Your recent letter and notes from your past conversation with acting Homeowners Association President, Tonya Evans, have been turned over to me. Until our 501(c)3 comes in from the federal government, Mrs. Evans has not been given the authority by the Developer, (Declarant) Eagle Harbor Inc., to handle such matters. Any future issues, in addition to the ARC requirements, should be handled directly by me and through the offices at 1044 Eagle Harbor Lane, Summerville, SC, 29483.

Your assumption that full approval has been granted is incorrect. The home plans and fee of $500 have not officially been submitted to our Architect who grants final approvals. They have although, been designed to meet all requirements as set forth by the ARC. I see now, as I saw when under contract to build your home, no problem in passing the ARC. The matter was delayed until payment for construction was made by you or your lending representative, at that point the fee and application would have been given to the Architect for final approval. It is because of my relationship with the Architect and because I am the developer that construction was started on your home. But, we still must adhere to covenants. It is not the concern of the ARC that a home such as yours will not pass the ARC requirements. The ARC is concerned with homes that will affect the value of your property and others in Eagle Harbor in a negative way.

Because to date you have not paid the money owed to me while under contract to build your home, you will be responsible for filling out the application (attached) and submitting it with a check to M. Brennan Architects for the amount of $500 to the Eagle Harbor Offices. This application and fee are non-negotiable and must be returned no later than March 1, 2004. If for any reason they are not submitted by that date, the Eagle Harbor Covenants 3.3.7 allow for a fine of non-compliance. The Covenants also allow for additional measures to be taken if for any reason you are not cooperative.

Be assured the measures were put in place to protect you and the value of what might be your largest investment.

Under no circumstance shall a mobile home be placed on your lot in Eagle Harbor. This is not in line with Article 2.1 and 3.3 and is subject to penalties under Article 3.3.7.

Thank you

Danny Gilbert
President, Eagle Harbor Inc.

cc: Tonya Evans, Charles Dix

Rec 2/28
Post Mark 2/23

FILED, RECORDED, INDEXED
02/20/2004 03:02:45PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 4
Issued to: DANNY L GILBERT
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

DANNY L. GILBERT D/B/A
HERITAGE CLASSIC HOMES, INC.)
)
Plaintiff,)
)
vs.)
)
RONALD & DIANA PRICE)
)
Defendants.)
)

MECHANICS LIEN

P EXHIBIT 19
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

PERSONALLY appeared before me Danny L. Gilbert d/b/a Heritage Classic Homes, Inc., who being duly sworn, deposes and says as follows:

That the annexed statement is a true and just account of the amount due to the Plaintiff with all just credits given for labor and materials furnished and actually used in the erection, alteration, or repair of buildings or structures situated on the after-described real estate, by virtue of its contract with Ron and Diana Price, and with notice to and consent of the Defendants herein. The value of the labor and materials furnished is the sum of TWENTY THREE THOUSAND SEVEN HUNDRED NINE AND 25/100 ($23,709.25) Dollars, as evidenced by the sworn statement of account, attached as *Exhibit "A,"* and labor and materials were furnished to the after-described real estate less than ninety (90) days from the date of the filing and service of this Mechanic's Lien.

That by virtue of the aforesaid labor and materials furnished to the after-described property, and by the service and filing of this Mechanic's Lien Plaintiff has and claims as Mechanic's Lien for the payment of the indebtedness aforesaid and the cost of enforcing said lien upon the described real estate, attached hereto as *Exhibit "B,"*.

WHEREFORE Plaintiff claims a Mechanic's Lien in the sum of TWENTY THREE THOUSAND SEVEN HUNDRED NINE AND 25/100 ($23,709.25) Dollars, plus a reasonable attorney's fee (if necessary) as prescribed by statute, and for the costs and disbursements of this action.

Plaintiff Pro Se

SWORN to before me this 20 day
of Feb, 2004

Sharon Campbell (Seal)
Notary Public for South Carolina
My Commission Expires: _____

Notary Public, Berkeley County, South Carolina
My Commission Expires October 18, 2011

EXHIBIT A

ITEMIZED STATEMENT OF ACCOUNT

Re: Danny L. Gilbert d/b/a, Heritage Classic Homes, Inc. v. Ronald E. and Diana R. B. Price

---

Property Address: 1104 Saddlehorn Road
Summerville, SC 29483

Date	Invoice No.	Amount
02/20/04		$23,709.25
	TOTAL AMOUNT DUE	$23,709.25

I, Danny L. Gilbert, Plaintiff Pro Se, do hereby verify that this is a true and correct Statement of Account for Friday this 20th day of February, 2004.

Plaintiff Pro Se

SWORN to before me this 20 day of Feb, 2004.

Sharon Campbell (Seal)
Notary Public for South Carolina
My Commission Expires:
Notary Public, Berkeley County, South Carolina
My Commission Expires October 18, 2011

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

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 foe: 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.

TMS # 194-00-02-031

I, Danny L. Gilbert, Plaintiff Pro Se, do hereby verify that this is a true and correct Statement of Account for Friday this 20th day of February, 2004.

Plaintiff Pro Se

SWORN to before me this 20 day of Feb, 2004.

(Seal)
Notary Public for South Carolina
My Commission Expires: _____

Notary Public, Berkeley County, South Carolina
My Commission Expires October 18, 2011

South Carolina

Western Surety Company

RELEASE OF LIEN BOND
(S.C. Code Ann. § 29-5-110)

KNOW ALL PERSONS BY THESE PRESENTS: Bond No. 69699362

That we, Diana and Ronald Price, as Principal(s), and WESTERN SURETY COMPANY, a corporation authorized to do surety business in the State of South Carolina, as Surety, are held and firmly bound unto Perry L. Gilbert dba Heritage Classic Homes, Inc., as Obligee(s), in the sum of not to exceed Thirty One Thousand Six Hundred Four And 43/100 — DOLLARS ($ 31, 604.43), for the payment of which well and truly to be made, we bind ourselves and our legal representatives, firmly by these presents.

THE CONDITION of the above obligation is such that WHEREAS the Principal(s) desires to have the lien filed by the Obligee(s) on February 20, 2004, in the office of the clerk of courts or register of deeds, discharged and is required to give bond pursuant to S.C. Code Ann. § 29-5-110. Recorded in Record Book 3843 Pg 38

NOW, THEREFORE, if the Principal(s) shall pay any amount found by judgment to be due to the Obligee(s) from the Principal(s) on such lien claim, not to exceed the amount of this bond, then this obligation to be void; otherwise to remain in full force and effect. In no event shall the total liability of the Surety for all breaches of the condition of this bond exceed the amount stated above.

Dated this 19th day of May, 2004.

FILED, RECORDED, INDEXED
05/24/2004 09:02:47AM
Rec Fee: 5.00 St Fee: 0.00
Co Fee: 0.00 Pages: 3
Issued to: RONALD E PRICE
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

Diana R. B. Price, Principal

By

Ronald E. Price, Principal

By

Countersigned

By attached on back
South Carolina Resident Agent

WESTERN SURETY COMPANY, Surety

By R. Gray
R. GRAY, ASSISTANT SECRETARY

P EXHIBIT 20
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Form F4928

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

TATE OF TEXAS
County of Dallas } ss

0000014578 Bk:04011 PG:00154

On this 19th day of May, 2004, before me, a Notary Public in

R. GRAY ASSISTANT SECRETARY

nd for said County, personally appeared _____
personally known to me, who being by me duly sworn, did say that he is the aforesaid officer of WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed on behalf of said corporation by authority of its Board of Directors, and further acknowledge that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Dallas, Texas, the day and year last above written.

My commission expires

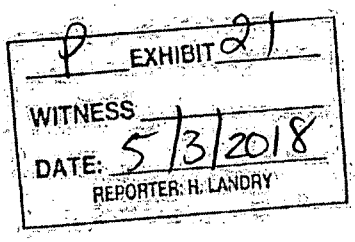
NOV 6 2005

K. Meek

Notary Public

May 13, 2004

Ronald and Diana Price
PO Box 191
Mt Blanchard, Oh 45867
AND
1104 Saddlehorn Rd.
Summerville, SC 29483



Danny Gilbert
Heritage Classic Homes
1044 Eagle Harbor Lane
Summerville, SC 29483

SUBJECT: "RIGHT TO CURE"

Mr. Gilbert,

For over six weeks, we have requested you give us access to the Eagle Harbor storage building, where you insisted in September 2003; we store many personal property items (motorcycle parts and new appliances for our house) while our house was under construction. It was unfortunate that you put us in a position in which we had to terminate our contract with you to build that house. We'll not reiterate those circumstances, we simply request you no longer detain allowing us to move our property, which is stored in a facility belonging to Eagle Harbor—The Boys Home, not Heritage Classic Homes—your personal business, as was suggested by your attorney Mr. Hollingsworth.

Our "personal" property has no bearing on your claim of funds owed you. You are well aware of your responsibility toward the termination provisions outlined by our contract with you, which clearly state you are not entitled to payment from us until the project (our house) is complete. We are working to "settle" with you while following those provisions, which you incorporated in the contract—not us. If the cause for termination had been our responsibility, you would expect us to perform up to that same standard.

As required by Magistrate, Small Claims Court, Monks Corner, SC., we are giving you 10 days from receipt of this letter to allow us access and removal of our property as listed below:

Item	Value
Stainless Range	$637.00
Stainless Dishwasher	$379.00
Stainless Compactor	$453.00
Stainless Microwave with Range Hood	$359.00
13 Ceiling Fans w/fixtures	$1,400.00
16 Boxes of Ceramic Tile	$400.00
Motorcycle Frame	$858.00
Motorcycle Fender	$52.00

Motorcycle Fender Brace	$44.00
Motorcycle Front Wheel with Tire 21"	$199.00
Motorcycle Front Brake Rotor w/hardware	$45.00
Motorcycle Rear Wheel 18x5.5	$276.00
Motorcycle Billet Forward Controls	$566.00
Motorcycle Gas Tank	$99.00
Motorcycle 16" Ape hangers 1.25"	$125.00
Motorcycle Headlight	$156.00
Motorcycle Speedometer with Top Clamp Mount	$250.00
Motorcycle Handlebar Risers	$35.00
Motorcycle Exhaust	$430.00
Motorcycle Taillight	$35.00
Motorcycle License plate frame w/lights	$43.00
Motorcycle License plate mount	$25.00
Motorcycle Billet Grips	$125.00
Motorcycle Mirrors	$35.00
Motorcycle Seat	$50.00
Motorcycle Jack	$65.00
Motorcycle Miscellaneous Parts	$100.00
Bucket of miscellaneous tools, pipe wrenches, etc.	$60.00
TOTAL	$7,301.00

We assume you are familiar with this process which will result in us filing for "Claim and Delivery" if you do not allow us to remove our property. Contact me at 843 729 6050 or 843 218 4981 to schedule the removal.

Sincerely,

Ronald E. Price

Cc: Dunn Hollingsworth, Attorney
Eagle Harbor—The Boys Home Board of Directors Chairman, Mr. John Moody

D H E C
PROMOTE PROTECT PROSPER

BERKELEY COUNTY HEALTH DEPARTMENT
Division of Environmental Health
109 W. Main Street
Moncks Corner, SC 29461
(843) 719-4649, 723-5355, 567-3125 ext. 4649
Fax (843) 719-4321

EXHIBIT 22
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

May 18, 2004

Danny Gilbert
1044 Eagle Harbor Lane
Summerville, SC 29483

Re: TMS# 194-00-02-031, Eagle Harbor Subdivision, Phase II

Dear Sir:

This department is in receipt of the final recorded plat of Eagle Harbor, Phase II and the recorded encroachment permit from S.C. Dept. of Transportation for the sanitary sewer transmission pipe across S.C. Road 1119 to serve remote drainfield sites for Lots 1, 2, 19 and 20.

Based on review of the easement dedications for remote drainfield sites for Lots 1, 2, 19 and 20, across Road 1119 and the easements for Lots 4, 7, and 18, each lot in this subdivision now meets current minimum S.C. DHEC Regulation 61-56 and Standards for at least a modified conventional subsurface treatment and disposal system for Lots 1 thru 16, and 18 thru 20.

Final approval for Phase II, Eagle Harbor S/D is granted for at least one three (3) bedroom single family dwelling for Lots 1 thru 16, and Lots 18 thru 20.

If you have any questions, please call me at 719-4649 or 202-7020, Monday thru Friday.

Sincerely,

B.B. Bozardt, Supervisor
District Onsite Wastewater Program

bg

cc: Diana Price

SPREADSHEET EXTRACT

P EXHIBIT 23
WITNESS
DATE 5/3/2018

7/27/04	$73.03	Fram/Porch/Deck	Misc Framing Materials	OWNER
4/3/07	$10.42	LEGAL	Chellis/Frampton	OWNER
5/20/05	$9,313.72	SF, Art 2	Landscaping	OWNER
6/17/04	$1,120.00	SF, Art 2	Landscaping	OWNER
7/2/05	$1,908.00	SF, Art 2	Landscaping	OWNER
2/5/05	$22.59	ADMIN	Photos	OWNER
10/28/05	$350.00	SF Agree, Art 2	Excavation Dirt	OWNER
9/13/04	$148.39	SF Agree, Art 2	Hardware	OWNER
9/27/04	$682.11	Applliances	Appliances - Kitchen	OWNER
10/8/04	$126.60	Lighting	Light Fixtures	OWNER
4/12/04	$132.30	Plumbing	Plumbing	OWNER
4/2/04	$4.65	ADMIN	Certified Mail	OWNER
9/10/04	$4.42	ADMIN	Certified Mail	OWNER
12/12/03	$5.34	ADMIN	Certified Mail	OWNER
2/13/04	$4.42	ADMIN	Certified Mail	OWNER
3/16/04	$4.30	ADMIN	Certified Mail	OWNER
3/16/04	$29.97	ADMIN	Misc	OWNER
1/20/05	$157.36	SF Agree, Art 2	Hardware	OWNER
1/23/05	$123.72	SF Agree, Art 2	Hardware	OWNER
9/24/04	$4.42	ADMIN	Certified Mail	OWNER
11/2/04	$37.69	Cabinets	Pulls	OWNER
11/2/04	$37.69	Cabinets	Pulls	OWNER
8/27/04	$4.42	ADMIN	Cert Mail - NCM	OWNER
1/7/05	$102.75	WINDOWS	Covering	OWNER
1/9/05	$87.35	WINDOWS	Covering	OWNER
3/6/04	$107.55	WINDOWS	Covering	OWNER
2/17/04	$79.59	WINDOWS	Covering	OWNER
2/18/04	$61.10	WINDOWS	Covering	OWNER
3/3/04	$131.68	WINDOWS	Covering	OWNER
3/7/04	$51.45	RENTAL MISC	Linens	OWNER
3/7/04	$18.98	RENTAL MISC	Coffee Pot	OWNER
3/7/04	$12.00	RENTAL MISC	Dishes	OWNER
5/27/04	$49.20	ADMIN	Office Supplies	OWNER
2/6/04	$56.42	ADMIN	Interior Design	OWNER
8/6/04	$12.26	Framing/Porch/De	Misc Construction Items	OWNER
8/13/04	$2.11	Framing/Porch/De	Misc Construction Items	OWNER
9/19/04	$8.01	MISCELLANEOUS	TILE	OWNER
3/30/04	$4.42	ADMIN	Certified Mail	OWNER
12/17/04	$70.15	ADMIN	Admin Supplies	OWNER
11/3/04	$556.32	SF Agree, Art 2	Shelving	OWNER
7/16/04	$4.42	ADMIN	Cert Mail - J.Kahler	OWNER
7/23/04	$10.00	ADMIN	Bldg Co Recording	OWNER
7/29/04	$104.94	Fram/Porch/Deck	Misc Framing Materials	OWNER
10/27/04	$6.85	Interior Trim	Pulls	OWNER
10/20/04	$51.72	Plumbing	Plumb Mat &/O Lab	OWNER
10/7/04	$67.84	SF Agree, Art 2	Hardware	OWNER
10/4/04	$15.19	SF Agree, Art 2	Hardware	OWNER
10/4/04	$449.97	Interior trim	Misc	OWNER
10/11/04	$141.56	SF Agree, Art 2	Hardware	OWNER
10/8/04	$135.09	SF Agree, Art 2	Hardware	OWNER
10/22/04	$5.28	Interior trim	Caulk	OWNER
10/22/04	$39.19	Interior trim	Duraplex	OWNER
9/18/04	$64.87	Interior doors	Door	OWNER
10/14/04	$48.70	SF Agreement, Ar	Hardware	OWNER
11/30/04	$6,000.00	SF Agreement, Ar	Driveway	OWNER
9/19/04	$8.01	Hardwood/Floorin	Tile	OWNER
9/18/04	$18.25	Interior trim	Interior trim	OWNER

SPREADSHEET EXTRACT

9/3/04	$199.71	Fram/Porch/Deck	Window Sealer			OWNER
8/31/04	$75.72	Dumpster	Container Rental			OWNER
8/29/04	$37.07	Fram/Porch/Deck	Spkr Wire			OWNER
4/29/04	$12.90	LEGAL	HCH Attorney			OWNER
5/31/04	$109.20	Foundation	Concrete Lad-BGM			OWNER
9/17/04	$1,211.83	SF Agree, Art 2	Hardware			OWNER
7/23/04	$3.85	Admin	Copies			OWNER
2/5/05	$22.00	Admin	Photos			OWNER
7/16/04	$8.92	ADMIN	NCM			OWNER
6/7/04	$332.88	SF Argee, Art 2	Hardware			OWNER
2/26/05	$1,202.00	SF Agree, Art 2	Shelving			OWNER
7/26/04	$265.58	Fram/Porch/Deck	Misc Framing Materials			OWNER
6/5/04	$17.94	Framing/Porch/De	Lumber			OWNER
3/29/04	$15.00	Admin	Coping			OWNER
1/15/04	$137.01	Hardwood/Floorin	Flooring			OWNER
3/15/04	$15.00	Recordings	Notices			OWNER
10/14/05	$100.00	Hardwood/Floorin	Defect Carpet Replace			OWNER
TOTAL	$26,525.65					
5/24/04	$75.00	STORAGE	Storage	Mini Wher	Receipt	SELLER/CONTRACTOR
6/10/04	$1,673.74	INSPECTION	Engineer F	C. Schneid	Check Rec	SELLER/CONTRACTOR
9/6/04	$250.00	INSPECTION	Engineer F	Sanford E	Check Rec	SELLER/CONTRACTOR
9/28/04	$75.00	STORAGE	Storage	Mini Ware	Check Rec	SELLER/CONTRACTOR
9/6/04	$650.88	STORAGE	Storage	A-1 Movin	Check Rec	SELLER/CONTRACTOR
7/16/04	$650.88	STORAGE	Storage	A-1 Movin	Check Rec	SELLER/CONTRACTOR
11/1/04	$650.88	STORAGE	Storage	A-1 Movin	Check Rec	SELLER/CONTRACTOR
8/26/04	$75.00	STORAGE	Storage	Mini Ware	Check Rec	SELLER/CONTRACTOR
8/15/04	$651.76	STORAGE	Misc Fram	A-1 Movin	Check Rec	SELLER/CONTRACTOR
7/24/04	$75.00	STORAGE	Storage	Mini Ware	Check Rec	SELLER/CONTRACTOR
7/1/04	$75.00	STORAGE	Storage	Mini Ware	Check Rec	SELLER/CONTRACTOR
6/7/04	$859.16	STORAGE	Storage	A-1 Movin	Receipt	SELLER/CONTRACTOR
9/27/04	$150.00	LEGAL	County Ct	Pederson	Check Rec	SELLER/CONTRACTOR
11/21/11	$111.15	LEGAL	Copying	Serve One	Check Rec	SELLER/CONTRACTOR
4/2007-12/2008	$1,572.90	LEGAL	$74.90 @ r	Westlaw S	Check Rec	SELLER/CONTRACTOR
8/11/08	$150.00	LEGAL	Depo Tran	Marrie Car	Check Rec	SELLER/CONTRACTOR
03/2009-04/2018	$7,000.00	LEGAL-ESTIMAT	Costs	T.Ward	Pending S	SELLER/CONTRACTOR
4/16/08	$75.00	LEGAL	Attorney F	George Bi	Check Rec	SELLER/CONTRACTOR
3/1/17	$218.75	LEGAL	Loss of Tr	TCR	T.Ward Inv	SELLER/CONTRACTOR
3/1/09	$5,000.00	LEGAL	Retainer (	T.Ward	Check Rec	SELLER/CONTRACTOR
8/11/08	$500.00	LEGAL	Attorney F	Oneal & P	Check Rec	SELLER/CONTRACTOR
9/27/04	$150.00	LEGAL	County Ct	Pederson	Check Rec	SELLER/CONTRACTOR
12/8/06	$5,000.00	LEGAL	Attorney F	Joe Ginn	Contract-C	SELLER/CONTRACTOR
10/25/05	$378.39	LEGAL	Legal Trai	USAA	CC Receip	SELLER/CONTRACTOR
10/3/16	$270.65	LEGAL	Copying	ProLegal	Ck Receip	SELLER/CONTRACTOR
8/20/07	$1,000.00	LEGAL	Attorney F	Simons &	CHeck Rec	SELLER/CONTRACTOR
6/6/05	$8,000.00	LEGAL	Attorney F	Chellis & F	check Rec	SELLER/CONTRACTOR
2/1/05	$25.00	LEGAL	Motion	Bill Scott	Ct. Record	SELLER/CONTRACTOR
3/11/04	$4.42	MECHANICS LIEN	Gilbert Ce	Post Offic	Receipt	SELLER/CONTRACTOR
3/1/04	$23.41	STORAGE	Property S	Public Sto	CC Receip	SELLER/CONTRACTOR
6/11/04	$647.09	MECHANICS LIEN	Surety Bo	USAA/Wes	CC Receip	SELLER/CONTRACTOR
4/29/04	$12.90	MECHANICS LIEN	HCH Attor	Post Offic	CC Receip	SELLER/CONTRACTOR
5/24/04	$12.10	MECHANICS LIEN	LIEN RELE	Berkeley C	Check Rec	SELLER/CONTRACTOR
5/14/04	$4.42	MECHANICS LIEN	Gilbert Ce	Post Offic	Receipt	SELLER/CONTRACTOR
5/19/04	$10.00	MECHANICS LIEN	MECHANI	US Legal F	CC Receip	SELLER/CONTRACTOR

SPREADSHEET EXTRACT

5/10/04	$14.00	MECHANICS LIEN	LIEN NOTI	Berkeley C	Receipt	SELLER/CONTRACTOR
4/2//04	$4.88	MECHANICS LIEN	Cert Mail -	Post Offic	CC Receip	SELLER/CONTRACTOR
5/14/04	$4.42	MECHANICS LIEN	Cert Mail -	Post Offic	CC Receip	SELLER/CONTRACTOR
6/3/04	$4.42	MECHANICS LIEN	Cert Mail -	Post Offic	CC Receip	SELLER/CONTRACTOR
6/18/04	$6.49	MECHANICS LIEN	Cert Mail -	Post Offic	CC Receip	SELLER/CONTRACTOR
4/2//04	$4.88	MECHANICS LIEN	Cert Mail -	Post Offic	CC Receip	SELLER/CONTRACTOR
12/13/04	$350.00	SURVEY	Closing	Ashley En	Check Rec	SELLER/CONTRACTOR
2004-2009	$4,349.48	LOAN COST	INTEREST	TSP LOAN	Check Rec	SELLER/CONTRACTOR
4/15/05	$225.24	REFUND ESCROV	NCM	Price	Loan Histo	SELLER/CONTRACTOR
10/3/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
11/2/04	$747.35	LOAN COST	INTEREST	NCM	NCM Histo	SELLER/CONTRACTOR
12/10/04	$461.78	LOAN COST	Interest	NCM	NCM Histo	SELLER/CONTRACTOR
1/5/05	$4,753.59	LOAN COST	Refinance	USAA	HUD	SELLER/CONTRACTOR
1/9/05	$200.00	SURVEY	Closing	Ashley En	Check Rec	SELLER/CONTRACTOR
8/29/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
7/23/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
7/3/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
6/23/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
7/1/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
5/31/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
4/29/04	$600.00	LODGING	Rent	Regency A	Check Rec	SELLER/CONTRACTOR
5/21/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
4/23/04	$291.25	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
4/6/04	$600.00	LODGING	RENT	Regency A	check Rec	SELLER/CONTRACTOR
3/1/04	$381.00	LODGING	Rent	Intown Su	Receipt	SELLER/CONTRACTOR
3/8/04	$735.00	LODGING	Rent	Regency A	CC Receip	SELLER/CONTRACTOR
3/19/04	$272.86	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
3/9/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
2/25/04	$292.47	LOAN COSTS	INTEREST	NCM	Check Rec	SELLER/CONTRACTOR
TOTAL	$54,074.97					
	Storage	$6,159.39				
	Interest	$3,213.57				
	Rent	$5,316.00				
	Total	$14,688.96				

37877	$1,324.92	Lighting	Light Fixtur	Lowe's	CC Receip	CONTRACTOR
37955	$328.99	Interior Trim	Tile	Lowe's	CC Receip	CONTRACTOR
37992	$4,620.00	Lot Prep	Lot Prep	B&B Enterr	Check Rec	CONTRACTOR
38014	$3,580.00	Lot Prep	Lot Prep	B&B Enterr	Check Rec	CONTRACTOR
37643	$100.00	Permits	Septic Perr	DHEC	Check Rec	CONTRACTOR
37933	$1,827.32	Appliances	Appliances	Lowe's	CC Receip	CONTRACTOR
38021	$1,035.23	Builders Risk	Ins-Builder	USAA	Receipt	CONTRACTOR
38026	$6,000.00	Job Mgt a/o Over H	Contractor	John Kahle	Check Rec	CONTRACTOR
38026	$400.00	Lot Prep	Excavation	Bishop & S	CC Receip	CONTRACTOR
38043	$221.21	Temp Power Pole	Service & N	Berkeley C	cc/& Recei	CONTRACTOR
38048	$71.15	Porta John	Porta Potty	Access Poi	Check Rec	CONTRACTOR
4/1//04	$141.24	Plumbing	Plumbing N	Home Depi	Receipt	CONTRACTOR
38088	$147.00	Plumbing	Plumbing N	Home Depi	Receipt	CONTRACTOR
38082	$5.34	Paint	Paint	Home Depi	CC Receip	CONTRACTOR
38061	$90.50	Porta John	Porta Potty	Access Poi	Check Rec	CONTRACTOR
38131	$47.77	Fram/Porch/Deck	Framing/Lu	Home Depi	CC Receip	CONTRACTOR
38131	$87.98	Footings	Rebar	Home Depi	CC Receip	CONTRACTOR
38132	$1,474.72	Foundation/G.Slab	Block & Mc	General Ma	CC Receip	CONTRACTOR
38131	$166.06	Foundation/G.Slab	Sand	Palmetto S	Check Rec	CONTRACTOR
38137	$7,389.26	Fram/Porch/Deck	Framing M	Home Depi	CC Receip	CONTRACTOR
38138	$465.73	Plumbing	Plumbing N	Home Depi	Receipt	CONTRACTOR
38138	$165.15	Plumbing	Plumbing N	Home Depi	CC Receip	CONTRACTOR

SPREADSHEET EXTRACT

38137	$71.65	Porta John	Porta Potty	Access Por	Check Rec	CONTRACTOR
38201	$1,086.29	Framing/Porch/Dec	Lumber	Builders 1s	CC Receip	CONTRACTOR
38138	$636.00	Foundation/G Slab	Sand	Palmetto S	Check Rec	CONTRACTOR
38141	$97.46	Framing/Porch/Dec	Poly Sheet	Home Dep	CC Receip	CONTRACTOR
38140	$6.06	Foundation/G Slab	Block Ties	Home Dep	CC Receip	CONTRACTOR
38149	$348.09	Foundation/G Slab	Foundation	Home Dep	CC Receip	CONTRACTOR
38143	$193.79	Foundation/G Slab	Foundation	Home Dep	CC Receip	CONTRACTOR
38141	$251.75	Foundation/G Slab	Concrete	Star Redim	CC Receip	CONTRACTOR
38140	$127.20	Foundation/G Slab	Dirt	Palmetto S	Check Rec	CONTRACTOR
38148	$1,550.00	Lot Prep	Excavation	Brad Hill	Check Rec	CONTRACTOR
38153	$1,125.00	Foundation/G Slab	Concrete F	Tony Jeffer	Check Rec	CONTRACTOR
38154	$3,000.00	Foundation/G Slab	Foundation	Randolph (	Check Rec	CONTRACTOR
38161	$3,000.00	Framing/Porch/Dec	Framing La	Mike Coop	Check Rec	CONTRACTOR
38161	$500.00	Plumbing	Plumbing L	Jason Hani	Check Rec	CONTRACTOR
38162	$700.00	Foundation/G Slab	Concrete P	Statewide I	Check Rec	CONTRACTOR
38166	$5,000.00	Fram/Porch/Deck	Framing La	Mike Coop	Check Rec	CONTRACTOR
38159	$368.35	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38170	$387.73	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38168	$337.05	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38168	$401.94	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38168	$414.36	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38155	$316.83	Fram/Porch/Deck	Lumber	Home Dep	Charge Ac	CONTRACTOR
38149	$6.30	Reproductions	Repro of Pl	Inkpressior	CC Receip	CONTRACTOR
38140	$12.60	Reproductions	Repro of Pl	Inkpressior	CC Receip	CONTRACTOR
38146	$221.58	Foundation/G Slab	Anchors	Lowe's	CC Receip	CONTRACTOR
38141	$97.84	Foundation/G Slab	Slab Anchc	Lowe's	CC Receip	CONTRACTOR
38131	$383.72	Foundation/G Slab	Rebar	Lowe's	CC Receip	CONTRACTOR
38146	$30.32	Foundation/G Slab	Rebar	Home Dep	CC Receip	CONTRACTOR
38147	$14.61	Foundation/G Slab	Anchor Str	Home Dep	CC Receip	CONTRACTOR
38148	$438.84	Foundation/G Slab	Concrete	Star Redim	CC Receip	CONTRACTOR
38145	$2,226.00	Footings	Concrete	Star Redim	CC Receip	CONTRACTOR
38147	$3,600.00	Well	Well	Anderson V	Check Rec	CONTRACTOR
38139	$1,575.00	Footings	Footings La	Tony Jeffer	Check Rec	CONTRACTOR
38149	$2,549.30	Foundation/G Slab	Concrete	Star Redim	CC Receip	CONTRACTOR
38141	$2,063.85	Fram/Porch/Deck	Front Door	Home Dep	CC Receip	CONTRACTOR
38149	$2,077.75	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38149	$4,063.73	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38152	$260.00	Termite	Treatment	Palmetto E	Check Rec	CONTRACTOR
38152	$71.65	Porta John	Porta Potty	Access Por	Receipt	CONTRACTOR
38173	$187.62	Fram/Porch/Deck	Misc Frami	Mike Coop	Check Rec	CONTRACTOR
38147	$7,643.00	Electrical	Electrical	Joe Easter	Check Rec	CONTRACTOR
38201	$15.87	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38186	$50.03	Reproductions	Drawing co	Office Max	CC Receip	CONTRACTOR
38188	$18.90	Reproductions	Drawing co	Inkpressior	CC Receip	CONTRACTOR
38175	$1,567.93	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38183	$54.27	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38176	$522.94	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38176	$12.15	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38296	$556.00	Interior Doors	Shower Do	Carolina Sl	Check Rec	CONTRACTOR
38192	$71.65	Porta John	Porta Potty	Access Por	Receipt	CONTRACTOR
38188	$939.69	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38183	$327.86	Fram/Porch/Deck	lumber	84 Lumber	CC Receip	CONTRACTOR
38190	$201.40	Fram/Porch/Deck	Tyvek	84 Lumber	CC Receip	CONTRACTOR
38191	$48.78	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38191	$166.39	Fram/Porch/Deck	Tyvek	84 Lumber	CC Receip	CONTRACTOR
38227	$82.88	Fram/Porch/Deck	Wire & Lun	Home Dep	CC Receip	CONTRACTOR
38174	$113.42	Fram/Porch/Deck	Misc Frami	Mike Coop	Receipt	CONTRACTOR
38188	$152.16	Fram/Porch/Deck	Misc Frami	Mike Coop	Receipt	CONTRACTOR

SPREADSHEET EXTRACT

38199	$1,012.26	Fram/Porch/Deck	Decking	84 Lumber	CC Receip	CONTRACTOR
38195	$461.33	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38192	$222.60	Fram/Porch/Deck	Windows	Home Dep	CC Receip	CONTRACTOR
38192	$4,800.00	Roof	Labor & Ma	So Carolina	Check Rec	CONTRACTOR
38196	$820.00	Roof	Labor & Ma	So Carolina	Check Rec	CONTRACTOR
38192	$201.46	Fram/Porch/Deck	Tyvek	84 Lumber	Check Rec	CONTRACTOR
38183	$327.86	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38201	$46.38	Framing/Porch/Dec	Nails	Central Tru	Receipt	CONTRACTOR
38226	$105.99	Interior Trim	Saw	Harbor Fre	CC Receip	CONTRACTOR
38194	$5,500.00	Fram/Porch/Deck	Framing La	Mike Coop	Check Rec	CONTRACTOR
38212	$3,000.00	Fram/Porch/Deck	Framing La	Mike Coop	Check Rec	CONTRACTOR
38226	$3,072.00	Fram/Porch/Deck	Framing La	Mike Coop	Check Rec	CONTRACTOR
38180	$5,000.00	Fram/Porch/Deck	Framing La	Mike Coop	Draw Sche	CONTRACTOR
38175	$5,000.00	Fram/Porch/Deck	Framing La	Mike Coop	Check Rec	CONTRACTOR
38221	$1,075.00	Fram/Porch/Deck	Porch labo	Bubba D R	Check Rec	CONTRACTOR
38201	$1,350.00	Fram/Porch/Deck	Porch labo	Lucius R. E	Check Rec	CONTRACTOR
38215	$12,500.00	Fram/Porch/Deck	Frame Pac	Boozer Lun	Check Rec	CONTRACTOR
38203	$12,940.00	Fram/Porch/Deck	Frame Pac	Boozer Lun	CC Rec/PA	CONTRACTOR
38210	$719.42	Counter Top	Vanity & Sh	McCann's	Check Rec	CONTRACTOR
38212	$333.77	Fram/Porch/Deck	Misc Frami	Mike Coop	Check Rec	CONTRACTOR
38262	$3,250.10	Interior doors	Interior Doc	Home Dep	CC Receip	CONTRACTOR
38211	$5,000.00	Job Mgt a/o OverH	Contractor	Todd Seibe	Check Rec	CONTRACTOR
38226	$50.88	Interior Trim	Nails	Air Fastene	CC Receip	CONTRACTOR
38226	$109.88	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38200	$860.33	Fram/Porch/Deck	Lumber/BA	Home Dep	CC Receip	CONTRACTOR
38215	$41.45	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38226	$93.21	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38202	$423.21	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38217	$55.02	Fram/Porch/Deck	Lumber/BA	Home Dep	CC Receip	CONTRACTOR
38221	$57.57	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38219	$9.21	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38207	$220.44	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38584	$70.36	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38200	$77.81	Fram/Porch/Deck	Nails & flas	Central Tru	CC Receip	CONTRACTOR
38200	$247.13	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38208	$45.58	Fram/Porch/Deck	Nails	Air Fastene	CC Receip	CONTRACTOR
38203	$45.58	Fram/Porch/Deck	Nails	Air Fastene	CC Receip	CONTRACTOR
38204	$8.46	Fram/Porch/Deck	Hangers	Builders 1s	CC Receip	CONTRACTOR
38203	$96.69	Fram/Porch/Deck	Hangers	Builders 1s	CC Receip	CONTRACTOR
38203	$334.07	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38201	$215.79	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38201	$70.60	Fram/Porch/Deck	Lumber	84 Lumber	CC Receip	CONTRACTOR
38236	$108.75	Porta John	Porta Potty	Access Por	Check Rec	CONTRACTOR
38217	$7,401.00	Siding	Siding	Doug Curry	Check Rec	CONTRACTOR
38246	$2,550.00	Insulation	Insulation	Cohen's Dr	Check Rec	CONTRACTOR
38231	$5,400.00	Plumbing	Plumbing L	Mark Mass	Check Rec	CONTRACTOR
38206	$2,689.27	Plumbing	Fixtures	Home Dep	CC Receip	CONTRACTOR
38252	$190.80	Hardwood/Flooring	Tile	Home Dep	CC Receip	CONTRACTOR
38257	$1,500.00	Paint	Painting	Dennis Mo	Check Rec	CONTRACTOR
9/6/4/4	$874.50	Fireplace	Fireplace	Bailey Spe	Check Rec	CONTRACTOR
38249	$5,000.00	Job Mgt & OverHd	Contractor	Todd Seibe	Check Rec	CONTRACTOR
38257	$1,544.00	Garage Doors	Garage Do	Acme Door	Check Rec	CONTRACTOR
38231	$4,707.00	HVAC	HVAC	Lonzie & S	Check Rec	CONTRACTOR
38236	$554.81	Fram/Porch/Deck	Boots/Winc	Todd Seibe	Check Rec	CONTRACTOR
38252	$8,668.34	Cabinets	Cabinets	Welcom Ca	Check Rec	CONTRACTOR
38246	$3,690.65	Sheetrock	Drywall	Todd Seibe	Check Rec	CONTRACTOR
38246	$7,272.64	Sheetrock	Drywall Ins	Floyd Hayn	Check Rec	CONTRACTOR
38257	$148.30	Porta John	Porta Potty	Access Por	Check Rec	CONTRACTOR

SPREADSHEET EXTRACT

38236	$248.28	Insulation	Materials	Lowe's	CC Receip	CONTRACTOR
38242	$40.26	Interior trim	Interior trim	Home Dep	CC Receip	CONTRACTOR
38208	$312.98	Lighting	Fixtures	Home Dep	CC Receip	CONTRACTOR
38241	$33.57	Interior trim	Trim	Home Dep	CC Receip	CONTRACTOR
38254	$357.82	Hardwood/Flooring	Wonderboa	Home Dep	CC Receip	CONTRACTOR
38246	$263.94	Cabinets	Vanity	Home Dep	CC Receip	CONTRACTOR
38256	$25.23	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38241	$29.73	Paint	Paint Mater	Home Dep	CC Receip	CONTRACTOR
38256	$90.52	Hardwood/Flooring	Tile & Ceda	Home Dep	CC Receip	CONTRACTOR
38235	$152.00	Sheetrock	Drywall	Home Dep	CC Receip	CONTRACTOR
38248	$133.81	Fram/Porch/Deck	Lumber & (	Home Dep	CC Receip	CONTRACTOR
38247	$12.64	Fram/Porch/Deck	Lumber	Home Dep	CC Receip	CONTRACTOR
38246	$153.87	Interior doors	Doors	Home Dep	CC Receip	CONTRACTOR
38257	$2,206.46	Siding	Siding Mat			CONTRACTOR
38243	-$206.44	Fram/Porch/Deck	Misc Frami	84 Lumber	CC Receip	CONTRACTOR
38257	$6,940.00	Hardwood/Flooring	Floor Mater	Wilson's C	Receipt	CONTRACTOR
38245	$372.26	Dumpster	Container F	Carolina W	Check Rec	CONTRACTOR
38253	$285.00	Electrical	Berkeley El	Berkeley El	Check Rec	CONTRACTOR
38275	$150.50	Interior trim	Handrail	Home Dep	CC Receip	CONTRACTOR
38266	$94.01	Lighting	Trim Mat	Lowe's	CC Receip	CONTRACTOR
38272	$9.54	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38269	$219.05	Interior trim	Attic Door/	Home Dep	CC Receip	CONTRACTOR
38275	$88.15	Interior trim	Baseboard	Home Dep	CC Receip	CONTRACTOR
38279	$7.34	Interior trim	Screws	Home Dep	CC Receip	CONTRACTOR
38281	$28.74	Interior trim	Bulbs & Fir	Home Dep	CC Receip	CONTRACTOR
38282	$72.66	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38271	$85.23	Interior trim	Cedar/Oak	Home Dep	CC Receip	CONTRACTOR
38284	$120.56	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38290	$14.25	Interior trim	Brackets &	Lowe's	CC Receip	CONTRACTOR
38290	$98.54	Interior trim	Oak	Home Dep	CC Receip	CONTRACTOR
38287	$58.30	Interior trim	Misc Retur	Home Dep	CC Receip	CONTRACTOR
38273	$71.91	Interior trim	Oak Trim	Lowe's	CC Receip	CONTRACTOR
38267	$57.83	Interior trim	Bulbs	Home Dep	CC Receip	CONTRACTOR
38272	$142.97	Interior trim	Cedar & Pa	Home Dep	CC Receip	CONTRACTOR
38282	$62.31	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38275	$35.83	Paint	Stain	Lowe's	CC Receip	CONTRACTOR
38261	$54.96	Interior trim	Blades & B	Home Dep	CC Receip	CONTRACTOR
38285	$198.91	Interior trim	Cedar Base	Home Dep	CC Receip	CONTRACTOR
38247	$204.12	Framing/Porch/Dec	Casing & L	Home Dep	CC Receip	CONTRACTOR
38268	$668.94	Interior Trim	Fixture/Rec	Home Dep	CC Receip	CONTRACTOR
38262	$203.80	Interior doors	Door & Mis	Home Dep	CC Receip	CONTRACTOR
38265	$122.96	Framing/Porch/Dec	Flashing	Lowe's	CC Receip	CONTRACTOR
38278	$156.88	Plumbing	Fixtures	Home Dep	CC Receip	CONTRACTOR
38289	$56.92	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR
38269	-$17.99	Interior trim	Misc Credi	Home Dep	CC Receip	CONTRACTOR
38268	$118.30	Plumbing	Fixture	Home Dep	CC Receip	CONTRACTOR
38277	$96.73	Interior trim	Cedar	Home Dep	CC Receip	CONTRACTOR

SPREADSHEET EXTRACT

38263	$33.48	Counter Top	Kit Counter	Home Dep	CC	Receip	CONTRACTOR
38278	$30.57	Interior trim	Toilet seats	WalMart	CC	Receip	CONTRACTOR
38262	$51.51	Paint	Materials	Home Dep	CC	Receip	CONTRACTOR
38275	$26.34	Interior trim	Brackets	Home Dep	CC	Receip	CONTRACTOR
38272	$104.94	Interior trim	Attic Ladde	Home Dep	CC	Receip	CONTRACTOR
38290	$187.46	Interior trim	Cedar	Home Dep	CC	Receip	CONTRACTOR
38265	$120.96	Lighting	Fixtures	Home Dep	CC	Receip	CONTRACTOR
38191	$1,436.25	Permits	Permits	Berkeley C	Check	Rec	CONTRACTOR
38265	$1,400.00	Septic	Drain field	Tolman Sa	Check	Rec	CONTRACTOR
38265	$660.00	Driveway/Sidewalk	Material/ L	Tolman Sa	Check	Rec	CONTRACTOR
38270	$330.00	Driveway/Sidewalk	Material / L	Tolman Sa	Check	Rec	CONTRACTOR
38275	$985.00	Siding	Hardiplank	Todd Seibe	Check	Rec	CONTRACTOR
38278	$5,000.00	Job Mgt & OverHd	Contractor	Todd Seibe	Check	Rec	CONTRACTOR
38270	$4,894.00	Siding	Materials /	Raul Martir	Check	Rec	CONTRACTOR
38281	$3,138.40	HVAC	HVAC	Lonzie & S	Check	Rec	CONTRACTOR
38281	$3,560.00	Hardwood/Flooring	Floors, Fire	Low Counti	Check	Rec	CONTRACTOR
38281	$4,306.75	Driveway/Sidewalk	Concrete a	Palmetto C	Check	Rec	CONTRACTOR
38281	$2,104.25	Plumbing	Shower & \	Quality Mai	Check	Rec	CONTRACTOR
38292	$2,479.59	Interior trim	Stairs Lab	Todd Seibe	Check	Rec	CONTRACTOR
38281	$522.50	Septic	Survey	Trico Engir	Check	Rec	CONTRACTOR
38265	$7,000.00	Septic	Septic Syst	Knights	Check	Rec	CONTRACTOR
38274	$2,480.14	Hardwood/Flooring	Floor Mat /	Wilson's C	CC &	Rec	CONTRACTOR
38279	$300.00	Lot Prep	Excavation	Tolman Sa	Check	Rec	CONTRACTOR
38245	$440.87	Paint	Paint	Lord & Eva	CC	Receip	CONTRACTOR
38269	$292.16	Paint	Paint	Lord & Eva	CC	Receip	CONTRACTOR
38294	$3,950.00	Plumbing	Plumbing L	Mark Mass	Check	Rec	CONTRACTOR
38291	$330.96	Dumpster	Container F	Carolina W	Check	Rec	CONTRACTOR
38301	$4,012.00	Electrical	Electrical	Joe Easterl	Check	Rec	CONTRACTOR
38279	$46.54	Interior trim	Trim	Central Tru	CC	Receip	CONTRACTOR
38290	$154.98	Fireplace	Mantle	Berlin G. M	Check	Rec	CONTRACTOR
38260	$214.99	Siding	Siding Lab	Hanson	Check	Rec	CONTRACTOR
38261	$173.97	Siding	Siding Lab	Hanson	Check	Rec	CONTRACTOR
38341	$48.12	Septic	Drain Pum	Coastline A	Check	Rec	CONTRACTOR
38262	$400.00	Paint	Painting	Dennis Moi	Check	Rec	CONTRACTOR
38010	$860.38	Cabinets	Utility RM	Home Dep	CC	Receip	CONTRACTOR
38295	$31.77	Framing/Porch/Dec	Sealer	Lowe's	CC	Receip	CONTRACTOR
38276	$53.46	Hardwood/Flooring	Felt	Home Dep	CC	Receip	CONTRACTOR
38010	$138.84	Interior trim	Cedar	Home Dep	CC	Receip	CONTRACTOR
38313	$5,020.10	Job Mgt & OverHd	Contractor/	Todd Seibe	Check	Rec	CONTRACTOR
38311	$1,150.00	Driveway/Sidewalk	Driveway M	Dusty Garv	Check	Rec	CONTRACTOR
38135	$36.28	Interior trim	Saw Blade	Home Dep	CC	Receip	CONTRACTOR
38209	$15.03	Counter Top	Cabinet	Home Dep	CC	Receip	CONTRACTOR
38206	$33.91	Framing/Porch/Dec	Screws	Central Tru	CC	Receip	CONTRACTOR
38089	$132.30	Plumbing	Plumbing	Home Dep	CC	Receip	CONTRACTOR
38464	$165.00	Paint	Painting M	Dennis Moi	Check	Rec	CONTRACTOR
38444	$520.00	Interior trim	Trim Mat / I	Josh Calm	Check	Rec	CONTRACTOR
38477	$345.00	Gutters	Gutters	Gutter Wor	Check	Rec	CONTRACTOR
38407	$1,670.00	Cabinets	Cabinets	Welcom Ca	Check	Rec	CONTRACTOR
38461	$2,000.00	Painting	Painting M	Larry Gadis	Check	Rec	CONTRACTOR
38453	$510.00	Painting	Painting M	Home Dep	Receipt		CONTRACTOR
38447	$430.00	Interior trim	Trim Mat / I	Home Dep	Receipt		CONTRACTOR
	$283,011.83						

	$283,011.83	CONTRACTOR
	$185,175.00	SF AGREE SUM
Damages	$97,836.83	DIFFERENCE OF SF AGREE SUM & ACTUAL COSTS

P EXHIBIT 24
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

	Date	Amount	Purpose	What	Payee	Pd.By	Responsible	Delay/Other
2								
3	02/04-07/04	$104.10	Reproductions	House Drawings	Office Max	Receipt	CONTRACTOR	
4								
5	9/13/03	$1,324.92	Lighting	Light Fixtures	Lowe's	CC Receipt	CONTRACTOR	
6	11/30/03	$328.99	Interior Trim	Tile	Lowe's	CC Receipt	CONTRACTOR	
7	1/6/04	$4,620.00	Lot Prep	Lot Prep	B&B Enterprises	Check Receipt	CONTRACTOR	
8	1/28/04	$3,580.00	Lot Prep	Lot Prep	B&B Enterprises	Check Receipt	CONTRACTOR	
10	1/22/03	$100.00	Permits	Septic Permit	DHEC	Check Receipt	CONTRACTOR	
	10/14/05	$100.00	Hardwood/Flooring	Defect Carpet Replace			OWNER	
12	2/25/04	$292.47	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	xxx
13								
14	11/8/03	$1,827.32	Appliances	Appliances	Lowe's	CC Receipt	CONTRACTOR	
15	2/4/04	$1,035.23	Builders Risk	Ins-Builder's Risk	USAA	Receipt	CONTRACTOR	
16	2/9/04	$6,000.00	Job Mgt a/o OverHd	Contractor	John Kahler	Check Receipt	CONTRACTOR	
17	12/3-02/04	$1,875.00	LODGING	Rent	Jim Rodenkirk	Check Receipt	SELLER/CONTRACTOR	xxx
18	2/9/04	$400.00	Lot Prep	Excavation dirt	Bishop & Son's	CC Receipt	CONTRACTOR	
19	3/9/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	xxx
20	3/11/04	$4.42	MECHANICS LIEN	Gilbert-Cert Mail	Post Office	Receipt	SELLER/CONTRACTOR	XXX
21	2/26/04	$221.21	Temp Power Pole	Service & Materials	Berkeley County Ele	cc & Receipt	CONTRACTOR	
22	3/19/04	$272.86	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	xxx
23	3/1/04	$23.41	STORAGE	Property Storage	Public Storage	CC Receipt	SELLER/CONTRACTOR	xxx
24	3/1/04	$381.00	LODGING	Rent	Intown Suites	Receipt	SELLER/CONTRACTOR	xxx
25	3/8/04	$735.00	LODGING	Rent	Regency Apartments	CC Receipt	SELLER/CONTRACTOR	xxx
	3/15/04	$15.00	Recordings	Notices			OWNER	
27	4/6/04	$600.00	LODGING	RENT	Regency Apartments	check Receipt	SELLER/CONTRACTOR	xxx
28	3/2/04	$71.15	Porta John	Porta Potty	Access Portable Toil	Check Receipt	CONTRACTOR	
29	4/23/04	$291.25	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	xxx
32	5/14/04	$4.42	MECHANICS LIEN	Gilbert-Cert Mail	Post Office	Receipt	SELLER/CONTRACTOR	XXX
33	5/21/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	xxx
34	4/1//04	$141.24	Plumbing	Plumbing Mat	Home Depot	Receipt	CONTRACTOR	
35	4/11/04	$147.00	Plumbing	Plumbing Mat	Home Depot	Receipt	CONTRACTOR	
36	4/29/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	xxx
37	4/5/04	$5.34	Paint	Paint	Home Depot	CC Receipt	CONTRACTOR	
38	3/15/04	$90.50	Porta John	Porta Potty	Access Portable Toil	Check Receipt	CONTRACTOR	
	4/26/04	$156.46	Plumbing	Plumbing Mat			OWNER	
	4/29/04	$12.90	MECHANICS LIEN	HCH Attorney			OWNER	
41	5/24/04	$12.10	MECHANICS LIEN	LIEN RELEASE	Berkeley County RO	Check Receipt	SELLER/CONTRACTOR	XXX
42	5/24/04	$47.77	Fram/Porch/Deck	Framing/Lumber	Home Depot	CC Receipt	CONTRACTOR	
43	6/11/04	$647.09	MECHANICS LIEN	Surety Bonds	USAA/Western Suret	CC Receipt	SELLER/CONTRACTOR	XXX
	1/15/04	$137.01	Hardwood/Flooring	Flooring			OWNER	
45	5/10/04	$14.00	MECHANICS LIEN	LIEN NOTICE	Berkeley County RO	Receipt	SELLER/CONTRACTOR	XXX
46	5/24/04	$75.00	STORAGE	Storage	Mini Warehouses	Receipt	SELLER/CONTRACTOR	XXX
47	6/10/04	$1,673.74	INSPECTION	Engineer Report	C. Schneider & Asso	Check Receipt	SELLER/CONTRACTOR	XXX
48	5/31/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX
49	5/24/04	$87.98	Footings	Rebar	Home Depot	CC Receipt	CONTRACTOR	
50	5/25/04	$1,474.72	Foundation/G.Slab	Block & Mortar	General Materials	CC Receipt	CONTRACTOR	
	3/29/04	$15.00	Admin	Coping			OWNER	
52	5/24/04	$166.06	Foundation/G.Slab	Sand	Palmetto Sand	Check Receipt	CONTRACTOR	
53	5/19/04	$10.00	MECHANICS LIEN	MECHANICS LIEN	US Legal Forms Inc	CC Receipt	SELLER/CONTRACTOR	XXX
54	5/30/04	$7,389.26	Fram/Porch/Deck	Framing Material	Home Depot	CC Receipt	CONTRACTOR	
55	5/31/04	$465.73	Plumbing	Plumbing Materials	Home Depot	Receipt	CONTRACTOR	
56	5/31/04	$165.15	Plumbing	Plumbing Materials	Home Depot	CC Receipt	CONTRACTOR	
57	5/30/04	$71.65	Porta John	Porta Potty	Access Portable Toil	Check Receipt	CONTRACTOR	
58	8/2/04	$1,086.29	Framing/Porch/Deck	Lumber	Builders 1st Source	CC Receipt	CONTRACTOR	
59	5/31/04	$636.00	Foundation/G.Slab	Sand	Palmetto Sand	Check Receipt	CONTRACTOR	

60	6/23/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR		xxx	
61	6/7/04	$859.16	STORAGE	Storage	A-1 Moving Sys	Receipt	SELLER/CONTRACTOR		xxx	
	6/5/04	$17.94	Framing/Porch/Deck	Lumber			OWNER			
63	6/3/04	$97.46	Framing/Porch/Deck	Poly Sheet	Home Depot	CC Receipt	CONTRACTOR			
64	6/2/04	$6.06	Foundation/G.Slab	Block Ties	Home Depot	CC Receipt	CONTRACTOR			
66	6/11/04	$348.09	Foundation/G.Slab	Foundation Materials	Home Depot	CC Receipt	CONTRACTOR			
67	6/5/04	$193.79	Foundation/G.Slab	Foundation Materials	Home Depot	CC Receipt	CONTRACTOR			
68	6/3/04	$251.75	Foundation/G.Slab	Concrete	Star Redimix	CC Receipt	CONTRACTOR			
69	7/1/04	$75.00	STORAGE	Storage	MiniWarehouses	Check Receipt	SELLER/CONTRACTOR		xxx	
70	6/2/04	$127.20	Foundation/G.Slab	Dirt	Palmetto Sand	Check Receipt	CONTRACTOR			
71	7/1/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR		xxx	
72	6/10/04	$1,550.00	Lot Prep	Excavation	Brad Hill	Check Receipt	CONTRACTOR			
73	6/15/04	$1,125.00	Foundation/G.Slab	Concrete Finish Labor	Tony Jefferson	Check Receipt	CONTRACTOR			
74	6/16/04	$3,000.00	Foundation/G.Slab	Foundation, Block, Pier	Randolph Cook	Check Receipt	CONTRACTOR			
75	6/23/04	$3,000.00	Framing/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
76	6/23/04	$500.00	Plumbing	Plumbing Labor	Jason Hannah	Check Receipt	CONTRACTOR			
77	6/24/04	$700.00	Foundation/G.Slab	Concrete Pumper	Statewide Pumping	Check Receipt	CONTRACTOR			
78	6/28/04	$5,000.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
79	6/21/04	$368.35	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
80	7/2/04	$387.73	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
81	6/30/04	$337.05	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
82	6/30/04	$401.94	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
83	6/30/04	$414.36	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
84	6/17/04	$316.83	Fram/Porch/Deck	Lumber	Home Depot	Charge Acct	CONTRACTOR			
85	6/11/04	$6.30	Reproductions	Repro of Plans	Inkpressions	CC Receipt	CONTRACTOR			
86	6/2/04	$12.60	Reproductions	Repro of Plans	Inkpressions	CC Receipt	CONTRACTOR			
87	6/8/04	$221.58	Foundation/G.Slab	Anchors	Lowe's	CC Receipt	CONTRACTOR			
88	6/3/04	$97.84	Foundation/G.Slab	Slab Anchors	Lowe's	CC Receipt	CONTRACTOR			
89	5/24/04	$383.72	Foundation/G.Slab	Rebar	Lowe's	CC Receipt	CONTRACTOR			
90	6/8/04	$30.32	Foundation/G.Slab	Rebar	Home Depot	CC Receipt	CONTRACTOR			
91	6/9/04	$14.61	Foundation/G.Slab	Anchor Straps	Home Depot	CC Receipt	CONTRACTOR			
92	6/10/04	$438.84	Foundation/G.Slab	Concrete	Star Redimix	CC Receipt	CONTRACTOR			
93	6/7/04	$2,226.00	Footings	Concrete	Star Redimix	CC Receipt	CONTRACTOR			
94	6/9/04	$3,600.00	Well	Well	Anderson Well	Check Receipt	CONTRACTOR			
	2/26/05	$1,202.00	SF Agree. Art 2	Shelving			OWNER			
96	6/1/04	$1,575.00	Footings	Footings Labor	Tony Jefferson	Check Receipt	CONTRACTOR			
97	6/11/04	$2,549.30	Foundation/G.Slab	Concrete	Star Redimix	CC Receipt	CONTRACTOR			
98	6/3/04	$2,063.85	Fram/Porch/Deck	Front Door	Home Depot	CC Receipt	CONTRACTOR			
	6/7/04	$332.88	SF Argee. Art 2	Hardware			OWNER			
100	6/11/04	$2,077.75	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
101	6/11/04	$4,063.73	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
102	6/14/04	$260.00	Termite	Treatment	Palmetto Ext	Check Receipt	CONTRACTOR			
103	6/14/04	$71.65	Porta John	Porta Potty	Access Portable	Receipt	CONTRACTOR			
	5/31/04	$109.20	Foundation	Concrete Lad BGM			OWNER			
105	7/5/04	$187.62	Fram/Porch/Deck	Misc Framing Materials	Mike Cooper	Check Receipt	CONTRACTOR			
106	6/9/04	$7,643.00	Electrical	Electrical	Joe Easterlin	Check Receipt	CONTRACTOR			
107	8/2/04	$15.87	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
	7/16/04	$8.92	ADMIN	NCM			OWNER			
110	7/18/04	$50.03	Reproductions	Drawing copies	Office Max	CC Receipt	CONTRACTOR			
111	7/20/04	$18.90	Reproductions	Drawing copies	Inkpressions	CC Receipt	CONTRACTOR			
112	7/7/04	$1,567.93	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
113	7/15/04	$54.27	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
	2/5/05	$22.00	Admin	Photos			OWNER			
115	7/8/04	$522.94	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
116	7/8/04	$12.15	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
	9/17/04	$1,211.83	SF Agree. Art 2	Hardware			OWNER			
	7/23/04	$3.85	Admin	Copies			OWNER			

119	11/5/04	$556.00	Interior Doors	Shower Doors	Carolina Shelving	Check Receipt	CONTRACTOR			
120	7/24/04	$71.65	Porta John	Porta Potty	Access Portable	Receipt	CONTRACTOR			
121	7/24/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR		xxx	
122	7/3/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR		xxx	
123	7/20/04	$939.69	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
124	7/15/04	$327.86	Fram/Porch/Deck	lumber	84 Lumber	CC Receipt	CONTRACTOR			
125	38384	25	LEGAL	Motion	Bill Scott	Ct. Record	ELLER/CONTRACTOR		XXX	
126	7/22/04	$201.40	Fram/Porch/Deck	Tyvek	84 Lumber	CC Receipt	CONTRACTOR			
127	7/23/04	$48.78	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
128	7/23/04	$166.39	Fram/Porch/Deck	Tyvek	84 Lumber	CC Receipt	CONTRACTOR			
129	8/28/04	$82.88	Fram/Porch/Deck	Wire & Lumber	Home Depot	CC Receipt	CONTRACTOR			
130	7/6/04	$113.42	Fram/Porch/Deck	Misc Framing Materials	Mike Cooper	Receipt	CONTRACTOR			
131	7/20/04	$152.16	Fram/Porch/Deck	Misc Framing Materials	Mike Cooper	Receipt	CONTRACTOR			
	7/29/04	$104.94	Fram/Porch/Deck	Misc Framing Materials			OWNER			
	7/27/04	$73.03	Fram/Porch/Deck	Misc Framing Materials			OWNER			
134	7/31/04	$1,012.26	Fram/Porch/Deck	Decking	84 Lumber	CC Receipt	CONTRACTOR			
135	7/27/04	$461.33	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
136	7/24/04	$222.60	Fram/Porch/Deck	Windows	Home Depot	CC Receipt	CONTRACTOR			
137	7/24/04	$4,800.00	Roof	Labor & Materials	So Carolina Build	Check Receipt	CONTRACTOR			
138	7/28/04	$820.00	Roof	Labor & Materials	So Carolina Build	Check Receipt	CONTRACTOR			
139	7/24/04	$201.46	Fram/Porch/Deck	Tyvek	84 Lumber	Check Receipt	CONTRACTOR			
140	7/15/04	$327.86	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
142	8/2/04	$46.38	Framing/Porch/Deck	Nails	Central True Value	Receipt	CONTRACTOR			
143	8/27/04	$105.99	Interior Trim	Saw	Harbor Freight	CC Receipt	CONTRACTOR			
144	7/26/04	$5,500.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
145	8/13/04	$3,000.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
146	8/27/04	$3,072.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
147	7/12/04	$5,000.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Draw Schedule	CONTRACTOR			
148	7/7/04	$5,000.00	Fram/Porch/Deck	Framing Labor	Mike Cooper	Check Receipt	CONTRACTOR			
150	8/22/04	$1,075.00	Fram/Porch/Deck	Porch labor	Bubba D Ricapinte	Check Receipt	CONTRACTOR			
151	8/15/04	$651.76	STORAGE	Misc Framing Materials	A-1 Moving Sys	Check Receipt	SELLER/CONTRACTOR		XXX	
152	8/2/04	$1,350.00	Fram/Porch/Deck	Porch labor	Lucius R. Bustamant	Check Receipt	CONTRACTOR			
153	38509	8000	LEGAL	Attorney Fee	Chellis & Frampton	check Receipt	ELLER/CONTRACTOR		XXX	
154	8/16/04	$12,500.00	Fram/Porch/Deck	Frame Package	Boozer Lumber	Check Receipt	CONTRACTOR			
155	8/4/04	$12,940.00	Fram/Porch/Deck	Frame Package	Boozer Lumber	CC Rec/PAY	CONTRACTOR			
156	8/11/04	$719.42	Counter Top	Vanity & Shower	McCann's	Check Receipt	CONTRACTOR			
157	8/13/04	$333.77	Fram/Porch/Deck	Misc Framing Materials	Mike Cooper	Check Receipt	CONTRACTOR			
158	10/2/04	$3,250.10	Interior doors	Interior Doors	Home Depot	CC Receipt	CONTRACTOR			
159	8/12/04	$5,000.00	Job Mgt a/o OverHd	Contractor	Todd Seibel	Check Receipt	CONTRACTOR			
160	8/27/04	$50.88	Interior Trim	Nails	Air Fasteners	CC Receipt	CONTRACTOR			
161	7/23/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR		XXX	
162	8/26/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR		XXX	
163	8/29/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR		XXX	
164	8/27/04	$109.88	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
165	8/1/04	$860.33	Fram/Porch/Deck	Lumber/BALSTR	Home Depot	CC Receipt	CONTRACTOR			
166	8/16/04	$41.45	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
167	8/27/04	$93.21	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
168	8/3/04	$423.21	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
169	8/18/04	$55.02	Fram/Porch/Deck	Lumber/BALSTR	Home Depot	CC Receipt	CONTRACTOR			
170	8/22/04	$57.57	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
171	8/20/04	$9.21	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
172	8/8/04	$220.44	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
173	8/20/05	$70.36	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
174	8/1/04	$77.81	Fram/Porch/Deck	Nails & flashing	Central True Value	CC Receipt	CONTRACTOR			
	8/29/04	$37.07	Fram/Porch/Deck	Spkr Wire			OWNER			
176	8/1/04	$247.13	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
177	8/9/04	$45.58	Fram/Porch/Deck	Nails	Air Fasteners	CC Receipt	CONTRACTOR			

178	8/4/04	$45.58	Fram/Porch/Deck	Nails	Air Fasteners	CC Receipt	CONTRACTOR			
179	8/5/04	$8.46	Fram/Porch/Deck	Hangers	Builders 1st Source	CC Receipt	CONTRACTOR			
180	8/4/04	$96.69	Fram/Porch/Deck	Hangers	Builders 1st Source	CC Receipt	CONTRACTOR			
181	8/4/04	$334.07	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
182	8/2/04	$215.79	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
183	8/2/04	-$70.60	Fram/Porch/Deck	Lumber	84 Lumber	CC Receipt	CONTRACTOR			
184	7/16/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR			XXX
185	11/1/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR			XXX
186	9/6/04	$108.75	Porta John	Porta Potty	Access Portable Toil	Check Receipt	CONTRACTOR			
187	9/6/04	$250.00	INSPECTION	Engineer Report	Sanford Engineering	Check Receipt	SELLER/CONTRACTOR			XXX
188	8/18/04	$7,401.00	Siding	Siding	Doug Curry	Check Receipt	CONTRACTOR			
189	9/16/04	$2,550.00	Insulation	Insulation	Cohen's Drywall	Check Receipt	CONTRACTOR			
190	9/1/04	$5,400.00	Plumbing	Plumbing Labor	Mark Massenburg Pl	Check Receipt	CONTRACTOR			
191	8/7/04	$2,689.27	Plumbing	Fixtures	Home Depot	CC Receipt	CONTRACTOR			
192	9/22/04	$190.80	Hardwood/Flooring	Tile	Home Depot	CC Receipt	CONTRACTOR			
194	9/27/04	$1,500.00	Paint	Painting	Dennis Monk	Check Receipt	CONTRACTOR			
195	9/6/4/4	$874.50	Fireplace	Fireplace	Bailey Specialties	Check Receipt	CONTRACTOR			
197	9/19/04	$5,000.00	Job Mgt & OverHd	Contractor	Todd Seibel	Check Receipt	CONTRACTOR			
198	9/27/04	$1,544.00	Garage Doors	Garage Doors	Acme Doors	Check Receipt	CONTRACTOR			
199	9/1/04	$4,707.00	HVAC	HVAC	Lonzie & Son	Check Receipt	CONTRACTOR			
200	9/6/04	$554.81	Fram/Porch/Deck	Boots/Window Wrap	Todd Seibel	Check Receipt	CONTRACTOR			
201	9/6/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR			XXX
202	9/22/04	$8,668.34	Cabinets	Cabinets	Welcom Cabinets	Check Receipt	CONTRACTOR			
203	9/16/04	$3,690.65	Sheetrock	Drywall	Todd Seibel	Check Receipt	CONTRACTOR			
	8/31/04	$75.72	Dumpster	Container Rental			OWNER			
205	9/16/04	$7,272.64	Sheetrock	Drywall Installation	Floyd Haynes	Check Receipt	CONTRACTOR			
206	9/27/04	$148.30	Porta John	Porta Potty	Access Portable	Check Receipt	CONTRACTOR			
	9/3/04	$199.71	Fram/Porch/Deck	Window Sealer			OWNER			
208	9/6/04	$248.28	Insulation	Materials	Lowe's	CC Receipt	CONTRACTOR			
209	9/12/04	$40.26	Interior trim	Interior trim	Home Depot	CC Receipt	CONTRACTOR			
210	8/9/04	$312.98	Lighting	Fixtures	Home Depot	CC Receipt	CONTRACTOR			
211	9/11/04	$33.57	Interior trim	Trim	Home Depot	CC Receipt	CONTRACTOR			
212	9/24/04	$357.82	Hardwood/Flooring	Wonderboard	Home Depot	CC Receipt	CONTRACTOR			
213	9/16/04	$263.94	Cabinets	Vanity	Home Depot	CC Receipt	CONTRACTOR			
214	9/26/04	$25.23	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
215	9/11/04	$29.73	Paint	Paint Materials	Home Depot	CC Receipt	CONTRACTOR			
	9/18/04	$18.25	Interior trim	Interior trim			OWNER			
217	9/26/04	$90.52	Hardwood/Flooring	Tile & Cedar	Home Depot	CC Receipt	CONTRACTOR			
218	9/5/04	$152.00	Sheetrock	Drywall	Home Depot	CC Receipt	CONTRACTOR			
219	9/18/04	$133.81	Fram/Porch/Deck	Lumber & Casing	Home Depot	CC Receipt	CONTRACTOR			
220	9/17/04	$12.64	Fram/Porch/Deck	Lumber	Home Depot	CC Receipt	CONTRACTOR			
221	9/16/04	$153.87	Interior doors	Doors	Home Depot	CC Receipt	CONTRACTOR			
	9/19/04	$8.01	Hardwood/Flooring	Tile			OWNER			
223	9/27/04	$2,206.46	Siding	Siding Mat			CONTRACTOR			
	10/14/04	$48.70	SF Agreement, Art 2	Hardware			OWNER			
	11/30/04	$6,000.00	SF Agreement, Art 2	Driveway			OWNER			
226	38257	150	LEGAL	County Ct Filing Fee	Pederson & Scott	Check Receipt	ELLER/CONTRACTOR			XXX
	9/18/04	$64.87	Interior doors	Door			OWNER			
228	9/13/04	$206.44	Fram/Porch/Deck	Misc Framing Materials	84 Lumber	CC Receipt	CONTRACTOR			
229	9/27/04	$6,940.00	Hardwood/Flooring	Floor Material	Wilson's Carpet	Receipt	CONTRACTOR			
230	9/15/04	$372.26	Dumpster	Container Rental	Carolina Waste	Check Receipt	CONTRACTOR			
231	9/23/04	$285.00	Electrical	Berkeley Electric	Berkeley Elec	Check Receipt	CONTRACTOR			
232	10/15/04	$150.50	Interior trim	Handrail	Home Depot	CC Receipt	CONTRACTOR			
233	10/6/04	$94.01	Lighting	Trim Mat	Lowe's	CC Receipt	CONTRACTOR			
234	10/12/04	$9.54	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
235	10/9/04	$219.05	Interior trim	Attic Door/Posts	Home Depot	CC Receipt	CONTRACTOR			
236	10/15/04	$88.15	Interior trim	Baseboard	Home Depot	CC Receipt	CONTRACTOR			

237	10/19/04	$7.34	Interior trim	Screws	Home Depot	CC Receipt	CONTRACTOR			
238	10/21/04	$28.74	Interior trim	Bulbs & Fire caulk	Home Depot	CC Receipt	CONTRACTOR			
239	10/22/04	$72.66	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
	10/22/04	$5.28	Interior trim	Caulk			OWNER			
	10/22/04	$39.19	Interior trim	Duraplex			OWNER			
242	10/11/04	$85.23	Interior trim	Cedar/Oak Trim	Home Depot	CC Receipt	CONTRACTOR			
243	10/24/04	$120.56	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
244	10/30/04	$14.25	Interior trim	Brackets & Paint	Lowe's	CC Receipt	CONTRACTOR			
245	10/30/04	$98.54	Interior trim	Oak	Home Depot	CC Receipt	CONTRACTOR			
246	10/27/04	-$58.30	Interior trim	Misc Return	Home Depot	CC Receipt	CONTRACTOR			
247	10/13/04	$71.91	Interior trim	Oak Trim	Lowe's	CC Receipt	CONTRACTOR			
248	10/7/04	$57.83	Interior trim	Bulbs	Home Depot	CC Receipt	CONTRACTOR			
	10/8/04	$135.09	SF Agree. Art 2	Hardware			OWNER			
250	10/12/04	$142.97	Interior trim	Cedar & Paint Mat	Home Depot	CC Receipt	CONTRACTOR			
251	10/22/04	$62.31	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
252	10/15/04	$35.83	Paint	Stain	Lowe's	CC Receipt	CONTRACTOR			
253	10/1/04	$54.96	Interior trim	Blades & Bits	Home Depot	CC Receipt	CONTRACTOR			
254	10/25/04	$198.91	Interior trim	Cedar Baseboards	Home Depot	CC Receipt	CONTRACTOR			
255	9/17/04	$204.12	Framing/Porch/Deck	Casing & Lumber	Home Depot	CC Receipt	CONTRACTOR			
256	10/8/04	$668.94	Interior Trim	Fixture/Red Oak	Home Depot	CC Receipt	CONTRACTOR			
257	10/2/04	$203.80	Interior doors	Door & Misc	Home Depot	CC Receipt	CONTRACTOR			
	10/11/04	$141.56	SF Agree. Art 2	Hardware			OWNER			
259	10/5/04	$122.96	Framing/Porch/Deck	Flashing	Lowe's	CC Receipt	CONTRACTOR			
260	10/18/04	$156.88	Plumbing	Fixtures	Home Depot	CC Receipt	CONTRACTOR			
261	10/29/04	$56.92	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
262	10/9/04	-$17.99	Interior trim	Misc Credit	Home Depot	CC Receipt	CONTRACTOR			
263	10/8/04	$118.30	Plumbing	Fixture	Home Depot	CC Receipt	CONTRACTOR			
	10/7/04	$67.84	SF Agree. Art 2	Hardware			OWNER			
	10/4/04	$15.19	SF Agree. Art 2	Hardware			OWNER			
	10/4/04	$449.97	Interior trim	Misc			OWNER			
267	10/17/04	$96.73	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
	10/20/04	$51.72	Plumbing	Plumb Mat &/O Lab			OWNER			
269	10/3/04	$33.48	Counter Top	Kit Counter Mat	Home Depot	CC Receipt	CONTRACTOR			
270	10/18/04	$30.57	Interior trim	Toilet seats	WalMart	CC Receipt	CONTRACTOR			
271	10/2/04	$51.51	Paint	Materials	Home Depot	CC Receipt	CONTRACTOR			
272	10/15/04	$26.34	Interior trim	Brackets	Home Depot	CC Receipt	CONTRACTOR			
273	10/12/04	$104.94	Interior trim	Attic Ladder	Home Depot	CC Receipt	CONTRACTOR			
274	10/30/04	$187.46	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
275	10/5/04	$120.96	Lighting	Fixtures	Home Depot	CC Receipt	CONTRACTOR			
	10/27/04	$6.85	Interior Trim	Pulls			OWNER			
277	7/23/04	$1,436.25	Permits	Permits	Berkeley Co Permitti	Check Receipt	CONTRACTOR			
	7/23/04	$10.00	ADMIN	Bldg Co Recording			OWNER			
279	12/13/04	$350.00	SURVEY	Closing	Ashley Engineering	Check Receipt	SELLER/CONTRACTOR		XXX	
	7/16/04	$4.42	ADMIN	Cert Mail - J.Kahler			OWNER			
281	10/5/04	$1,400.00	Septic	Drain field	Tolman Salisbury	Check Receipt	CONTRACTOR			
282	10/5/04	$660.00	Driveway/Sidewalks	Material / Labor	Tolman Salisbury	Check Receipt	CONTRACTOR			
283	10/10/04	$330.00	Driveway/Sidewalks	Material / Labor	Tolman Salisbury	Check Receipt	CONTRACTOR			
284	10/15/04	$985.00	Siding	Hardiplank	Todd Seibel	Check Receipt	CONTRACTOR			
285	10/18/04	$5,000.00	Job Mgt & OverHd	Contractor	Todd Seibel	Check Receipt	CONTRACTOR			
286	10/10/04	$4,894.00	Siding	Materials / Labor	Raul Martinez	Check Receipt	CONTRACTOR			
287	10/21/04	$3,138.40	HVAC	HVAC	Lonzie & Son	Check Receipt	CONTRACTOR			
288	10/21/04	$3,560.00	Hardwood/Flooring	Floors, Fireplace,Count	Low Country Floorin	Check Receipt	CONTRACTOR			
289	10/21/04	$4,306.75	Driveway/Sidewalks	Concrete and Labor	Palmetto Concrete S	Check Receipt	CONTRACTOR			
290	10/21/04	$2,104.25	Plumbing	Shower & Vanity	Quality Marble	Check Receipt	CONTRACTOR			
291	11/1/04	$2,479.59	Interior trim	Stairs Lab & Mat	Todd Seibel	Check Receipt	CONTRACTOR			
292	10/21/04	$522.50	Septic	Survey	Trico Engineering	Check Receipt	CONTRACTOR			
293	10/5/04	$7,000.00	Septic	Septic System	Knights	Check Receipt	CONTRACTOR			
294	10/14/04	$2,480.14	Hardwood/Flooring	Floor Mat / Lab	Wilson's Carpet	CC & Receipt	CONTRACTOR			
295	10/19/04	$300.00	Lot Prep	Excavation dirt	Tolman Salisbury	Check Receipt	CONTRACTOR			

296	9/15/04	$440.87	Paint	Paint	Lord & Evans	CC Receipt	CONTRACTOR			
297	10/9/04	$292.16	Paint	Paint	Lord & Evans	CC Receipt	CONTRACTOR			
298	11/3/04	$3,950.00	Plumbing	Plumbing Labor	Mark Massenburg Pl	Check Receipt	CONTRACTOR			
	11/3/04	$556.32	SF Agree. Art 2	Shelving			OWNER			
300	10/31/04	$330.96	Dumpster	Container Rental	Carolina Waste	Check Receipt	CONTRACTOR			
301	11/10/04	$4,012.00	Electrical	Electrical	Joe Easterlin	Check Receipt	CONTRACTOR			
302	10/19/04	$46.54	Interior trim	Trim	Central True Value	CC Receipt	CONTRACTOR			
303	10/30/04	$154.98	Fireplace	Mantle	Berlin G. Meyers	Check Receipt	CONTRACTOR			
304	9/30/04	$214.99	Siding	Siding Lab / Mat	Hanson	Check Receipt	CONTRACTOR			
305	10/1/04	$173.97	Siding	Siding Lab / Mat	Hanson	Check Receipt	CONTRACTOR			
306	9/28/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR		XXX	
307	1/9/05	$200.00	SURVEY	Closing	Ashley Engineering	Check Receipt	SELLER/CONTRACTOR		XXX	
308	12/20/04	$48.12	Septic	Drain Pump	Coastline Appliance	Check Receipt	CONTRACTOR			
309	10/2/04	$400.00	Paint	Painting	Dennis Monk	Check Receipt	CONTRACTOR			
310	11/5/05	$4,753.59	LOAN COST	Refinance w/USAA	USAA	HUD	SELLER/CONTRACTOR		XXX	
311	1/24/04	$860.38	Cabinets	Utility RM	Home Depot	CC Receipt	CONTRACTOR			
312	11/4/04	$31.77	Framing/Porch/Deck	Sealer	Lowe's	CC Receipt	CONTRACTOR			
313	10/16/04	$53.46	Hardwood/Flooring	Felt	Home Depot	CC Receipt	CONTRACTOR			
314	11/2/04	$747.35	LOAN COST	interest	NCM	NCM History	SELLER/CONTRACTOR		XXX	
315	12/10/04	$461.78	LOAN COST	Extra Interest w/pay	NCM	NCM History	SELLER/CONTRACTOR		XXX	
316	1/24/04	$138.84	Interior trim	Cedar	Home Depot	CC Receipt	CONTRACTOR			
	12/17/04	$70.15	ADMIN	Admin Supplies			OWNER			
318	11/22/04	$5,020.10	Job Mgt & OverHd	Contractor/materials	Todd Seibel	Check Receipt	CONTRACTOR			
319	11/20/04	$1,150.00	Driveway/Sidewalks	Driveway Mat & Lab	Dusty Garvis	Check Receipt	CONTRACTOR			
320	5/28/04	$36.28	Interior trim	Saw Blade	Home Depot	CC Receipt	CONTRACTOR			
321	10/3/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR		XXX	
	9/19/04	$8.01	MISCELLANEOUS	TILE			OWNER			
	3/30/04	$4.42	ADMIN	Certified Mail			OWNER			
	3/30/04	$4.65	MECHANICS LIEN	Cert - Knights			OWNER			
	1/7/05	$102.75	WINDOWS	Covering			OWNER			
	1/9/05	$87.35	WINDOWS	Covering			OWNER			
	3/6/04	$107.55	WINDOWS	Covering			OWNER			
	2/17/04	$79.59	WINDOWS	Covering			OWNER			
	2/18/04	$61.10	WINDOWS	Covering			OWNER			
	3/3/04	$131.68	WINDOWS	Covering			OWNER			
	3/7/04	$51.45	RENTAL MISC	Linens			OWNER			
	3/7/04	$18.98	RENTAL MISC	Coffee Pot			OWNER			
	3/7/04	$12.00	RENTAL MISC	Dishes			OWNER			
	5/27/04	$49.20	ADMIN	Office Supplies			OWNER			
	2/6/04	$56.42	ADMIN	Interior Design			OWNER			
	8/6/04	$12.26	Framing/Porch/Deck	Misc Construction Items			OWNER			
	8/13/04	$2.11	Framing/Porch/Deck	Misc Construction Items			OWNER			
338	8/10/04	$15.03	Counter Top	Cabinet	Home Depot	CC Receipt	CONTRACTOR			
339	8/7/04	$33.91	Framing/Porch/Deck	Screws	Central True Value	CC Receipt	CONTRACTOR			
	1/20/05	$157.36	SF Agree. Art 2	Hardware			OWNER			
	1/23/05	$123.72	SF Agree. Art 2	Hardware			OWNER			
	9/24/04	$4.42	ADMIN	Certified Mail			OWNER			
	11/2/04	$37.69	Cabinets	Pulls			OWNER			
	11/2/04	$37.69	Cabinets	Pulls			OWNER			
	8/27/04	$4.42	ADMIN	Cert Mail - NCM			OWNER			
345	4/2/04	$4.88	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR		XXX	
346	5/14/04	$4.42	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR		XXX	
347	6/3/04	$4.42	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR		XXX	
348	6/18/04	$6.49	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR		XXX	
	9/13/04	$148.39	SF Agree. Art 2	Hardware			OWNER			
	9/27/04	$682.11	Appliances	Appliances - Kitchen			OWNER			
	10/8/04	$126.60	Lighting	Light Fixtures			OWNER			
352	4/12/04	$132.30	Plumbing	Plumbing	Home Depot	CC Receipt	CONTRACTOR			
	4/2/04	$4.65	ADMIN	Certified Mail			OWNER			

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	9/10/04	$4.42	ADMIN	Certified Mail			OWNER		
	12/12/03	$5.34	ADMIN	Certified Mail			OWNER		
	2/13/04	$4.42	ADMIN	Certified Mail			OWNER		
	3/16/04	$4.30	ADMIN	Certified Mail			OWNER		
	3/16/04	$29.97	ADMIN	Misc			OWNER		
	2/5/05	$22.59	ADMIN	Photos			OWNER		
	10/28/05	$350.00	SF Agree, Art 2	Excavation Dirt			OWNER		
364	4/22/05	$165.00	Paint	Painting Mat & Lab	Dennis Monk	Check Receipt	CONTRACTOR		
365	4/2/05	$520.00	Interior trim	Trim Mat / Lab	Josh Calmack	Check Receipt	CONTRACTOR		
366	5/5/05	$345.00	Gutters	Gutters	Gutter Works	Check Receipt	CONTRACTOR		
367	2/24/05	$1,670.00	Cabinets	Cabinets	Welcom Cabinets	Check Receipt	CONTRACTOR		
368	4/19/05	$2,000.00	Painting	Painting Mat & Lab	Larry Gadist	Check Receipt	CONTRACTOR		
369	4/11/05	$510.00	Painting	Painting Mat / Lab	Home Depot	Receipt	CONTRACTOR		
370	4/5/05	$430.00	Interior trim	Trim Mat / Lab	Home Depot	Receipt	CONTRACTOR		
371	11/2/05	$3,000.00	Job Mgt & OverHd	Structure Demolish	Arthur Joiner	Receipt	SELLER/CONTRACTOR		XXX
	5/20/05	$9,313.72	SF, Art 2	Landscaping			OWNER		
	6/17/04	$1,120.00	SF, Art 2	Landscaping			OWNER		
	7/2/05	$1,908.00	SF, Art 2	Landscaping			OWNER		
377	39059	5000	LEGAL	Attorney Fee	Joe Ginn	Contract-Ct Rec	ELLER/CONTRACTOR		XXX
378	38653	378.39	LEGAL	Legal Training Books	USAA	CK receipt	ELLER/CONTRACTOR		XXX
379	42646	270.65	LEGAL	Copying	ProLegal	CC Receipt	ELLER/CONTRACTOR		XXX
380	39314	1000	LEGAL	Attorney Fee	Simons & Keaveny	CHeck Receipt	ELLER/CONTRACTOR		XXX
	39175	10.42	LEGAL	Certified Mail			OWNER		
383	4/15/05	$225.24	REFUND ESCROW	NCM	Price	Loan History	SELLER/CONTRACTOR		XXX
384	42795	218.75	LEGAL	Loss of Transcript	TCR	T-Ward Inv	ELLER/CONTRACTOR		XXX
385	39873	5000	LEGAL	Retainer(1,150&1855)	T-Ward	Check Receipt	ELLER/CONTRACTOR		XXX
386	39671	500	LEGAL	Attorney Fee	Oneal & Phepps	Check Receipt	ELLER/CONTRACTOR		XXX
387	38218	350	LEGAL	Attorney Fee	NCM	Loan History	ELLER/CONTRACTOR		XXX
388	39671	150	LEGAL	Depo Transcript	Marrie Carrin Ass	Check Receipt	ELLER/CONTRACTOR		XXX
389	3/2009-04/201	6500	LEGAL	Costs	T-Ward	Statements	ELLER/CONTRACTOR		XXX
390	39554	75	LEGAL	Attorney Fee	George Bishop	Check Receipt	ELLER/CONTRACTOR		XXX
392	2004-2009	$4,349.48	LOAN COST	Interest/Lost Inv.	TSP LOAN - $35k	Check Receipt	SELLER/CONTRACTOR		XXX
395	11/21/11	$111.15	LEGAL	Copying	Serve One	Check Receipt	SELLER/CONTRACTOR		XXX
396	/2007-12/200	$1,572.90	LEGAL	$74.90 @ mo x 21	Westlaw	Check Receipt	SELLER/CONTRACTOR		XXX
		$368,037.00		$26,525.65	OWNER ACCEPTED COSTS/NO RECEIPTS REQUIRED				
				$58,949.97	DELAY OR OTHER				
				$97,386.38	DIFFERENCE OF SF AGREE SUM & ACTUAL COSTS				
				$185,175.00	SF AGREEMENT STIPULATED SUM				
				$368,037.00					
	7/27/04	$73.03	Fram/Porch/Deck	Misc Framing Materials			OWNER		
	4/3/07	$10.42	LEGAL	Chellis/Frampton			OWNER		
	5/20/05	$9,313.72	SF, Art 2	Landscaping			OWNER		
	6/17/04	$1,120.00	SF, Art 2	Landscaping			OWNER		
	7/2/05	$1,908.00	SF, Art 2	Landscaping			OWNER		
	2/5/05	$22.59	ADMIN	Photos			OWNER		
	10/28/05	$350.00	SF Agree, Art 2	Excavation Dirt			OWNER		

	9/13/04	$148.39	SF Agree. Art 2	Hardware			OWNER				
	9/27/04	$682.11	Appliances	Appliances - Kitchen			OWNER				
	10/8/04	$126.60	Lighting	Light Fixtures			OWNER				
	4/12/04	$132.30	Plumbing	Plumbing			OWNER				
	4/2/04	$4.65	ADMIN	Certified Mail			OWNER				
	9/10/04	$4.42	ADMIN	Certified Mail			OWNER				
	12/12/03	$5.34	ADMIN	Certified Mail			OWNER				
	2/13/04	$4.42	ADMIN	Certified Mail			OWNER				
	3/16/04	$4.30	ADMIN	Certified Mail			OWNER				
	3/16/04	$29.97	ADMIN	Misc			OWNER				
	1/20/05	$157.36	SF Agree. Art 2	Hardware			OWNER				
	1/23/05	$123.72	SF Agree. Art 2	Hardware			OWNER				
	9/24/04	$4.42	ADMIN	Certified Mail			OWNER				
	11/2/04	$37.69	Cabinets	Pulls			OWNER				
	11/2/04	$37.69	Cabinets	Pulls			OWNER				
	8/27/04	$4.42	ADMIN	Cert Mail - NCM			OWNER				
	1/7/05	$102.75	WINDOWS	Covering			OWNER				
	1/9/05	$87.35	WINDOWS	Covering			OWNER				
	3/6/04	$107.55	WINDOWS	Covering			OWNER				
	2/17/04	$79.59	WINDOWS	Covering			OWNER				
	2/18/04	$61.10	WINDOWS	Covering			OWNER				
	3/3/04	$131.68	WINDOWS	Covering			OWNER				
	3/7/04	$51.45	RENTAL MISC	Linens			OWNER				
	3/7/04	$18.98	RENTAL MISC	Coffee Pot			OWNER				
	3/7/04	$12.00	RENTAL MISC	Dishes			OWNER				
	5/27/04	$49.20	ADMIN	Office Supplies			OWNER				
	2/6/04	$56.42	ADMIN	Interior Design			OWNER				
	8/6/04	$12.26	Framing/Porch/Deck	Misc Construction Items			OWNER				
	8/13/04	$2.11	Framing/Porch/Deck	Misc Construction Items			OWNER				
	9/19/04	$8.01	MISCELLANEOUS	TILE			OWNER				
	3/30/04	$4.42	ADMIN	Certified Mail			OWNER				
	12/17/04	$70.15	ADMIN	Admin Supplies			OWNER				
	11/3/04	$556.32	SF Agree. Art 2	Shelving			OWNER				
	7/16/04	$4.42	ADMIN	Cert Mail - J.Kahler			OWNER				
	7/23/04	$10.00	ADMIN	Bldg Co Recording			OWNER				
	7/29/04	$104.94	Fram/Porch/Deck	Misc Framing Materials			OWNER				
	10/27/04	$6.85	Interior Trim	Pulls			OWNER				
	10/20/04	$51.72	Plumbing	Plumb Mat'&/O Lab			OWNER				
	10/7/04	$67.84	SF Agree. Art 2	Hardware			OWNER				
	10/4/04	$15.19	SF Agree. Art 2	Hardware			OWNER				
	10/4/04	$449.97	Interior trim	Misc			OWNER				
	10/11/04	$141.56	SF Agree. Art 2	Hardware			OWNER				
	10/8/04	$135.09	SF Agree. Art 2	Hardware			OWNER				
	10/22/04	$5.28	Interior trim	Caulk			OWNER				
	10/22/04	$39.19	Interior trim	Duraplex			OWNER				
	9/18/04	$64.87	Interior doors	Door			OWNER				
	10/14/04	$48.70	SF Agreement. Art 2	Hardware			OWNER				
	11/30/04	$6,000.00	SF Agreement. Art 2	Driveway			OWNER				
	9/19/04	$8.01	Hardwood/Flooring	Tile			OWNER				
	9/18/04	$18.25	Interior trim	Interior trim			OWNER				
	9/3/04	$199.71	Fram/Porch/Deck	Window Sealer			OWNER				
	8/31/04	$75.72	Dumpster	Container Rental			OWNER				
	8/29/04	$37.07	Fram/Porch/Deck	Spkr Wire			OWNER				
	4/29/04	$12.90	MECHANICS LIEN	HCH Attorney			OWNER				
	5/31/04	$109.20	Foundation	Concrete Lad-BGM			OWNER				
	9/17/04	$1,211.83	SF Agree. Art 2	Hardware			OWNER				
	7/23/04	$3.85	Admin	Copies			OWNER				
	2/5/05	$22.00	Admin	Photos			OWNER				
	7/16/04	$8.92	ADMIN	NCM			OWNER				

	6/7/04	$332.88	SF Argee. Art 2	Hardware			OWNER			
	2/26/05	$1,202.00	SF Agree. Art 2	Shelving			OWNER			
	7/26/04	$265.58	Fram/Porch/Deck	Misc Framing Materials			OWNER			
	6/5/04	$17.94	Framing/Porch/Deck	Lumber			OWNER			
	3/29/04	$15.00	Admin	Coping			OWNER			
	1/15/04	$137.01	Hardwood/Flooring	Flooring			OWNER			
	3/15/04	$15.00	Recordings	Notices			OWNER			
	10/14/05	$100.00	Hardwood/Flooring	Defect Carpet Replace			OWNER			
		$26,525.65								
37.1	11/2/05	$3,000.00	Job Mgt & OverHd	Structure Demolish	Arthur Joiner	Receipt	SELLER/CONTRACTOR	XXX		
46	5/24/04	$75.00	STORAGE	Storage	Mini Wharehouses	Receipt	SELLER/CONTRACTOR	XXX		
47.1	6/10/04	$1,673.74	INSPECTION	Engineer Report	C. Schneider & Asso	Check Receipt	SELLER/CONTRACTOR	XXX		
187	9/6/04	$250.00	INSPECTION	Engineer Report	Sanford Engineering	Check Receipt	SELLER/CONTRACTOR	XXX		
306	9/28/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR	XXX		
201	9/6/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR	XXX		
184	7/16/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR	XXX		
185	11/1/04	$650.88	STORAGE	Storage	A-1 Moving Systems	Check Receipt	SELLER/CONTRACTOR	XXX		
162	8/26/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR	XXX		
151	8/15/04	$651.76	STORAGE	Misc Framing Materials	A-1 Moving Sys	Check Receipt	SELLER/CONTRACTOR	XXX		
121	7/24/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR	XXX		
69	7/1/04	$75.00	STORAGE	Storage	Mini Warehouses	Check Receipt	SELLER/CONTRACTOR	XXX		
61	6/7/04	$859.16	STORAGE	Storage	A-1 Moving Sys	Receipt	SELLER/CONTRACTOR	XXX		
226	9/27/04	$150.00	LEGAL	County Ct Filing Fee	Pederson & Scott	Check Receipt	SELLER/CONTRACTOR	XXX		
395	11/21/11	$111.15	LEGAL	Copying	Serve One	Check Receipt	SELLER/CONTRACTOR	XXX		
396	/2007-12/200	$1,572.90	LEGAL	$74.90 @ mo x 21	Westlaw Subscript	Check Receipt	SELLER/CONTRACTOR	XXX	*	
388	8/11/08	$150.00	LEGAL	Depo Transcript	Marrie Carrin Ass	Check Receipt	SELLER/CONTRACTOR	XXX		
389	3/2009-04/201	$7,000.00	LEGAL-ESTIMATED	Costs	T.Ward	Pending State	SELLER/CONTRACTOR	XXX		
390	4/16/08	$75.00	LEGAL	Attorney Fee	George Bishop	Check Receipt	SELLER/CONTRACTOR	XXX		
384	3/1/17	$218.75	LEGAL	Loss of Transcript	TCR	T.Ward Inv	SELLER/CONTRACTOR	XXX		
385	3/1/09	$5,000.00	LEGAL	Retainer (1150&1855)	T.Ward	Check Receipt	SELLER/CONTRACTOR	XXX		
386	8/11/08	$500.00	LEGAL	Attorney Fee	Oneal & Phepps	Check Receipt	SELLER/CONTRACTOR	XXX		
226	9/27/04	$150.00	LEGAL	County Ct Filing Fee	Pederson & Scott	Check Receipt	SELLER/CONTRACTOR	XXX		
377	12/8/06	$5,000.00	LEGAL	Attorney Fee	Joe Ginn	Contract-Ct Rec	SELLER/CONTRACTOR	XXX		
378	10/25/05	$378.39	LEGAL	Legal Training Books	USAA	CC Receipt	SELLER/CONTRACTOR	XXX		
379	10/3/16	$270.65	LEGAL	Copying	Pro Legal	Ck Receipt	SELLER/CONTRACTOR	XXX		
380	8/20/07	$1,000.00	LEGAL	Attorney Fee	Simons & Keaveny	CHeck Receipt	SELLER/CONTRACTOR	XXX	*	
153	6/6/05	$8,000.00	LEGAL	Attorney Fee	Chellis & Frampton	check Receipt	SELLER/CONTRACTOR	XXX		
125	2/1/05	$25.00	LEGAL	Motion	Bill Scott	Ct Record	SELLER/CONTRACTOR	XXX		
20	3/11/04	$4.42	MECHANICS LIEN	Gilbert-Cert Mail	Post Office	Receipt	SELLER/CONTRACTOR	XXX	*	
23	3/1/04	$23.41	STORAGE	Property Storage	Public Storage	CC Receipt	SELLER/CONTRACTOR	XXX		
43	6/11/04	$647.09	MECHANICS LIEN	Surety Bond	USAA/Western Suret	CC Receipt	SELLER/CONTRACTOR	XXX		
40	4/29/04	$12.90	MECHANICS LIEN	HCH Attorney	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
41	5/24/04	$12.10	MECHANICS LIEN	LIEN RELEASE	Berkeley County RO	Check Receipt	SELLER/CONTRACTOR	XXX		
32	5/14/04	$4.42	MECHANICS LIEN	Gilbert-Cert Mail	Post Office	Receipt	SELLER/CONTRACTOR	XXX		
53	5/19/04	$10.00	MECHANICS LIEN	MECHANICS LIEN	US Legal Forms Inc	CC Receipt	SELLER/CONTRACTOR	XXX	*	
45	5/10/04	$14.00	MECHANICS LIEN	LIEN NOTICE	Berkeley County RO	Receipt	SELLER/CONTRACTOR	XXX		
345	4/2/04	$4.88	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
346	5/14/04	$4.42	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
347	6/3/04	$4.42	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
348	6/18/04	$6.49	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
345	4/2//04	$4.88	MECHANICS LIEN	Cert Mail - HCH Attor	Post Office	CC Receipt	SELLER/CONTRACTOR	XXX		
279	12/13/04	$350.00	SURVEY	Closing	Ashley Engineering	Check Receipt	SELLER/CONTRACTOR	XXX		
392	2004-2009	$4,349.48	LOAN COST	INTEREST/Lost Inv	TSP LOAN - $35k	Check Receipt	SELLER/CONTRACTOR	XXX		
383	4/15/05	$225.24	REFUND ESCROW	NCM	Price	Loan History	SELLER/CONTRACTOR	XXX		

00984

321	10/3/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
314	11/2/04	$747.35	LOAN COST	INTEREST	NCM	NCM History	SELLER/CONTRACTOR	XXX	
315	12/10/04	$461.78	LOAN COST	Extra Interest w/pay	NCM	NCM History	SELLER/CONTRACTOR	XXX	
310	1/5/05	$4,753.59	LOAN COST	Refinance w/USAA	USAA	HUD	SELLER/CONTRACTOR	XXX	
307	1/9/05	$200.00	SURVEY	Closing	Ashley Engineering	Check Receipt	SELLER/CONTRACTOR	XXX	
163	8/29/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
161	7/23/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
###	7/3/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
60	6/23/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
71	7/1/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
48	5/31/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
36	4/29/04	$600.00	LODGING	Rent	Regency Apartments	Check Receipt	SELLER/CONTRACTOR	XXX	
33	5/21/04	$282.26	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
29	4/23/04	$291.25	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
27	4/6/04	$600.00	LODGING	RENT	Regency Apartments	check Receipt	SELLER/CONTRACTOR	XXX	
24	3/1/04	$381.00	LODGING	Rent	Intown Suites	Receipt	SELLER/CONTRACTOR	XXX	
25	3/8/04	$735.00	LODGING	Rent	Regency Apartments	CC Receipt	SELLER/CONTRACTOR	XXX	
22	3/19/04	$272.86	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
19	3/9/04	$291.67	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
17	12/3-02/04	$1,875.00	LODGING	Rent	Jim Rodenkirk	Check Receipt	SELLER/CONTRACTOR	XXX	
12	2/25/04	$292.47	LOAN COSTS	INTEREST	NCM	Check Receipt	SELLER/CONTRACTOR	XXX	
		$58,949.97							
		$31,524.52	total legal						
		$27,425.45	Total delay						
	ACTUAL COSTS/DAMAGES FROM CLOSING 11/25/03:			$156,336.35	$97,386.38	ACTUAL EXTRA CONSTRUCTION $			
					$58,949.97	DELAY OR OTHER			
		$368,037.00	TOTAL COSTS		$26,525.65	OWNER ACCEPTED COSTS			
					$185,175.00	SF AGREE SUM			
		$31,524.52	DELAY OR OTHER						
		-$26,525.65	OWNER ACCEPTED COSTS		$368,037.00	TOTAL COSTS			
		$309,986.83	ACTUAL CONSTRUCTION $						
		-$185,175.00	SF AGREE SUM		DOES NOT CONSIDER: (1) OUR OWN LABOR TO SAVE $				
		$97,386.38	ACTUAL EXTRA CONSTRUCTION $			(2) LOSS OF OTHER EARNINGS INVESTMENT			
						(3) 14 YEARS IN LITIGATION			
						(4) FUTURE REAL COST IN EH NEIGHBOR ROAD REPAIRS			
						(5) TRIAL COSTS			
	LAND APPRAISAL:		$82,530.00	NOTE: DOES NOT ACCOUNT FOR VALUE LOSS, WITH NO LEGAL EH ACCESS--NO SCDOT PERMIT					
	$145,410	REPRESENTED VALUE, DEC 2003							
	-62,880	ACTUAL VALUE, DEC 2003							
	$82,530								

Regulatory Division - Charleston District-Corps of Engineers 69-A Hagood Avenue Charleston, South Carolina 29403

REQUEST FOR WETLANDS DETERMINATION

Date: 20 Sep 05

County: BERKELEY

Total Acreage of Tract: 7.86

Project Name (if applicable): EAGLE HARBOR

Property Owner (name, address, phone):
RONALD E. PRICE & DIANA R.
1104 SADDLEHORN Rd.
SUMMERVILLE, SC 29483
(843) 688-6045

Agent/Developer/Engineer (name, address, phone):

P EXHIBIT 25
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Status of Project (check one):
- ☑ On-going site work for development purposes
- ☐ Development in planning stages
- ☐ No specific development plans at this time

Project Type - Indicate the proposed use of the land in question or, if no specific work is planned at present, indicate the current zoning or land use at the site. (check one):
- ☑ Residential
- ☐ Industrial
- ☐ Silviculture
- ☐ Commercial
- ☑ Agriculture
- ☐ Aquaculture
- ☐ Mixed Use (Residential + Commercial)
- ☐ Public Works
- ☐ Other:

Information Required to Accompany Request - Check the items submitted - forward as much information as is available. At a minimum, the first two items must be forwarded:
- ☐ Accurate Location Map (from County Map, USGS Quad Sheet, etc.)
- ☑ Survey Plat or Tax Map of the Property in Question
- ☐ Soil Survey Sheet (from USDA-NRCS) or Aerial Photo (from County Assessor's Office or other source). Property boundaries should be show on the soil survey / photo.
- ☐ Topographic Survey
- ☐ Conceptual Site Plan for the Overall Development

Endangered Species Evaluation:
Has the site been evaluated for the presence of federally protected (endangered, threatened or proposed) species and/or any proposed or designated critical habitat for such species? YES (NO)

If Yes, has this evaluation been coordinated with the US Fish and Wildlife Service (FWS)? YES NO

If coordination has occurred, please provide the FWS Log number and enclose a copy of the report:
FWS Log Number: _____ Copy of Report enclosed? YES NO

If the evaluation has not been coordinated with the US FWS, enclose a copy of your report of findings.

IMPORTANT NOTE: Legible printed name and signature required. The person signing this form must be the present property owner or have the specific authority of the property owner to authorize Corps of Engineers employees or their agents to enter onto the property for on-site investigations if such is deemed necessary.

Do not sign this form unless you are the owner, or have the specific authority of the property owner.

The signature of the owner or authorized agent on this form constitutes prior consent to disclose these records to other federal, state or local governmental agencies and the public at large.

PRINTED NAME of person signing this form, below: Ronald E. Price

Signature of Property Owner or Authorized Agent: [signature]

Copies of this form may be obtained from the Charleston District web site at: http://www.sac.usace.army.mil/permits/form_JDRequest.pdf

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF:

October 19, 2005

P EXHIBIT 26
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Regulatory Division

Mr. Ronald Price
1104 Saddlehorn Road
Summerville, South Carolina 29483

Dear Mr. Price :

A recent inspection by a member of my staff revealed that fill material had been placed in wetlands adjacent to Sandy Run within the Eagle Harbor Subdivision in Berkeley County, South Carolina. The specific areas of concern to this office at this time are shown on the enclosed sketch dated October 19, 2005. This work has been performed in waters of the United States (which includes wetlands), and is thus subject to Department of the Army regulatory authority. This is to inform you of the current permit provisions of the Clean Water Act as they relate to the placement of fill material in wetlands. In particular, your attention is called to Section 404 of this Act (33 USC 1344) which authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into all waters of the United States, which includes all wetland areas. Section 301(a) of this Act makes it unlawful to perform such activities without the requisite permit and Section 309 provides for fines of up to $32,500 per day for each violation. At this juncture, this office is continuing to gather information relative to the Eagle Harbor Subdivision. If you have any information you feel is pertinent in this case, please take this opportunity to provide this office with that information.

This is also to inform you that based on a review of aerial photography and soil survey information, it appears that there may be wetlands on your property within the Eagle Harbor Subdivision. These potential wetland areas are shown on the referenced sketch. This office should be contacted prior to performing any work in or around these approximated wetlands or other waters of the United States. In order for a more accurate determination to be provided, these areas should be delineated on-site, surveyed and platted. There may be other wetland areas in addition to those shown on the above referenced sketch.

In future correspondence concerning this matter, please refer to SAC 60-2005-2200-2. If you have any questions regarding this matter, please contact Ms. Elizabeth Jackson at (843) 329-8044 or toll free at 1-866-329-8187.

Respectfully,

Tina B. Hadden
Chief, Regulatory Division

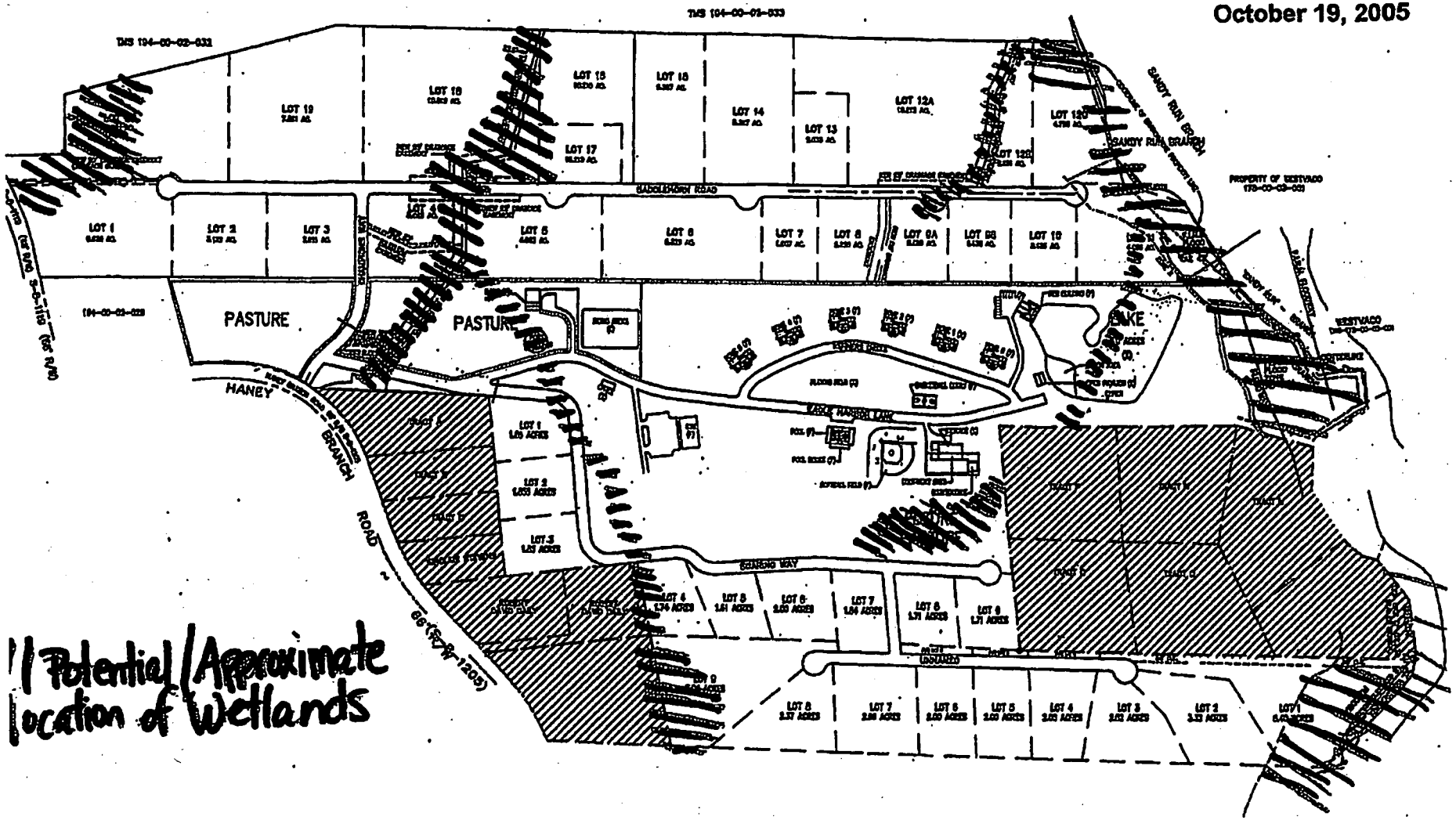
Eval: 3 Nov
Called on L+R Sketch
14 Nov

Enclosure

Copy Furnished:

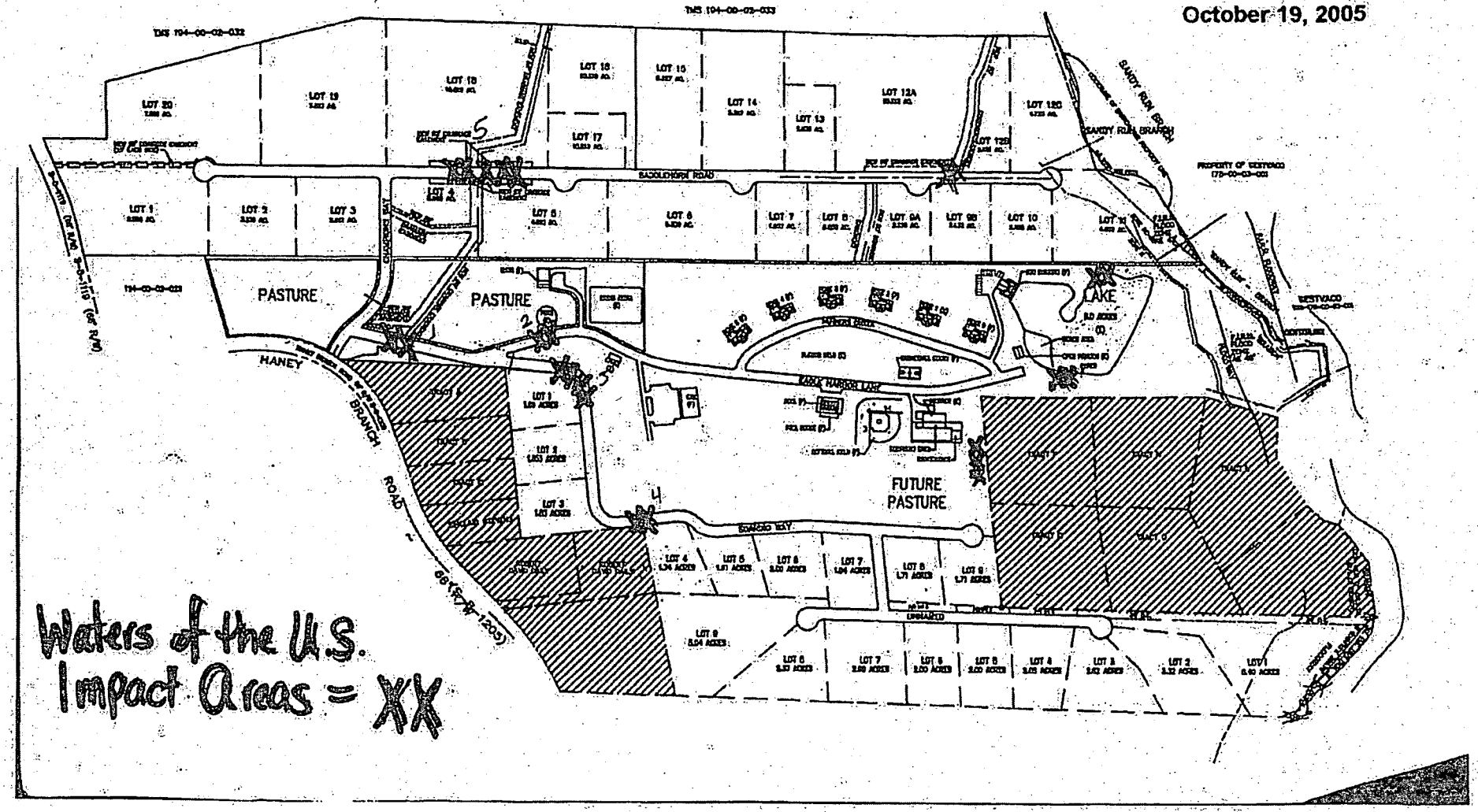
S.C. Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

Eagle Harbor Subdivision
60-2005-2200-2
October 19, 2005



00986

Eagle Harbor Subdivision
60-2005-2200-2
October 19, 2005



00987

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

November 7, 2005

P EXHIBIT 27
WITNESS
DATE: 5/3/2018
REPORTER: H. LANDRY

Regulatory Division

Ronald and Diana Price
1104 Saddlehorn Road
Summerville, South Carolina 29483

Re: SAC 87-2005-2039-2
Berkeley County

Dear Mr. and Mrs. Price:

This is in response to your letter of September 20, 2005, requesting a wetland determination for a 7.86 acre tract located at the terminus of Saddlehorn Road, in Berkeley County, South Carolina. The project area is depicted on the survey plat you submitted which was prepared by Ashley Engineering & Surveying, Inc., dated October 20, 2004, and entitled "CLOSING SURVEY FOR DON PRICE & DIANA PRICE CITY OF GOOSE CREEK BERKELEY COUNTY, SOUTH CAROLINA."

I have depicted the approximate boundaries of wetlands and other waters of the United States on a copy of the plat referenced above. The property in question contains approximately 2 acres of federally defined freshwater wetlands or other waters. However, none of these aquatic resources are considered to be subject to the jurisdiction of this office due to a recent decision by the U.S. Supreme Court. The location and configuration of these areas, as well as their status relative to jurisdiction, are reflected on the plat referenced above.

It should be clearly noted that the decision of the U.S. Supreme Court to exclude certain waters and wetlands from federal jurisdiction under the Clean Water Act has no effect on any state or local government restrictions or requirements concerning aquatic resources, including wetlands. You are strongly cautioned to ascertain whether such restrictions or requirements exist for the area in question before undertaking any activity which might destroy or otherwise impact these wetland resources.

Based on an on-site inspection and a review of aerial photography and soil survey information, it has been determined that the boundaries shown on the referenced plat are a reasonable approximation of the location and boundaries of the wetlands or other waters found on this site. However, you are cautioned that this delineation is approximate, subject to change, and should be used for planning purposes only. In order for a more accurate determination to be provided, these areas should be surveyed and platted. Upon receipt of such a plat, this office can then issue a letter verifying the accuracy of the actual boundaries. Please note that this office does not require that these non-jurisdictional areas be surveyed. However, if the landowner voluntarily wishes to obtain a more accurate determination or needs to perform this level of mapping due to the requirements of state or local governmental entities, we will provide a review and verification of this mapping upon request.

Please be advised that this determination is valid for five (5) years from the date of this letter unless new information warrants revision of the delineation before the expiration date. All actions concerning this determination must be complete within this time frame, or an additional delineation must be conducted. Further, be advised that this **preliminary** jurisdictional determination is **not** an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR 331.

In future correspondence concerning this matter, please refer to SAC 87-2005-2039-2. You may still need state or local assent. Prior to performing any work, you should contact the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management. A copy of this letter is being forwarded to them for their information.

If you have any questions concerning this matter, please contact me at 843-329-8044 or toll free at 1-866-329-8187.

Respectfully,

Elizabeth Jackson
Biologist

Enclosure:
Basis for Jurisdiction
Customer Service Survey

Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

JURISDICTIONAL DETERMINATION Revised 8/13/04
U.S. Army Corps of Engineers

DISTRICT OFFICE: SAC.87-2005-2039-2
FILE NUMBER:

PROJECT LOCATION INFORMATION:
State: South
County: Berkeley
Center coordinates of site (latitude/longitude): 33.11380 / 80.16511
Approximate size of area (parcel) reviewed, including uplands: 7.8 acres.
Name of nearest waterway: Sandy Run
Name of watershed: W2

JURISDICTIONAL DETERMINATION
Completed: Desktop determination ☐ Date:
Site visit(s) ☒ Date(s): 11-3-05

Jurisdictional Determination (JD):

☒ Preliminary JD - Based on available information, ☐ *there appear to be* (or) ☒ *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

☐ Approved JD – An approved JD is an appealable action (Reference 33 CFR part 331).
Check all that apply:

☐ *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☐ *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

☐ *There are "isolated, non-navigable, intra-state* waters or wetlands" within the reviewed area.
☐ Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:
A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":
☐ The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":
☐ (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.
☐ (2) The presence of interstate waters including interstate wetlands[1].
☐ (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):
☐ (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ (iii) which are or could be used for industrial purposes by industries in interstate commerce.
☐ (4) Impoundments of waters otherwise defined as waters of the US.
☐ (5) The presence of a tributary to a water identified in (1) – (4) above.
☐ (6) The presence of territorial seas.
☐ (7) The presence of wetlands adjacent[2] to other waters of the US, except for those wetlands adjacent to other wetlands.

CERTIFICATION BY COUNSEL

I, the undersigned counsel, do hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted this 16th day of June 2019.

Paul B. Ferrara, III
S.C. Bar No. 70511
8887 Old University Blvd, Ste. 200
North Charleston, SC 29406
(843) 569-5511 / (843) 569-5411 fax
paul@ferraralawfirm.net
Attorney for Appellant