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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No. 2016-CP-10-2955

Appellate Case No. 2021-000272

TCC of Charleston, Inc. *Plaintiff and Appellant/Respondent.*

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam, ... *Defendants and Respondents/Appellants.*

**RECORD ON APPEAL
VOL. 4 of 6**

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1 Q. What date was that meeting?

2 A. I don't remember. I think it was
3 first of September. Some time in September.

4 Q. How many PCOs would you estimate
5 followed the time of this conversion from
6 guaranteed maximum price to cost plus?

7 A. Again, you know, the first couple of
8 PCOs probably did not deal in time, and the second
9 when we started getting into PCOs that dealt in
10 time was probably, I don't know, four or five. So
11 I don't remember how many PCOs we had total. Say
12 we had 140, 150. So let's call it five or ten.
13 So probably 120 plus or minus. That's just a
14 guess. I'd have to look at the PCOs.

15 Q. I'm not holding you to the exact
16 number, but I'm looking for sort of an order of
17 magnitude. Approximately 120 PCOs followed this
18 date where you say the contract converted from
19 guaranteed maximum price to cost plus; is that
20 right?

21 A. Yes, sir.

22 Q. How many of the change orders followed
23 that date?

24 A. I think all the change orders followed
25 that date. That may not be right. One of the

1 first change orders was a credit that had nothing
2 to do with time.

3 Q. If the contract was a cost plus
4 contract why would you need change orders?

5 A. Well, the owner had a budget. I've
6 never done a job without a budget. I take that
7 back. I built the Ness Motley building. They're
8 the only ones I've ever worked with that didn't
9 have a budget. Every other job I've done had a
10 budget. That was what we were doing to track.
11 You still have to track it.

12 Q. There's no need for a change order in
13 a cost plus arrangement; you just bill your costs?

14 A. You still have to track it.
15 Everybody's got a budget. I've done other cost
16 plus jobs. We still track changes in scope. I
17 mean, it's a dual purpose. I mean, look, this job
18 was based on this set of documents. This set of
19 documents changed, but you still have to track
20 that change equals this amount of money.

21 Q. In a cost plus arrangement, the
22 obligation of the owner is to pay whatever your
23 costs are for the job plus a fee?

24 A. That's correct.

25 Q. So if this is a cost plus job, your

1 billing would include whatever costs you incurred
2 in that billing period, correct?

3 A. That is correct. But I don't think
4 you listened to me. Parts of the PCOs addressed
5 the fix. That fix. In other words, add that
6 steel plate to that column. It addressed adding
7 that steel plate to that column. The painter was
8 painting that column and he found that it's got a
9 big crack in it and said, look here, this thing
10 don't look exactly right, you want me to keep
11 going or what you want me to do. Well, no, we
12 want you to stop. Get the engineer. The engineer
13 says we need to add that plate. So the painter
14 goes and does something else.

15 Structural engineer designs a plate.
16 We order the plate. We install the plate. The
17 PCO is just paying for that plate. It did not
18 address the owner -- the painter changing the
19 color. You see the change in the color of that
20 plate? Did not address changing the color of that
21 plate or coming back and finish painting column.

22 Q. He was a subcontractor, right, who is
23 incurring time and he's billing time to the
24 general contractor, correct?

25 A. That's correct.

1 Q. So if it's a cost plus arrangement you
2 take that time and bill it with that pay
3 application?

4 A. Correct. It is except that they
5 requested that we wait until the end.

6 Q. Who said -- who is they?

7 A. The architect mostly, but it was
8 discussed in the meetings.

9 Q. So your testimony is that the
10 architect requested that you not bill your costs
11 until the end?

12 A. That's correct on parts of it.

13 Q. Did he give that instruction in
14 writing?

15 A. I believe it's in writing. Trey
16 McCraw also did that.

17 Q. Do you agree with me that in a
18 traditional cost plus contract arrangement
19 whatever costs you incur in a time period you
20 bill?

21 A. That is correct.

22 Q. So at the end of the job the final pay
23 ap, that includes the final costs from that last
24 pay period, and it's done right then, correct?

25 A. That is correct.

1 Q. In this case my understanding of what
2 you're saying here is that costs were accumulated,
3 not billed or shown to the owner until the last
4 submitted change order; is that right?

5 A. That is not right.

6 Q. Why is that not right?

7 A. As we went along, like when I told you
8 we met with Trey and that was, what did we say,
9 September, I showed it to him then. I showed him
10 some of the costs, the costs up to that point. He
11 was given a copy of that cost.

12 Q. But at that time your testimony is the
13 contract was a cost plus contract, correct?

14 A. Correct.

15 Q. And you hadn't billed the accumulated
16 costs at that time?

17 A. All of it. Hadn't billed all of it.

18 Q. Even though you had it in hand?

19 A. I had up to that point in hand. The
20 contract went on for another -- September,
21 October, November, December, January, February,
22 March -- another seven or eight months.

23 Q. Going back to something you mentioned
24 earlier that I didn't follow up on. You talked
25 about the pay, the PCO process was handled with

1 the architect before Mr. McCraw. How did it
2 change after Mr. McCraw came on site?

3 A. I don't think it did change other than
4 the fact that instead of the architect
5 recommending payment and the owner signing the
6 change order, making it official change order, if
7 you look at the change order there's a place for
8 us, the architect and owner to sign. I understood
9 that the owner said that Trey McCraw was going to
10 step in there, but Trey McCraw said no, he was
11 not.

12 It was kind of confusing, and you'll
13 have to ask them. But I understand that they
14 added a point that Trey said, no, I'm not signing
15 it, but I'm also making my recommendation that it
16 be paid or not paid or added or not added.

17 Q. So the process didn't change but for
18 Mr. McCraw's involvement with regard to whether he
19 was going to sign or not sign change orders?

20 A. No, sir.

21 Q. Sorry. I apologize. Clear me up.

22 A. No, sir. When Trey McCraw became
23 involved, as I understand, basically it added
24 another step. I understood Trey McCraw was going
25 to be the owner's representative before the

1 owner's rep was signing change orders. I
2 understood that Trey McCraw was going to take the
3 owner's place in the process. But Trey McCraw
4 said no, I'm just helping check, the owner is
5 still going to sign the change orders. So you
6 basically came from us to the architect to Trey
7 and then to the owner as opposed to from us to the
8 architect to the owner. You'll have to ask them,
9 but that's what it appeared to me.

10 Q. So I was getting the impression there
11 was some change to the review process that you're
12 indicating, but the only change, there is just the
13 addition of Trey McCraw as an owner's rep or
14 someone working for the owner to review the PCOs?

15 A. I don't know what all his assignment
16 was. Again, you'll have to ask him. I understood
17 that it was to be the owner's rep.

18 (Griffith EXH. 5, Email Correspondence,
19 Subject: Concord & Cumberland, marked for
20 identification.)

21 BY MR. FORD:

22 Q. Handing you Exhibit 5. This is an
23 October 2014 email. The top one is you forwarding
24 the email to Mr. Thomas and Mr. Burrell. The
25 bottom is from Mr. Moore to you. He says: Good

1 news, exclamation point. We know what the problem
2 is. They are completely out of sync, no sequence
3 and flow to our crews. They are jumping around
4 too much, and they do not know where they are
5 going once they have stopped one task. Jesse and
6 Doug have been working on it all day. They are
7 developing a plan. I will be on site at 7:00 a.m.
8 to confirm and help. Did I read that correctly?

9 A. That's the way I understand it.

10 Q. It says then: Now that I know what
11 the problem is we can fix it. I did not expect
12 this as the problem, but it seems it is. I am
13 disappointed, but I think the light has come on
14 for Doug. Do you see that?

15 A. I do.

16 Q. Who are Jesse and Doug? Do you know?

17 A. It's two of his foremen. Well, I
18 think Doug was his project manager, kind of like
19 Chris. And Jesse would be comparable to my Ryan,
20 and Doug would be comparable to my Chris.

21 Q. Do you know what he's talking about
22 here?

23 A. I believe this is in the time when the
24 owner says, look, y'all keep telling us you're
25 going to start stucco on drop one. That's where

1 we started drop one. Hadn't started on drop one.
2 Y'all need to man up and get going with the
3 stucco. And Trident's job, we represent the
4 owner, and we said, okay, we'll lean on the subs
5 like we normally do. Y'all need to dadgum man up,
6 let's get going.

7 But I believe this letter really
8 explains to more degree what you and I were
9 talking about before lunch. No sequence or flow.
10 I don't remember what the previous email we talked
11 about was. Getting in rhythm. He couldn't get in
12 rhythm. We kept running into something.

13 Drop one, again, I think you ought to
14 talk to Ryan. Drop one, just like the windows,
15 before we ever started we started demoing at the
16 top. And we ran into one thing that wasn't right,
17 another thing wasn't right, another thing wasn't
18 right just on drop one. We couldn't get drop one
19 ready for the stucco guy when it was supposed to.

20 And these guys, we had them on the
21 job, and we would try to move them where they --
22 we didn't want to pay them -- I mean, they were
23 sitting there waiting on the owner, waiting on the
24 architect to come up with a fix. We tried to keep
25 that to a minimum. So we tried to move them

1 somewhere else where they could do productive
2 work.

3 Q. It looks like to me this is a
4 conversation about Salem sequencing its crews; is
5 that a fair assessment?

6 A. I think Trident was sequencing the
7 work, but Salem within the drops we were working
8 on, yes.

9 Q. So in sequencing, correct me if I'm
10 wrong, but this is a means and methods issue; is
11 it not?

12 A. Yes.

13 Q. And the contractor is responsible for
14 sequencing and means and methods of its work?

15 A. Yes.

16 Q. That's not the architect's
17 responsibility?

18 A. No, sir.

19 Q. Nor the owner's responsibility?

20 A. No, sir.

21 Q. So this email seems to be Mr. Moore
22 stating some disappointment in this or perhaps
23 Trident's sequencing or control of means and
24 methods on the project; is that correct?

25 A. I think what he's saying is they were

1 not able to get in a sequence and flow to our
2 crews. I think that was because of all the
3 differences we were running into. Again, this
4 job, the job turned out to be not this document.

5 MR. EPTING: Exhibit 1.

6 THE WITNESS: I'm sorry. Exhibit 1.
7 This job was not this document. I mean, I tried
8 to explain drop one with demolition. Well, no.
9 Drop three would be doing demolition. Drop two's
10 demolition would be done, and they would be
11 putting waterproofing and windows in. Drop three,
12 the demolition and the waterproofing, would be
13 done and the skin would be going back on. That
14 was the sequence. We could not get to that
15 sequence and we couldn't get to that flow. We
16 never did.

17 BY MR. FORD:

18 Q. You said the job was not Exhibit 1.
19 It was Exhibit 1 plus the nine change orders that
20 were approved, correct?

21 A. Nine plus the ten, whatever you want
22 to call it.

23 Q. Ten has PCO 139 in it, which has the
24 total job cost ledger?

25 A. Correct.

1 Q. PCO 139, when was that submitted?

2 A. There's a date on it. I don't
3 remember. At the end of the job.

4 Q. The PCO and total job cost ledger was
5 provided at the end of the job?

6 A. No, sir. I'm sorry. In September I
7 gave Trey McCraw a total job cost that had all of
8 that in it and discussed it at length with him.

9 Q. September of what year?

10 A. What was it, '15. '15. That's
11 probably '16.

12 Q. Exhibit 2 has PCO 139. Looks like
13 there's two copies of this one. One is October
14 17, 2016?

15 A. I think there's another one.

16 Q. One is dated August 29, 2017, right?

17 A. Whatever you say. I'm not looking at
18 it.

19 Q. So PCO 139 is created, what,
20 approximately seven months after substantial
21 completion?

22 A. If that's what the date is.

23 Q. Just so we're on the same page,
24 substantial completion occurred when? Do you have
25 an understanding of that?

1 A. I believe it was in March. There is a
2 document I think the architect signed. I'd have
3 to refer back to that document. There is an AIA
4 document that says substantial completion. I
5 believe that was on this job.

6 Q. So PCO 139 with the total job cost
7 ledger is submitted to the architect and owner,
8 what, five months after substantial completion?

9 A. No, sir. It was submitted before
10 then, and the PCOs were submitted before then. We
11 submitted PCOs a multiple of different ways.
12 Shawn says, look, I don't like it this way. How
13 about change it. Let's break it out this way.

14 Trey McCraw came in. We had meetings
15 at the end of the job concerning this specific
16 document. I said, Trey, how do you want to
17 address these items. Well, John David, you know,
18 I think maybe this way. Okay, Trey. That's a
19 good idea. Let's do it that way. So we would
20 prepare it that way. Then he'd come back and say
21 I don't think that's right, we need to do
22 something different.

23 Then at the end Trey McCraw says, John
24 David -- and I suspect that's where you coming
25 with this line of questioning. John David, if you

1 hadn't got a signed change order before you did
2 any kind of work it's not valid. I said, Trey,
3 I'm sorry you weren't here when we started the
4 job. I'm not trying to ambush you with it, but
5 that ain't the way it worked. That wasn't the
6 deal.

7 Q. Earlier you told me all the change
8 events were recorded in a PCO; is that right?

9 A. Yes, I believe 99 percent of them were
10 included in proposed change orders to some extent.
11 Again, the architect directed us to wait until the
12 end to see the impact of different things to -- on
13 the final.

14 MR. FORD: Let's take a quick.

15 (A recess was taken.)

16 MR. FORD: Back on the record.

17 BY MR. FORD:

18 Q. So I asked you about the PCOs, and you
19 said like 99 percent of -- I'm not sure what you
20 said. Correct me if I'm wrong. I think you said
21 that 99 percent of the costs were presented in
22 PCOs through the end of the job; is that right?

23 A. Yes, throughout the job.

24 Q. Throughout the job. If that's true,
25 why are they not -- why is this last change order

1 supported by the job cost ledger and not those
2 PCOs?

3 A. The deal was when we got to the end of
4 the job we were going to sit down with all
5 concerned and discuss all issues and come to
6 agreement on all of those issues. When Trey
7 McCraw got involved, Shawn said you got to sit
8 down with Trey McCraw. Sit down with Trey. Trey
9 said what is it. I said here it is. This is what
10 the agreement was. This is what it was. He
11 suggested that we change the format of it.

12 That's what I was telling you. I
13 think there's several variations of this as per
14 Trey's suggestions. I think it was a good one.

15 MR. EPTING: When you say this, what
16 exhibit are you referring to?

17 THE WITNESS: I'm sorry. What you're
18 calling 10. I don't think that's 10, but let's
19 call it 10.

20 BY MR. FORD:

21 Q. I'm looking at my copy of Exhibit 2,
22 which is right here.

23 A. I'm sorry. Exhibit 2. Thank you.

24 Q. Which is change order 10 unexecuted?

25 A. That's right. I'm telling you I think

1 there is a later date of this. Anyway, Trey asked
2 us to do it a different way. I think this is a
3 variation. I think this is number 2 because I
4 don't believe in the original one we had this, TCC
5 you called me Concord 98 that you referred me to,
6 I believe that was Trey's suggestion, and we
7 changed and did it that way.

8 Q. Hold on a second. So this document,
9 what this means here, just to explain and we can
10 figure it out, but my understanding of this is
11 this is a Bates stamp applied by your attorneys in
12 the discovery process.

13 A. I'm just trying to get a number on it
14 so you know which document I'm talking about.

15 Q. Fair enough. So this document
16 starting with TCC 98 is what?

17 A. Is what I believe was one of the
18 variations Trey requested that we put our final
19 bill in in this form.

20 Q. You believe Trey requested a
21 submission of your total costs on the job without
22 reference to any prior PC0?

23 A. Yes. He asked us to do it like this.
24 I'm sure of this. I'm not sure which one it is.
25 That we apply it to a TCC SOV code. See the far

1 left column?

2 Q. Yes, sir.

3 A. Schedule of value code.

4 Q. The numbers down the left-hand side
5 are not PCOs?

6 A. No, sir. They were original pay
7 requests, schedule of value codes. Now, there was
8 some consolidation of that as well. If you look
9 at the pay requests it's a little bit different,
10 but it was executive summary, if you will.

11 Q. Going back. You said that 99 percent
12 of your costs were reflected in what I'm calling
13 prior proposed change orders, PCOs, prior to
14 Exhibit 2; am I correct?

15 A. Yes, sir.

16 Q. If we wanted to go back and check that
17 how would we reference these costs to the
18 particular issued prior PCOs?

19 A. You would take each of those PCOs and
20 assign it to one of those numbers.

21 Q. How could I do that?

22 A. You probably can't. I could probably
23 -- well, my team. We would have to do that. Be
24 glad for Trey to sit in and give us his opinion as
25 well.

1 Q. But TCC would be the only folks able
2 to do that, right?

3 A. No, sir. The description of every PC0
4 was on every PC0. In other words, add windows.
5 Adding windows would either go -- may I get up?

6 Q. Yes.

7 A. You could do that -- where is it?
8 Right here.

9 Q. You have one, too.

10 A. I understand. I want to show you.
11 Item 14, if you added windows, it would either go
12 to that one or that one, 21. You could do that.

13 Q. All right. See, let me see if I
14 understand what you're telling me. So item 14 --
15 and maybe look on with me -- glass and glazing,
16 LBR. What does LBR stand for?

17 A. Labor.

18 Q. So glass and glazing LBR 226,735 plus
19 21, which is all glass and glazing, MAT, material,
20 916,062. Do those two numbers add up to equal the
21 original estimate for window removal and
22 installation?

23 A. Yes. They add up to the total
24 contract of \$3,923,939.

25 Q. Wait a minute. Now, those two items,

1 226 and 916, does that equal the original scope on
2 the windows?

3 A. Yes.

4 Q. Inside of that 3.9 number?

5 A. Yes. My point, that whole column adds
6 up to the contract amount.

7 Q. Understood. I don't have the -- I may
8 have it somewhere, but I don't have it right now,
9 that scope of work, the window scope of work. You
10 believe that whatever that is, \$1.2 or 2 million,
11 is the original scope cost of windows?

12 A. Yes, sir.

13 Q. To the right you've said approved CO,
14 then created a new contract amount, and that line
15 item or those line items together collect all of
16 the costs associated with window removal and
17 reinstallation?

18 A. Say that again.

19 Q. Those line items together total the
20 scope of work performed to remove and replace
21 windows at this job?

22 A. You saying the first two columns,
23 those two numbers? Is that what you're talking
24 about?

25 Q. Plus the approved CO amount?

1 A. No, that is not correct.

2 Q. So I've got to add the -- I see. So
3 you have an actual cost column and then a
4 difference; is that right?

5 A. That's correct.

6 Q. So in the approved CO column this
7 column reflects amounts submitted through the PCO
8 process and approved for inclusion in the change
9 orders?

10 A. Right, 1 through 9.

11 Q. That number at least for line 14 is
12 \$462,000 plus different from the approved amounts?

13 A. That is correct.

14 Q. So my question to you would be, is
15 that difference reflected in any prior issued PCO?

16 A. Some of it. I think most of it is.
17 I'm not going to say all of it. I think most of
18 it is.

19 Q. How would I identify that cost from
20 prior issued PCOs?

21 A. You need to go look at the porches.

22 Q. But in this document there is no
23 reference to what PCOs you're referring to,
24 correct?

25 A. No, sir.

1 Q. That effort hasn't been undertaken?

2 A. We have done some of that work. I
3 mean, again, this was Trey's suggestion. And
4 after this -- after we did this we came back and
5 sat down with him and said, is this what you want.
6 And then when Trey says, well, if you don't have a
7 signed change order 1 through 9 that addresses
8 that dollar then we're not going anywhere. I
9 said, okay, then we'll turn it over to the lawyer.

10 Q. Did you say then we have those PCOs
11 that we submitted that cover these costs?

12 A. He asked me to send him the PCOs for
13 backup. I sent every one of them.

14 Q. You didn't send any particular PCOs
15 identifying what you claim to be the additional
16 actual costs for glass and glazing labor and
17 material?

18 A. No, sir. I sent him all the PCOs. I
19 didn't say Trey plug in this one here, plug in
20 that one there.

21 Q. Between you and Chris and Ryan, if I'm
22 looking for PCOs that report to the owner
23 additional actual costs incurred for labor and
24 material for windows over and above approved CO
25 amounts, who is the person to do that?

1 A. That all went to the architect. Every
2 one of them went to the architect. Now, what he
3 forwarded on to the owner I don't know. You'll
4 have to ask him.

5 Q. My question is who amongst your staff
6 would be able to go out and identify which PCOs
7 are reporting to the owner of this additional
8 actual cost over and above the original contract
9 amount and the approved COs?

10 A. I think anybody that knows anything
11 about the construction and the terms could do it.
12 It doesn't have to be my guys. My guys can do it.
13 I can do it. Chris can do it. Ryan can do it.

14 MR. EPTING: We're here to do it.

15 BY MR. FORD:

16 Q. But that hasn't been done yet, right?

17 A. We've been working on some of that.
18 But again, we're trying to figure out what Trey
19 wants. I mean, who we working for. That was
20 Trey's suggestion. Again, we tried to follow
21 exactly what his suggestion was. I mean, we can
22 do it.

23 Q. Back to this Exhibit 5. I was asking
24 you about this and we jumped off. So Moore says:
25 I'm disappointed, but I think the light has come

1 on for Doug. Did I read that correctly that last
2 sentence of the second paragraph?

3 A. Yes. That's the way I read it: I'm
4 disappointed, but I think the light has come on
5 for Doug.

6 Q. That indicates to me, correct me if
7 you think I'm wrong, disappoint -- prior
8 disappointment in Doug's performance; is that
9 incorrect or correct?

10 A. I think he's insinuating that Doug and
11 Jason, is it -- no, Jesse, disappointed that
12 they've been able to get the crews into the flow.
13 That's correct. That's what I read.

14 (Griffith EXH. 6, Concord & Cumberland
15 Exterior/Interior Renovation Project Monthly
16 Report, October 2014, marked for identification.)

17 BY MR. FORD:

18 Q. I'll hand you Exhibit 6. Do you
19 recognize this document?

20 A. Yes, sir.

21 Q. What is it?

22 A. Monthly report dated October 2014.

23 Q. It's the monthly report for October
24 2014. Looks like it's dated, at least executive
25 summary on the second page is dated November 7,

1 2014?

2 A. I am not sure about that. It may be
3 for October. I don't know whether it's for the
4 month of October or it was the monthly report of
5 October or it was for the monthly report of
6 September, but it was a October report.

7 Q. So, well, let me ask you this: Did
8 TCC prepare monthly reports for the owners on this
9 job?

10 A. I don't remember how many we did. We
11 prepared reports, yes, sir, periodically reports.

12 Q. It looks like a letter describing the
13 events thus far I suppose that November 7 probably
14 captures progress through October; is that fair?

15 A. Either through October or through
16 September. That's minor, but I'm not sure.

17 Q. In the third paragraph it starts off:
18 In October we revised our overall project schedule
19 to account for the delays.

20 Does that indicate that this is a
21 report for events occurring at least in October
22 but maybe through October also?

23 A. I don't read through October, but it
24 clearly reads in October. Again, I don't think
25 that matters.

1 Q. We I think have talked about this
2 process a little bit. It says: Salem added
3 additional manpower and resources and we are now
4 tackling the building from both ends of the
5 building; is that correct?

6 A. That's correct.

7 Q. Is that added manpower and resources,
8 is that additional costs to the owner?

9 A. Not necessarily. This is what we
10 talked about before.

11 Q. Understood. On the next page there is
12 reporting on contract completion dates, reports
13 the original contract completion date of May 27,
14 2014; is that right?

15 A. That's correct.

16 Q. Then approved days by change orders is
17 40; is that correct?

18 A. That's correct.

19 Q. It gives you the revised contract
20 completion date?

21 A. 7/06, yes, sir.

22 Q. All right. So through this time is it
23 your understanding there had been issues with
24 discovery of problems on the building and work to
25 address those and the outcome at least at this

1 point was 40 days time extension?

2 A. Yes, sir.

3 Q. And that's approved by the architect
4 and approved by the owner?

5 A. I don't know about approved by the
6 owner. There was always a delay with the owner.
7 I don't remember whether we had a signed change
8 order from the owner or not.

9 Q. It says approved days by change
10 orders?

11 A. That would lead me to believe that the
12 owner had signed them, but I don't know that.
13 Again, the owner was slow signing change orders.

14 Q. Were any of the additional manpower or
15 resources that Salem was providing on the job
16 making up for any delay that they caused
17 themselves?

18 A. I don't believe so. I believe they
19 were trying to overcome what was the previous
20 email, out of sync, non sequence and flow.

21 Q. That's means and methods and
22 sequencing, which is the responsibility of the
23 contractor, right?

24 A. That's the responsibility of the
25 contractor, but on this particular job, again, you

1 go back to -- what do you call it, Exhibit 1 --
2 Exhibit 1 says what the means and methods we
3 designed and priced to do the job. The means and
4 methods that we had to use to finish the job was
5 different than what Exhibit 1 is.

6 Q. So at this point you've got 40 days
7 extension of time to deal with those things,
8 correct?

9 A. That's correct.

10 Q. At this point you're telling me that
11 the additional manpower and resources are not
12 equating to additional costs to the owner?

13 A. I say could not -- would not
14 necessarily I believe is the word I used. If you
15 want to read it back to me. I don't believe I
16 said would not. I think I said could not
17 necessarily be an increase to the owner.

18 Q. Would it be fair to say through this
19 date that if you've got 40 days of approved change
20 orders, whatever additional costs from added
21 manpower or resources are included also in change
22 orders through this date?

23 A. No, sir. They are not. I'm sorry.
24 I'm not explaining it. Because the deal we had
25 with Shawn Mellin was that when the change orders

1 overlapped, were concurrent, we would not charge
2 the owner total time. You remember my example of
3 the concurrence?

4 Q. I don't.

5 A. So I don't remember when that started.
6 It started on PCOs. You have to go look at the
7 PCOs and date of the PCOs. I don't have them here
8 in front of me, but that -- I doubt very seriously
9 if that 40 days included the general conditions
10 for all 40 days.

11 Q. Was this report a way for you to
12 communicate to the homeowners and tenants not just
13 the time of expected completion but the amount of
14 additional costs incurred at this time?

15 A. You would have to take the PCOs and
16 add them to this. Again, I don't know that the
17 change orders were signed. I suspect that they
18 were not signed by the owner on this date because
19 of delay.

20 Q. By the end of October 2014 did you
21 have any -- we can go back and look, but do you
22 have a sense of the amount of additional costs
23 that were incurred because of change in conditions
24 of the building?

25 A. I do not. I'd have to go back and

1 look.

2 Q. Why wouldn't that information be
3 communicated to the owners at that time?

4 A. Because, again, the problem is you
5 are -- you could compare it with this document,
6 what the in scope items were, but you could not
7 find out what the out of scope items were until
8 you figured out what the concurrence would be.

9 Q. At this time do you believe that the
10 contract had converted from guaranteed maximum
11 price to cost plus?

12 A. Again, I'd have to go look at the
13 PCOs. The PCOs clearly show when it changed.

14 Q. Was that change reported to the owners
15 in a communication like this at any point in time?

16 A. I don't remember that. It was
17 discussed at length at the OAC meetings, which the
18 owner was present at, and with the architect
19 there, and he concurred.

20 Q. This is a letter, though, to the
21 homeowners and tenants, correct?

22 A. Dear homeowners and tenants. That is
23 correct.

24 Q. There's more than just the one or two
25 or three that show up at the OAC meetings?

1 A. Correct.

2 Q. Wouldn't this be a good time to report
3 to the owners that the form of contract had
4 changed from guaranteed maximum price to cost
5 plus?

6 A. No, sir. We had and were instructed
7 not to talk to all the owners, that we were
8 instructed to deal with the owners' rep. We had
9 owners that wanted to change a door back to a
10 window.

11 Q. This is a receipt of communication
12 from the homeowner with a complaint. This is
13 providing, you know, pertinent, timely information
14 to the owners about what's happening on the
15 project; is that correct?

16 A. It appears to be. It may have been a
17 monthly meeting by the homeowners' association. I
18 don't remember what it was.

19 Q. Given that it's a communication coming
20 from TCC to all the owners and it's not calls from
21 other owners coming to you, wouldn't it be a
22 reasonable thing to do to take the opportunity in
23 this report to let them know that they're on the
24 hook not for a guaranteed maximum price but for
25 the total cost that TCC incurs to finish this job?

1 A. I personally think that everybody
2 ought to hear and know the same thing. That was
3 not what we were directed to do by the homeowners'
4 association with which our contract was written.
5 So you need to ask them what they wanted to share
6 with all of the members or not. They approved
7 this before we sent it out.

8 Q. You said instruct and directed. Who
9 is giving you these instructions and directions?

10 A. Again, at that time I think it was Mr.
11 Tom Mather. At some time it changed to Ms.
12 Candace. I think one time it changed to Ms.
13 Marianne. Another time it changed to Trey McCraw.
14 I don't remember.

15 Q. How did Tom give this instruction not
16 to talk with all the owners?

17 A. Probably at one of the OAC meetings.
18 Probably at the meeting before we prepared this.

19 Q. You think some time in October or
20 thereabouts 2014?

21 A. I don't know that it even had anything
22 to do with this. I'm just telling you what we
23 were told by the HOA rep.

24 Q. Did you ever get such an instruction
25 in this 2014 timeframe in writing or email?

1 A. I do not know. Do not recall.

2 (Griffith EXH. 7, Email Correspondence,
3 Subject: Resident Frustrations, marked for
4 identification.)

5 BY MR. FORD:

6 Q. I'll hand you Exhibit 7. This is a
7 November 2014 email and you are on the CC line; is
8 that correct?

9 A. That is correct. Well, wait a minute.
10 Yes, up at the top. I was looking at the bottom.
11 Yes.

12 Q. Do you recall this email or the issues
13 therein?

14 A. I do.

15 Q. First paragraph, this is from Chris
16 Burrell to Gary Moore and Doug Benson at Salem,
17 and he's reporting the residents -- the
18 homeowners' frustrations have reached a fever
19 pitch and indicates that the board is preparing to
20 put TCC on notice and will likely require another
21 recovery plan. Do you see that?

22 A. I do.

23 Q. So in November 2014 it appears that
24 again Mr. Burrell is reporting to Salem that there
25 are frustrations on the owners' part and an

1 expectation of a recovery plan to be submitted by
2 TCC to the owners. Is that an accurate reflection
3 of what was going on at this time?

4 A. It is.

5 Q. This doesn't appear to be an issue
6 driven by differing conditions in the building.
7 This appears to be a problem where TCC is
8 reporting to Salem that it is obligated to provide
9 a recovery plan?

10 A. That is incorrect.

11 Q. This is not a recovery plan to recover
12 from delays caused by Salem or other
13 subcontractors of TCC?

14 A. You are correct. This is to try to
15 overcome all items. I think I mentioned earlier
16 about drop one. We kept putting in the minutes, I
17 remember, we going to start stucco next week, next
18 week, next week. Couldn't start the stucco until
19 we resolved the issues. Finally we started the
20 stucco, and we did it not by drop but by four on
21 drop.

22 Q. If the owner was on notice that all
23 this additional work and costs was their problem,
24 why would they be putting you on notice of the
25 need for you to provide a recovery plan?

1 A. Well, we, Trident Construction
2 Company, have been in business since 1981, and our
3 focus has always been to push the owner's agenda.
4 And to push the owner's agenda here we felt like
5 we needed to lean on the subcontractors, not just
6 Salem, but all, and our guys, too. We had
7 meetings with our guys: How can we make up
8 time. That's what we did. All of it was not his
9 fault. I'm telling you.

10 Q. Some of it was?

11 A. Some of it might have been, but most
12 of it was the stucco guy was there ready to go to
13 work and he couldn't start.

14 Q. So you're telling me that TCC's mode
15 of operation is to tell the subcontractors that
16 the delay is their fault at the same time that
17 it's telling the owners that it's their fault?

18 A. Well, no. We put it all on the table.
19 We put everything on the table. You ain't got the
20 RFIs. The architect is dealing with the RFIs, all
21 that. You can't just look at one thing. You got
22 to look at the whole thing and what was going on.

23 The PCOs at that time, the change
24 orders at that time. Part of the problem that
25 Salem went out of business is we weren't

1 processing PCOs into change orders and change
2 orders into building. It's all part of it.

3 Q. In the first sentence of the second
4 paragraph Mr. Burrell says: We continue to
5 struggle to make any headway and establish flow.
6 Day by day and week by week activities and
7 progress have slipped and quality and oversight
8 have been lacking as well; is that correct?

9 A. That's correct.

10 Q. Quality and oversight are not the
11 responsibility of the owner, correct?

12 A. Correct.

13 Q. So Mr. Burrell is telling Salem that
14 its quality of its work is slipping, correct?

15 A. Correct.

16 Q. Not up to par?

17 A. Yeah. Correct.

18 Q. And that its oversight of its work is
19 also slipping and not up to par, correct?

20 A. That is correct. That's what that
21 says.

22 Q. So it appears from this communication
23 in November that Salem is not performing as TCC
24 expected to; is that right?

25 A. We are hoping that they can help us

1 make up time and overcome some of these
2 difficulties. That's correct.

3 Q. But they appear clearly from Mr.
4 Burrell's communication to at least share
5 responsibility for the delay?

6 A. That is correct.

7 Q. Costs I imagine were incurred to catch
8 up; is that correct?

9 A. I believe there was some costs
10 associated with this, yes.

11 Q. Is that costs to TCC?

12 A. The ones that were our responsibility
13 should be TCC.

14 Q. Is TCC seeking to recover costs
15 incurred to make up for subcontractor caused
16 delays from the owner?

17 A. This, call it change order 3, your
18 document 2, does seek that.

19 Q. So Exhibit 2 which contains change
20 order 10 lists out all of the costs incurred by
21 TCC, correct?

22 A. Correct.

23 Q. Part of those costs are incurred
24 because of problems with quality and oversight of
25 subcontractors and in this case Salem; is that

1 right?

2 A. That's correct.

3 Q. Those costs should not be borne by the
4 owner, correct?

5 A. Correct.

6 Q. So how can I parse through over 20
7 pages of costs, labor, and material and identify
8 what portion is TCC or its subcontractors'
9 responsibility versus that which is the owners'
10 responsibility?

11 A. If you had followed the agreement that
12 would have been worked out at the end of the job.
13 You didn't. You didn't sign change orders. You
14 didn't shut down at the end of the job and go over
15 it. How about, look, also we -- we also continued
16 to struggle and make any headway and establish
17 flow.

18 When we get back to that establish
19 flow. Establish flow is part of the problem, is a
20 big part of the problem because all the problems
21 we ran into. Again, I told you we start stucco
22 next week. Supposed to start stucco next week.
23 Supposed to start stucco next week. Couldn't
24 start stucco because kept running into problems.

25 So part of it -- I agree with you.

1 Part of it was ours, but more of it was this
2 establishing flow. Every piece of paper you have
3 given me addresses sequence and flow to our crew,
4 headway and establish flow on that one. Detail
5 changes on this one. I mean, these are yours that
6 you picked. I don't know what's on this one. I
7 have to look at it. This was about the window
8 guy.

9 Q. My question that I asked you was about
10 yours, this total job cost ledger. The question
11 was, how can I go through this document and
12 establish or find out, discover what portions of
13 it are attributable to TCC or its subcontractors'
14 failures of performance versus those which are
15 attributable to the owner?

16 A. I would start with the PCOs and price
17 all the PCOs out and see what the delta is, and we
18 can sit down and talk about it. That's what
19 Trident does.

20 Q. So I can't do it by looking at this
21 document in Exhibit 2?

22 A. I wouldn't.

23 Q. You mentioned earlier that, as you
24 pointed at me telling me that I breached the
25 contract, that change orders weren't signed. I

1 thought we established earlier on that nine change
2 orders had been signed?

3 A. For example, change order number 6 was
4 presented in August. It wasn't signed I don't
5 believe until the end of January.

6 Q. Is that the source of any damage that
7 you're claiming in this case?

8 A. Yes.

9 Q. What is that?

10 A. The delay in signing the change
11 orders, we didn't know -- talking about why didn't
12 we present all the change orders when y'all
13 weren't signing the ones that we had agreement
14 with the architect, how are we going to know what
15 else to add.

16 Q. If you're claiming damage from not
17 signing change order 6, how can I or where would I
18 find the damage that you attribute to that failure
19 to act?

20 A. It's not a separate damage. It hasn't
21 been broken out that way.

22 Q. So we can't identify it sitting here
23 today?

24 A. I cannot. To date y'all haven't paid
25 the ones that have been approved, all of them.

1 Q. The final pay applications attach
2 change order 10, correct?

3 A. Again, I think there's one. There's
4 been some interim since then. We changed them
5 based on -- I say your -- Trey, Shawn
6 recommendations.

7 Q. Change order 10 was presented with the
8 final pay application, correct?

9 A. With one of them, yes. I think it's
10 been revised. I'm sorry I keep repeating.

11 Q. The first change order 10 was
12 submitted with the first final pay application,
13 correct?

14 A. I would have to look. I think so.
15 Yes, sir.

16 Q. That's the universe of this dispute,
17 correct?

18 A. That's the universal of the dispute,
19 yes, sir. I think the one you're looking at is
20 actually the second one.

21 Q. Correct me if I'm wrong, and I
22 apologize for not having the series, but the first
23 change order 10 attached as its support a total
24 job cost ledger, correct?

25 A. I believe so. Yes.

1 Q. Without reference in it to particular
2 PCOs, correct?

3 A. Correct. I believe so.

4 Q. No difference in presentation than
5 what we see here in Exhibit 2?

6 A. Somewhat, but not to any magnitude.

7 (Griffith EXH. 8, Email Correspondence,
8 Subject: Damage Notice, marked for
9 identification.)

10 BY MR. FORD:

11 Q. I'm going to hand you a document
12 marked Exhibit 8. Exhibit 8 is a December 2014
13 email; is that correct?

14 A. Yes.

15 Q. The subject of the email is damage
16 notice. The original email is to Gary Moore and
17 others from Chris --- I'm sorry, from Ryan
18 Tomberlin to Gary Moore and others CCing you and
19 Mr. Burrell, correct?

20 A. Correct.

21 Q. The issue here is that TCC is telling
22 Salem that it is responsible for repairs to
23 existing precast concrete band; is that right?

24 A. That's correct.

25 Q. Just for a little background. Do you

1 recall this particular issue?

2 A. Yes, sir.

3 Q. How did this building component become
4 damaged?

5 A. I believe something was dropped on it.

6 Q. TCC is telling Salem to fix it at
7 their cost?

8 A. That's right.

9 Q. First question is, is that cost to
10 repair also reflected in the total cost for this
11 job?

12 A. I don't know about that one. At that
13 time Salem was still working on the contract
14 amount and billing this per schedule of values.
15 That particular one I think they paid for out of
16 pocket, but I'd have to check.

17 Q. But this Exhibit 2 contains the job
18 cost ledger which includes Salem's costs incurred
19 by TCC; is that right?

20 A. Yes and no. Salem originally had a
21 lump sum contract. When they could not -- we
22 could not get the change orders processed in a
23 timely manner. They did not have cash in the bank
24 to carry those out. At that time we started
25 paying their bills for them.

1 Q. Did that cause increased costs to TCC?

2 A. No, sir. It saved costs. It saved
3 costs.

4 Q. How did it save costs?

5 A. Well, going back to the contract, on
6 page 3, sorry, your Exhibit 1, if you look at page
7 3, item 5.1.3. See that at the bottom?

8 Q. I see it.

9 A. Limitations, if any, on a
10 subcontractor's overhead and profit for increase
11 in the cost of this portion of the work, ten
12 percent overhead and five percent profit.

13 So anything that Salem did outside of
14 the contract they should have gotten 15 percent
15 on. When we started paying that wasn't added. We
16 paid the costs. Salem didn't get 15 percent.
17 Really the way it works is they get 15 percent and
18 we get 8 percent on top of it according to this
19 contract. When we started paying for Salem they
20 didn't get the 15 percent. So it saved you -- I'm
21 sorry -- the HOA 15 percent on everything we paid
22 for Salem.

23 Q. So TCC started paying Salem's costs,
24 and when it did that it stopped paying overhead
25 and profit on additional work; is that right?

1 A. On contract work.

2 Q. Well, they had a fixed price before?

3 A. They did, but when they couldn't pay
4 because we couldn't pay them, we couldn't process
5 the PCOs, therefore, the change orders, therefore
6 the owner signed change orders, they ran out of
7 money. So we had to start paying for them or a
8 bunch of liens were going to be filed on the job.

9 Q. So did TCC pay Salem its fixed price
10 sum in full?

11 A. Only on what was approved by the
12 architect up to that point.

13 Q. If it was a fixed price contract, then
14 shouldn't they have been paid that price?

15 A. No.

16 Q. Was there some amendment to the
17 agreement?

18 A. Well, we kept up with it. We kept up
19 with what we were paying for Salem. There is an
20 accounting.

21 Q. So there is an original contract price
22 of Salem. How would I -- strike that.

23 Would I be able to look in Exhibit 2
24 to identify all of the costs --

25 A. Yes. I'm sorry I interrupted you.

1 Q. I did one of those pauses. I was
2 thinking about my next clause.

3 A. I'm sorry. I apologize. You told me.
4 I apologize.

5 Q. It's all right. It's bound to happen.
6 Let me back up fully so I can stay on track.
7 Salem had a fixed price contract, correct?

8 A. Yes, sir.

9 Q. That was, I think we talked about
10 earlier, was that --

11 A. \$3,200,000, something like that. I
12 don't remember the exact number.

13 Q. The majority of TCC's contract with
14 the owner?

15 A. Yes, a little bit more than 2 million
16 bucks.

17 Q. So if I wanted to see and compare that
18 amount, the Salem contract fixed sum amount to
19 what was paid to Salem, could I track that in this
20 total job cost ledger?

21 A. Yes, sir.

22 Q. For costs that TCC started paying
23 directly of Salem's, which would mean to me paying
24 some vendor of Salem or some sub subcontractor of
25 Salem, is that cost reflected here as a payment to

1 Salem or payment to that other, you know,
2 third-party entity?

3 A. It is paid to that third-party entity,
4 and you can pick it up in there, and that's where
5 you're saving the 15 percent.

6 Q. So back to Exhibit 8. Moore says:
7 We'll repair the damage on the stone. You respond
8 to him in December 2014 and say: What can we do
9 to help eliminate this problem in the future. We
10 are behind on our contract work without adding
11 scope. What did you mean by that?

12 A. What I meant by that was that if we
13 damaged stone somebody has got to go fix it.
14 Unless you bring somebody new in to fix it, then
15 you're going to pull somebody off of contract
16 work, in scope or out of scope work, change order
17 work to fix it. So it's something that they would
18 be doing that they could be doing toward the
19 change order work or the in scope original
20 article, what did you call it, Exhibit 1 work.

21 Q. So if they're spending resources
22 fixing things they have damaged, that is harming
23 productivity towards completion of the original
24 scope work, correct?

25 A. Maybe, depending on whether they bring

1 a stone guy in that wasn't necessarily on the job
2 to do it or whether they pool somebody to do it.

3 Q. But at this time you appear to be
4 stating that TCC is behind on its Exhibit 1 work;
5 is that correct?

6 A. That is correct.

7 Q. That is without adding scope, which is
8 the unforeseen building conditions that we have
9 been talking about, correct?

10 A. No, sir. What I'm saying is that the
11 added scope work is what's affecting the schedule
12 on this work. That's what I've been trying to
13 say. Maybe I wasn't clear.

14 Q. We are behind on our contract work
15 without adding scope. That would indicate that
16 you're behind on your Exhibit 1 original contract
17 scope of work, correct?

18 A. Not necessarily. All the RFIs that
19 have already been answered and the direction on
20 how to fix those problems are now in scope work.

21 Q. So for approved change orders or
22 through approved change orders you've got added
23 scope and added duration, correct?

24 A. Correct.

25 Q. That work which has become part of the

1 contract, that work, that is work TCC is behind
2 on, correct?

3 A. That is correct. But again, I'm
4 sorry. Every time we ran into something that was
5 different, whether it was different from the
6 original contract work or from one RFI response,
7 was added scope. I think you're asking me if at
8 this time everything was either a change order,
9 I'm telling you -- or in scope work. I'm telling
10 you no, it was not.

11 Q. It looks like to me that you're
12 putting the spurs in Mr. Moore because you're
13 behind on the work that you're performing without
14 adding scope from the differing conditions items;
15 is that not right?

16 A. That is not right.

17 Q. So despite what this says, your
18 testimony is that TCC was on time with its
19 original contract scope of work?

20 A. No, sir, that's not what I'm saying
21 either.

22 Q. I'm sure it's my fault I'm
23 misunderstanding.

24 A. No. No. It's my fault for not
25 explaining it. Try to ask it -- I don't think I'm

1 understanding exactly what you're asking.

2 Q. It wouldn't be the first time. I
3 asked a confusing question. I'll try again.

4 It says here, you to Mr. Moore: We
5 are behind on our contract scope -- sorry, it
6 doesn't say that: We are behind on our contract
7 work without adding scope.

8 So in its very simplest form it looks
9 like you're indicating to Mr. Moore that we're
10 behind; is that right?

11 A. That's correct.

12 Q. Correct me if I'm wrong, but it looks
13 like you're telling Mr. Moore we're behind not
14 because of things that are the owner's
15 responsibility?

16 A. That is incorrect.

17 Q. Why am I incorrect?

18 A. Well, again, going back to number 1,
19 this is what we were contracted to do, and this
20 was a contract work on day one. All during that
21 process I think I explained that we had run into a
22 different condition. Shawn would come out, look
23 at it, say, well, we need to do this, we need to
24 tear this off and replace this, we need to do
25 that. At that time when he directed us to do that

1 this contract was modified and the contract work
2 was modified. So for you to say that the contract
3 scope work was behind, it was all behind. We were
4 going to try to finish this job in ten months.

5 Q. But at this time you've got time
6 extensions agreed to with like 40 days in the
7 previous exhibit?

8 A. Again, when Shawn and I talked and it
9 was agreed that concurrence, we would adjust at
10 the end. From then on it became cost plus work
11 and was going to be adjusted at the end.

12 Q. Again, you told me earlier I think
13 that that change occurred in the fall of 2014?

14 A. That's correct.

15 Q. You referenced a conversation with
16 Shawn. Did that change that you're testifying to
17 occur in a conversation between you and Shawn?

18 A. I believe it was between me and Shawn.
19 I also believe it was several, several
20 conversations. I think it was at OAC meetings.
21 It was talked about a lot.

22 Q. Who on behalf of the owner said to you
23 or some TCC representative we agree this is not
24 any more a guaranteed maximum price, it's a cost
25 plus contract?

1 A. I believe Tom Mather to start with was
2 the owner's rep was involved in that conversation.
3 I think there were some others as well.

4 Q. In that conversation -- I asked you
5 earlier about writing. Again, can you identify
6 any writing that records that agreement?

7 A. I believe there is some writing. I
8 don't have it in front of me, whether it's a
9 letter, email or what. I don't have that in front
10 of me.

11 Q. If Mr. Mather is the person you
12 believe on behalf of the owner entered into that
13 agreement with you, what did he say to you?

14 A. What I remember, the conversation was
15 we running into a lot of changes, an exorbitant
16 amount of changes, this is not the job that's in
17 this document 1, we think it's in the best
18 interests of the owner for the architect to get us
19 direction as quick as we can and we will work out
20 the costs later.

21 Q. That sounded like TCC talking?

22 A. I think that was Shawn talking as well
23 because Shawn couldn't get us the answers as
24 quick.

25 Q. So that's Shawn talking. What did Mr.

1 Mather say or some other owner representative say
2 to enter into this agreement that you're
3 testifying about?

4 A. I believe Mr. Mather said, and with
5 Shawn's input, that it was the best thing for the
6 owner, it was the cheapest way for the owner, and
7 fastest way for the owner to get their building
8 back, to go ahead.

9 Q. Where did this meeting take place?

10 A. On site.

11 Q. Where on site?

12 A. The OAC meetings were -- they gave us
13 a couple of parking places downstairs. We blocked
14 it off with plywood and put up a conference table
15 and had a meeting down in the garage every week.
16 I say every week. Most every week.

17 Q. So this meeting occurred on site in a
18 wooden framed structure over a couple of parking
19 spaces?

20 A. Yes, sir.

21 Q. The attendees were you, Shawn, and who
22 else?

23 A. Chris was there usually. Ryan was
24 there usually. Tom Mather was there usually.

25 Q. This is a big moment, right? This is

1 an agreement to change the form of the contract.

2 Who was there?

3 A. We'll have to look at the meeting
4 minutes. The meeting minutes tell who is there.
5 April. I think April was at most of the meetings,
6 too. What's her last name, Gawrych. And later
7 Trey was there.

8 Q. But he wasn't there for this meeting?

9 A. Not the first meeting, but it was
10 discussed at length at the very first meeting with
11 Trey in Trey's office in Mount Pleasant sometime
12 in September. I think we talked about that
13 before.

14 (Griffith EXH. 9, Concord & Cumberland
15 Exterior/Interior Renovation Project Monthly
16 Report, November 2014, marked for identification.)

17 BY MR. FORD:

18 Q. I'm going to hand you Exhibit 9. I
19 previously handed you Exhibit 6, which was the
20 monthly report for October 2014. This looks like
21 the monthly report for November 2014; is that
22 correct?

23 A. Again, I'm not sure whether it's the
24 prior meeting or not, but that's my...

25 Q. The executive summary on page 2 is

1 dated December 12, 2014; is that correct?

2 A. That's correct.

3 Q. This would be a time after the meeting
4 that we just talked about again where you believe
5 the contract form changed from guaranteed maximum
6 price to total cost; is that correct?

7 A. I would like to verify the PCOs, but I
8 do believe that is correct.

9 Q. All right. In this report TCC is
10 telling the owners and tenants that very few
11 additional unforeseen items are being discovered
12 or impacting the project. Do you see that?

13 A. Which paragraph?

14 Q. First sentence of the first paragraph.

15 A. That's correct.

16 Q. Is that accurate based on your
17 recollection of the project?

18 A. If it's in here I'm sure it is. We
19 reported what we found. That being said, since
20 the last monthly report. So I would assume in
21 that 30 days from this one that you gave me,
22 October dated Exhibit 6 to this one dated 9. I
23 would say that's correct.

24 Q. Let me ask you this question real
25 quick: In this repair process did every piece of

1 cladding come off the building?

2 A. Every and some that was not scheduled
3 to come off.

4 Q. There was a variety of cladding, some
5 stucco, some brick and some polished stone; is
6 that correct?

7 A. That's correct. The polished stone
8 did not come off.

9 Q. Was the original scope inclusive of
10 removal and replacement of all of the stucco and
11 brick, not the polished stone?

12 A. No.

13 Q. Generally?

14 A. The original scope was to remove the
15 brick, the stucco. As I recall there was also
16 some Hardie siding, little bits to remove. The
17 brick, the stucco, and the Hardie. Not all of the
18 stucco. The stucco on the sheer walls was to
19 remain. Waterproof behind the same. Replace all
20 the windows, including the windows in the stone
21 tower.

22 The only scope in the stone tower was
23 to take the existing windows out and put the
24 existing windows back in the holes. The stone was
25 not supposed to be touched. I mean, it might have

1 been called for it to be cleaned, but no work on
2 it other than to be cleaned. And then to put the
3 brick, the stucco, and the Hardie back.

4 Q. On that cladding scope did that
5 change, or is that what occurred?

6 A. Again, all of the stucco came off.

7 Q. Sheer walls included?

8 A. Sheer walls included. Whereas, this
9 included no sheer wall stucco was to be removed.
10 That's an executive summary.

11 Q. I'm sorry?

12 A. There's a lot of other things going
13 on, but that's the meat of the job.

14 Q. That what you said was an executive
15 summary?

16 A. Yes.

17 Q. That's all I was looking for, but I
18 was confused because these documents are executive
19 summary.

20 A. I'm sorry.

21 Q. The sheer wall removal and
22 replacement, that was added scope?

23 A. Yes.

24 Q. That was subject to the PC0?

25 A. Correct.

1 Q. That was approved in a change order?

2 A. Yes, sir.

3 Q. Back to this executive summary in
4 Exhibit 9. Again, December 12, 2014 there are
5 some pictures that are part of the report, and my
6 question is at this point in time how much of the
7 cladding had been removed? Can you say with some
8 estimation?

9 A. I cannot, unless it's in this report.

10 Q. It was not the main question. So
11 again, so you're reporting to the owners that very
12 few additional unforeseen items have been
13 discovered or impacted the project I guess as
14 compared to the previous report. Then not you but
15 either Mr. Burrell or Mr. Thomas say: That being
16 said, since the last monthly report we have fallen
17 behind schedule by a few weeks on our current
18 schedule. Did I read that correctly?

19 A. That is correct.

20 Q. Then they say: This is largely in
21 part due to Salem's inability to maintain adequate
22 manpower levels on site. Did I read that
23 correctly?

24 A. That is correct.

25 Q. This appears to be a clear report that

1 Salem is performing inadequately and causing
2 multiple week's delay to the project; is that
3 right?

4 A. That is correct. That's what I read.

5 Q. That is not the responsibility of the
6 owner, correct?

7 A. That is correct.

8 Q. So it describes some of the activity.
9 It says: We seem to finally have the manpower
10 issue worked out and starting to see production
11 reach the expected levels.

12 What was the problem with Salem in
13 this timeframe, and what was done to resolve it?

14 A. Their part of it was this was in 2014
15 when we were coming out of what we call the recent
16 unpleasantness, the recession, depression,
17 whatever of '8, '9, '10, '11, '12, whatever you
18 want to call it. They were having some problems
19 getting enough people, as were we. That was the
20 majority of the problem. They had the
21 supervision. They had the people there to
22 supervise and get the work done as far as
23 supervisory, but they needed some more bodies.

24 Q. There was criticism by Mr. Burrell
25 just a couple weeks before this letter saying they

1 didn't have oversight?

2 A. I don't think that's exactly right.
3 They had oversight. But you'll have to ask him.
4 Ryan Tomberlin would be the one to ask about that.

5 Q. Exhibit 7 says quality and oversight
6 have been lacking?

7 A. Yes, sir.

8 Q. So here you're describing, what, an
9 access to sufficient labor problem to Salem?

10 A. There was some of that.

11 Q. So what was done to remedy the
12 problem?

13 A. Well, reading on down here, Salem
14 broken out some pieces of the work to self
15 perform. They have subcontracted stucco and
16 masonry, and in addition we brought in another
17 resource to help support Salem with carpenter
18 activities to make up the shortfall. We seem
19 finally to have the manpower issue worked out.
20 See production reach the levels.

21 I think that was referring to
22 Tidewater that you asked me about earlier I
23 believe.

24 Q. I thought Tidewater was brought on to
25 do new scope work?

1 A. Mostly, yes.

2 Q. So was part of their work also
3 dedicated to supplementing Salem's portions?

4 A. As I recall, they were brought in as
5 we talked about to straighten the walls out. In
6 Salem's work they were supposed to add new nailers
7 for the windows, and I believe -- and again, Ryan
8 and Chris could probably answer this better. What
9 I recall is while Tidewater was straightening the
10 walls out, we had them go ahead and do the
11 woodwork, which we deducted from Salem's contract
12 and added to Tidewater's contract.

13 Q. So is it your belief that Tidewater's
14 reporting of costs to you can be broken down
15 between that which is performing the reframing of
16 the walls, which would be new scope, versus
17 supplementing Salem's forces, which would not be
18 an owner responsibility?

19 A. That is correct, and it is and it was.

20 Q. These what you described to me as
21 what's being done to correct Salem's manpower
22 issues, the self-performance, the subbing the
23 stucco and masonry and some carpentry and
24 Tidewater's extra work, did that result in
25 increased costs to TCC in the performance of its

1 work on this the project?

2 A. No, sir. They had a contract for in
3 scope. That was all in scope work. It was lump
4 sum price for that. Again, I believe it was a
5 savings of 15 percent, because we paid those guys
6 direct and they did not get their 15 percent
7 markup on it.

8 Q. After this date were there any further
9 issues with Salem?

10 A. Not that I recall. When we started
11 spreading out all over the building they got some
12 additional supervisory in there, supervisors,
13 and we worked with those different guys. But I
14 don't recall anything specific. You know, is
15 there something specific? I don't remember
16 anything specific.

17 Q. That's fine. Next page under the
18 contract completion dates, similar to the previous
19 report to the owners for the month of October,
20 we've got the original contract completion date.
21 We've got approved days by change. We've got
22 revised contract completion date. Then we have a
23 new line that says forecasted completion date per
24 last schedule update 7/24/2015; is that correct?

25 A. That's correct.

1 Q. So that is what, 18 days, beyond what
2 appears to have been an agreed upon extension of
3 time for the work of the project; is that correct?

4 A. That's correct.

5 Q. In that 18 days did TCC incur
6 additional general conditions?

7 A. Yes, sir. We had guys there the whole
8 time, general conditions being supervisory people,
9 scaffold.

10 Q. Those 18 days or in the letter up
11 front it says a few weeks, you know, of delay were
12 caused by Salem's issues. So whatever it is, a
13 few weeks or these 18 days, are these 18 days
14 trying to put a number of days on the few weeks as
15 described in the executive summary?

16 A. It would be better to ask Chris. I
17 believe so.

18 Q. General conditions, costs incurred in
19 those 18 days, are those costs that are included
20 in Exhibit 2 on the total job cost ledger?

21 A. Yes.

22 Q. Are those costs which you're claiming
23 are owed to TCC by the owner?

24 A. By that document, yes.

25 Q. But those would not be proper costs to

1 recover from the owner, correct?

2 A. That is correct.

3 Q. How would I parse out from this
4 Exhibit 2 those general conditions costs that are
5 not the responsibility of the owner?

6 A. Shawn Mellin has already done that for
7 you. Now, I don't agree with all of what he did,
8 just so you know.

9 Q. How much of it do you agree with?

10 A. Again, Shawn and I need to sit down
11 and go over the daily reports and what was going
12 on to see what portion of it.

13 Q. Do you know what your general -- your
14 per diem general condition costs were for this
15 job?

16 A. I do. It was different at different
17 times. When we were working all over the building
18 it was more. We had more supervisors, more
19 quality control. When we started we were doing
20 the three drops. It was, say, \$500 a day. When
21 we were doing -- working all of the building it
22 was twice that much. It was \$1000 a day. Don't
23 get hung up on those numbers. But that's a
24 representation.

25 Q. At this period of time, in December

1 2014, were your general conditions costs greater
2 or less than average?

3 A. I don't remember, but that document
4 tells you.

5 Q. Does this document tell me -- well, it
6 tells me the total general conditions costs
7 perhaps; is that right? It wouldn't tell me the
8 daily rate, would it?

9 A. Yes, it would.

10 Q. Show me where.

11 A. Well, you pick a date and I'll tell
12 you. How about November 15?

13 A. Okay. Superintendent Ryan Tomberlin
14 on November 15. Let's see. November 15 would be
15 11 -- week of 11/20 there.

16 Q. What page are you looking at?

17 A. TCC Concord 99.

18 Q. So this is titled TCC cost detail,
19 cost breakdown not including labor or sale cost?

20 A. That is correct.

21 Q. So is this 99 through 104, is this a
22 compilation of general conditions costs?

23 A. No. It's a compilation of all costs.

24 Q. All of TCC's costs?

25 A. Everything we wrote checks for, subs

1 or otherwise.

2 Q. Then just so I understand. If you go
3 back to TCC 105, there is a 25 page document,
4 Salem cost breakdown?

5 A. Wait a minute. What page are you on?

6 Q. TCC 1015.

7 A. I don't see Salem on there. Where did
8 you get Salem on that? I must be looking at a
9 different sheet. 1 of 25 TCC 105.

10 Q. I'm looking at TCC 105. It's page 1
11 of 25. At the top left corner it says Salem cost
12 breakdown.

13 A. Okay. Yes. That, again, was the
14 materials we bought for Salem. At that time we
15 were apparently paying Salem's costs. A&R Sheet
16 Metals, Atlantic Roofing, Accu Group, yes, Buck
17 Lumber, Capital Materials. That's correct. And
18 you see each of those had a date by it. So you
19 pick out the date you want, the week you want and
20 you add it up.

21 Q. So just so I'm understanding, there
22 were several documents inside of Exhibit 2. Page
23 99 or Bates number 99 through 104 is TCC's direct
24 costs?

25 A. That's what I believe. I mean, I have

1 to study it, but I think that's correct.

2 Q. TCC 105 through 129 is Salem's costs
3 incurred by TCC?

4 A. That's correct.

5 Q. Then there is another document, TCC
6 130 through 133. It looks like that is TCC labor
7 costs breakdown, and that looks like it's
8 summarized on TCC 134; is that right?

9 A. That's the way I see it.

10 Q. That's the first set of TCC set of
11 documents from --

12 A. 99.

13 Q. -- 99 to 104. Is that material costs,
14 or is that --

15 A. It's, yes, material or other.

16 Q. I was asking you for an example
17 general conditions costs on November 15, 2014.
18 How would I find that?

19 A. Again, I would start with the page,
20 first page, 99, and I'd go down to that date,
21 which we just said was 11/20. And you see the
22 first line item there 1120 is a \$500 truck expense
23 for Ryan Tomberlin, truck expense for November.
24 See it?

25 Q. I see that. Just curious. What is

1 the basis for that \$500 cost?

2 A. That's a truck that's used on the job
3 that's billed in accordance with Exhibit 1.

4 Q. Is that a TCC-owned truck?

5 A. I don't believe that one is because it
6 has Ryan Tomberlin on it. We furnish all our
7 superintendents trucks. They can drive a company
8 truck and charge the same thing.

9 Q. Early on I was trying to figure out
10 what TCC of Charleston does. One of the things
11 they do is own equipment, which included trucks?

12 A. Yes, sir.

13 Q. Does TCC own Ryan Tomberlin's truck?

14 A. No, sir. The superintendant's have
15 the choice whether to get a truck allowance or
16 drive a company truck. It's charged the same.

17 Q. What is Tomberlin's actual truck cost?

18 A. \$500.

19 Q. What is that? Like, a lease payment?

20 A. Yes. It's a lease per month. Every
21 superintendent gets the same thing.

22 Q. Every superintendent gets the same
23 thing because they have the same truck and same
24 lease term?

25 A. Yes, sir, same basic truck, same

1 basic. They have a 150 or something like that
2 truck. Some of them might want something nicer,
3 like a crew cab or something like that, but they
4 only get 500 bucks. It's based on standard 150,
5 what I call old highway truck.

6 Q. That's not my question. My question
7 is, is that Tomberlin's actual cost, or is that an
8 amount that TCC has said we'll pay you \$500 a
9 month for truck allowance?

10 A. That's what we pay everybody for a
11 truck allowance. His truck may have been paid
12 for. He may have an old truck. It may have been
13 paid off ten years ago.

14 Q. So there's some part of this contract.
15 I apologize for not being able to -- there it is,
16 5.1.4.

17 A. You on 1?

18 Q. Yes. Exhibit 1, page 3: Rental rates
19 for contractor-owned equipment shall not exceed 95
20 percent of the standard rate paid at the place of
21 the project. Do you see that?

22 A. That's it.

23 Q. So what is this 500? Is that --

24 A. That's probably less than 95 percent
25 of what you go to Hertz Equipment Rental and rent

1 a pickup truck for.

2 Q. How do you determine the standard rate
3 paid at the place of the project?

4 A. You call somebody like Hertz Equipment
5 Rental and say what do you rent a backhoe for,
6 what do you rent a forklift for, what do you rent
7 a truck for.

8 Q. So Tomberlin's truck would be, for
9 purposes of the contract, a contractor-owned piece
10 of equipment?

11 A. Correct.

12 Q. Another question, I guess. Let's see.
13 Page 99, Wright Express Fuel?

14 A. Probably fuel for his truck. Where
15 are you?

16 Q. I'm down two-thirds of the way down
17 the page there are several Wright Express entries.

18 A. Again, you go to 11/20, that week or
19 month, add it up, divide it. It's just math.

20 Q. I don't see an 11/20. But my question
21 is, is this cost, Wright Express, is that costs
22 that TCC has incurred for its trucks on the job
23 for a particular month for Wright Express?

24 A. Yes.

25 Q. Who is Wright Express?

1 A. They're gas. So gas.

2 Q. Just never ever heard of them. Are
3 they -- is it some vendor? It's not a gas
4 station, is it?

5 A. No. I think it's a card, like
6 American Express card that you can buy gas with.
7 It just helps us track who is spending how much,
8 where, when on gas.

9 Q. Let's go over to 101. There are
10 several entries for Mr. Thomas, Mr. Burrell, Mr.
11 Gary, petty cash?

12 A. That's correct.

13 Q. How do we know what those costs were
14 for? Is there a way?

15 A. Yes.

16 Q. What is that?

17 A. Trident Construction Company set this
18 up when we did the Omni Charleston Place. They
19 had an accountant review every pay ap. They
20 wanted to see every invoice that a check was
21 written for. We set this, and this is more
22 detailed than most people can handle or want, but
23 we got it. This is just what you're doing. You
24 can go every month and see what was written. They
25 turn in a petty cash ticket, and it's coded to a

1 code. First of all, it's signed by the
2 superintendent on the job. We tell you which job
3 it is, but they also write a job number on it.

4 If Ryan Tomberlin were working
5 multiple jobs, which he wasn't, but if he worked
6 half a day on this job or half a day on this job.
7 The superintendent signs it, puts a job number on
8 it, and puts a cost code on it, what's he going to
9 charge for it. If he went to the hardware store
10 to get nails he would charge it to lumber, code
11 600. If he went to hardware to get a lock put on
12 the door, charge it to 800, the AIA codes. Are
13 you familiar with those?

14 Q. Not by specific number, but I'm
15 familiar with the concept.

16 A. We use AIA codes. I mean, everything
17 we do is pretty much based on what the architects
18 say. And then it's sent in. And on this job
19 Chris would get it. If he had a question about
20 it, say he couldn't read the job number, code
21 number, he'd pick up the phone and call Ryan and
22 say I got a ticket here for Buck Lumber Company.
23 I can't read what it's for. What was this for.
24 He would put a code number on it and authorize it
25 for payment and it would get paid.

1 Every one of these has got his
2 signature on it and generally a delivery ticket
3 with Ryan's signature on it or somebody on the job
4 where they signed for it. They match the delivery
5 ticket with the invoice. It's a pretty good
6 checks and balances system.

7 MR. EPTING: Speaking of checks and
8 balances. Why don't we check and balance with our
9 court reporter. She's been going for two hours.

10 (A recess was taken.)

11 MR. FORD: Back on the record.

12 BY MR. FORD:

13 Q. A question with regard to labor on
14 site. In this timeframe was Salem the only
15 subcontractor on site through the fall of 2014, or
16 were there other subcontractors?

17 A. I'm pretty sure Tidewater had started
18 then. We'd have to look at the dates and see what
19 the bills are. Usually, and that's the reason --
20 I wasn't trying to be cute on the days on these.
21 Usually the bills are a month behind. We finance,
22 contractors finance the job for 30 days.

23 MR. FORD: Sounds like a law firm.

24 MR. EPTING: Or three years.

25 THE WITNESS: Yeah, on this one. But I

1 believe Salem -- I mean, Tidewater was also on
2 site then.

3 BY MR. FORD:

4 Q. With regard to these delays referenced
5 in Exhibit 9, is there any other subcontractor
6 that you believe is responsible for those
7 identified delays other than Salem?

8 A. Well, again, when we started running
9 into reframing all the walls Tidewater had
10 problems keeping up as well because there got to
11 be so many of them and so many problems besides
12 just framing the wall -- out of plane of the wall
13 and the windows being canted, leaning. They had a
14 hard time keeping up, too, but that's the reason
15 we use a different subcontractor, try to minimize
16 that problem.

17 Q. My question is with regard to
18 subcontractor-caused delay. It's Salem's delay,
19 not any other subcontractors; is that right? Or
20 do you think Tidewater also had problems with
21 manpower?

22 A. Tidewater was strictly cost plus from
23 the get-go. They were never anything but cost
24 plus. So you know, if we asked Tidewater to get
25 us another crew in, sometimes they could and

1 sometimes they couldn't. But their contract was
2 whatever it costs, overtime, material, whatever it
3 cost their whole contract.

4 Q. You mentioned earlier that the owner
5 had some input into subcontractor retention before
6 contracting. Was there any input from the owner
7 before retaining Tidewater?

8 A. There was some discussion. I don't
9 remember who all with. I remember Shawn Mellin
10 said he had worked with Tidewater on several jobs
11 and didn't have a problem with them. I don't
12 remember whether Tom Mather had any or whoever was
13 the owners' rep at the time had any knowledge of
14 them. I don't remember any of that.

15 Q. The owner didn't have any say in the
16 form of the contract that you entered into with
17 Tidewater, correct?

18 A. No. They were at the meetings. We
19 talked about it with Salem about it being a cost
20 plus job. Not with Salem, with Tidewater.

21 Q. My question is, there's no owner or
22 owners' representative instructing Trident or TCC,
23 -- I'm sorry, to retain Tidewater or advising it
24 on how it should enter into a contract with
25 Tidewater, correct?

1 A. No. That's correct.

2 (Griffith EXH. 10, Email
3 Correspondence, Subject: Concord & Cumberland OTD
4 Violations, marked for identification.)

5 BY MR. FORD:

6 Q. I'll hand you a document marked
7 Exhibit 10, another December 2014 document, an
8 email, and the subject is OTD violations. Do you
9 see that?

10 A. I do.

11 Q. I think you're copied on this email
12 string; is that correct?

13 A. I'm sorry?

14 Q. You're copied on this email string?

15 A. Yes.

16 Q. Do you remember this issue generally?

17 A. I do.

18 Q. Down below there is reference to OTD,
19 which I suppose is -- is that the abbreviation of
20 a subcontractor or a sub subcontractor?

21 A. I believe that's abbreviation -- I'm
22 not sure. I'm pretty sure that's the abbreviation
23 for Mark's installation company.

24 Q. Is this the same Mark that we saw
25 earlier that was the window installer?

1 A. Yes. That's my memory.

2 Q. So was this entity sub subcontracted
3 to Salem?

4 A. On the date of this, I'd have to go
5 back and look when we took over Salem's contract
6 and we started paying for Salem. I don't remember
7 whether we were paying them or Salem was still
8 paying them.

9 Q. We can go back and look at it, but I
10 recall that that email communication indicated
11 that Moore or Salem was going to employ Mark?

12 A. That was one way we talked about doing
13 it, yes. I think that's the way it ended up. I'm
14 not sure which way it ended up. That was one way.

15 Q. Regardless, they're doing stuff, OTD
16 or Mark, that is, that Moore doesn't like, and so
17 he's terminating Mark, correct?

18 A. That's the way I read it.

19 Q. He says: This is our third
20 conversation concerning your action or inactions
21 on this project; is that correct?

22 A. Correct.

23 Q. Are you familiar with what other
24 actions or inactions Moore is referring to with
25 regard to Mark and/or OTD's work?

1 A. No, sir. That's what he lists here.
2 Must be what all it was, what all the issues were.

3 Q. There was at least Trident had --
4 sorry -- TCC had some prior experience and, you
5 know, some questions about Mark's inclusion on the
6 project. Are you familiar with -- you know.
7 Strike that.

8 I assume Mr. Moore would be a good
9 person to ask about the violations, but do you
10 specifically know about what violations or actions
11 or inactions that OTD or Mark incurred that caused
12 this termination?

13 A. Only what I read here. I do not
14 remember that. I remember him fussing about not
15 getting any production. He couldn't make money he
16 quoted to put in windows because he could only do
17 a few at a time and he had to jump here and there
18 and yonder. That's what I remember. I don't
19 remember this.

20 Q. I thought you told me earlier that
21 maybe this guy left the job because he wasn't
22 getting production, but it looks here he was
23 fired?

24 A. That's what it looks like.

25 Q. Does this refresh your recollection

1 about what happened?

2 A. I believe that -- I'm not sure he
3 wasn't trying to get fired, get out of his
4 contract here, because I remember him calling me:
5 John David, look, this is not the job I quoted.
6 You told me we were going to do one drop at a
7 time. I'm doing two windows here, going
8 somewhere. I can't make money doing this.

9 I asked him to stay with it, stick
10 with it. It appears here he was let go. You are
11 correct.

12 Q. For flagrant safety violations. Do
13 you think this fellow is incurring flagrant safety
14 violations in order to get purposely kicked off
15 the job?

16 A. I don't know. What I remember was the
17 problems we had with him was production. He was
18 more interested in production -- I think we talked
19 about that early on -- than he was in quality. I
20 said, look, we going to have to stay on him about
21 quality. I got no problem hiring him, but this is
22 not a production job.

23 I think that was one of the previous
24 letters. This is not a production job. This is a
25 quality job. We don't want to get sued because

1 these windows leak after they pay us to put them
2 back in.

3 Q. So Mark wasn't productive, correct?

4 A. No, sir. He couldn't be productive.

5 Q. His performance was such that he got
6 fired?

7 A. Looks like it, according to this, yes,
8 sir.

9 Q. Did that result in additional costs on
10 this job?

11 A. No sir, because, again, Salem started
12 installing the windows. They got more people and
13 they started installing the windows. You saved
14 whatever Mark's markup was. Plus you saved
15 Salem's markup on Mark. You made less whatever
16 Mark's markup was, less the 15 percent that Salem
17 had on them, and you only paid the eight percent
18 that Trident had on them. So this was, again, a
19 credit.

20 Q. So no cost impact or delay impact of
21 the job by virtue of Mark getting himself fired on
22 the job?

23 A. No. I said there was a cost impact.
24 It's less, not more.

25 Q. So it was Salem that replaced Mark?

1 A. As I recall. You can check with Ryan
2 to be sure.

3 (Griffith EXH. 11, Email
4 Correspondence, Subject: Concord & Cumberland -
5 Rework, marked for identification.)

6 BY MR. FORD:

7 Q. Handing you Exhibit 11. This is a
8 January 2015 email. The first is from Mr. Burrell
9 to Mr. Moore copying you, and then there is a back
10 and forth. Mr. Burrell jumps. Looks like Mr.
11 Moore responds. And then Mr. Tomberlin responds
12 and a Mr. Beaufait, Michael Beaufait. Who is
13 that? Are you familiar with this email?

14 A. I don't remember this particular
15 email. I don't remember Michael Beaufait, but I
16 remember talking about this issue.

17 Q. You're copied throughout, correct?

18 A. Yes, looks like it.

19 Q. The first email I think you may have
20 read it or at least skimmed it, Mr. Burrell to Mr.
21 Moore, and he is upset about Salem's work; is that
22 correct?

23 A. That's correct.

24 Q. Basically telling Salem they're
25 screwing up with the framing of these window

1 openings; is that right?

2 A. That's correct.

3 Q. He discussing there being a window
4 that had to be reframed not once but twice; is
5 that correct?

6 A. That is correct.

7 Q. He reports that Ryan is accounting for
8 how many times it's happening, saying it's
9 happened on twelve openings we framed. And then
10 Tomberlin I guess is reporting to Burrell that
11 this has cost us between 12 and 24 days on the
12 schedule depending on how you look at it; is that
13 right?

14 A. Which one are you on? I don't know
15 which one you're on.

16 Q. Third sentence in the parenthetical.

17 A. Of which email? From who to who?

18 Q. I'm starting at the first email in the
19 chain.

20 A. Still on Chris Burrell?

21 Q. Yes.

22 A. I just wanted to make sure I was on
23 the right one. I already turned the page.

24 Q. He's reporting framing and reframing
25 of windows multiple times and there being delay of

1 between 12 and 24 days on the schedule?

2 A. Yes, sir.

3 Q. I'm assuming also that in addition to
4 time, this is additional costs to reframe these
5 windows; is that right?

6 A. That's correct.

7 Q. He references the trashing of material
8 in this effort; is that right?

9 A. Yes. When this happens the material
10 has to be trashed, ends up taking two or three
11 times the labor and time.

12 Q. Taking two to three times the amount
13 of time, labor, additional labor, and additional
14 material costs to get it right; is that correct?

15 A. That's correct.

16 Q. There's more description and
17 requirement for further supervision. Then in the
18 last sentence of that paragraph he says in the
19 last clause: But for God sake someone has to make
20 sure these guys don't screw it up after they
21 receive instructions; is that right?

22 A. That is correct.

23 Q. So at this point in time in the
24 project is it true that Salem was -- having
25 received instruction on how to conduct the framing

1 work -- was getting it wrong multiple times, and
2 that was causing both a cost and time impact or
3 delay to the job?

4 A. That is correct.

5 Q. These costs for both time, whether
6 it's general conditions costs over the amount of
7 time reported or time to catch up which has been
8 lost and cost for materials that is being wasted,
9 is that cost that is included in Exhibit 2?

10 A. It is.

11 Q. Is that cost that Trident is claiming
12 against the owner of this project?

13 A. It is included in Exhibit 2.

14 Q. But those are not proper claims
15 against the owner?

16 A. That is correct. I would agree with
17 that.

18 Q. Again, how could I go through this job
19 cost ledger in Exhibit 2 and pull out from it
20 these costs that are being reported in this email,
21 Exhibit Number 11?

22 A. We would have to look at the dates and
23 materials and pull those out, get a total and come
24 to an agreement on a number.

25 Q. Has that been done at this point in

1 time?

2 A. No, sir. One thing I might mention,
3 though, this, there is no excuse for this. That's
4 not what Trident does. But again, if the job was
5 done as per Exhibit 1, the supervisor would have
6 been on drop one doing all the windows. All he'd
7 have had to do was go up a window, down a level
8 instead of going from drop 3 to drop 19 to drop 5
9 to drop 6. It made it tougher. There's no excuse
10 for not doing it right.

11 Q. Your project team is exasperated with
12 the performance of Salem?

13 A. They are. They're also exasperated
14 with jumping all over the building and not being
15 able to follow the flow.

16 Q. There's no --

17 A. No excuse for it.

18 Q. There's no excuses listed in the
19 document at least that you're screwing up, but
20 it's really the fault of the owners?

21 A. No. No. We did not go there. It was
22 not the fault of the owner. It was our job to
23 make sure it was done right.

24 Q. Something else that you address in the
25 latest email is absenteeism. Do you see that?

1 A. I do.

2 Q. Did Salem have a problem with
3 absenteeism?

4 A. Looks like on Saturday they do.

5 Q. Is absenteeism generally a cause
6 related to delay on a project?

7 A. Yes.

8 Q. Was Salem guilty of absenteeism on a
9 job?

10 A. When we started working so many hours,
11 ten hours a day six days a week, yes. We had some
12 people that wanted to take off on Saturdays, yes.

13 Q. At least with regard to this email
14 chain, the absenteeism wouldn't be justified?
15 They were required to be present to either
16 complete, rework, or to catch up time lost because
17 of the multiple reworks of framing?

18 A. That and the changes in scope. I
19 wouldn't limit it to just the rework.

20 (Griffith EXH. 12, Email
21 Correspondence, Subject: Concord & Cumberland -
22 Profit Projection, marked for identification.)

23 BY MR. FORD:

24 Q. I'll hand you Exhibit 12. This is an
25 email chain. It looks internal to TCC or Trident

1 personnel; is that correct?

2 A. That's correct.

3 Q. January 2015. Who is Jeanne Snell?

4 A. At that time she was the -- I believe
5 she was handling the accounting for this job.

6 Q. Is she still with TCC?

7 A. She is not.

8 Q. When did she depart?

9 A. I believe -- this was January. I
10 think she departed I would say November plus or
11 minus of that year. I don't remember exactly.

12 Q. At least at this time she had some
13 responsibility for accounting on this job?

14 A. That is my recollection.

15 Q. The email starts January 19, the same
16 day as the last exhibit. There is reference in
17 Mr. Burrell's email to Carl Ulm with First
18 Exteriors?

19 A. I'm sorry, where are you now?

20 Q. I'm looking at the last large
21 paragraph on the second page of the exhibit right
22 in the middle. It says: On a side note, I have
23 asked Carl Ulm with First Exteriors to provide a
24 number and schedule to us so we can see what it
25 could cost if we were to not finish with Salem.

1 I'm expecting these numbers any day. We are doing
2 this on the quiet just so we understand what our
3 exposure is and understand what our options are.
4 Do you see that?

5 A. I do.

6 Q. Obviously it's Mr. Burrell's email,
7 but you're on the CC line as a recipient. Were
8 you aware that your team was reaching out to a
9 different subcontractor for the purpose of
10 investigating the replacement of Salem on the job?

11 A. It was on the stucco. I don't
12 remember about it being for the whole job. What I
13 recall specifically, we were trying to get some
14 help for stucco since South Georgia was so far out
15 of town and we weren't able to get them enough
16 work.

17 Q. So Ulm, I guess he would have come as
18 a stucco only subcontractor?

19 A. That's what I remember. You have to
20 ask Chris if there was more.

21 Q. Did TCC ever receive a quote from Carl
22 Ulm or First Exteriors?

23 A. As I recall we did.

24 Q. What was that?

25 A. I don't remember the number, but I

1 believe in conversations -- and again, I'd have to
2 go back and look at the correspondence. It was
3 something like it would cost over \$100,000 just on
4 the stucco to change subcontractors at that time.

5 Q. Did he give you a written quote?

6 A. I believe he did. I don't know
7 whether he did. I don't know. You have to ask
8 Chris. I think he bid the job originally when we
9 had a quote from him.

10 Q. I don't think we have looked. We
11 haven't found it in the file. We can ask Chris as
12 well.

13 A. May not have been written.

14 Q. Further on below Mr. Burrell says: I
15 have received all of Salem's budget information
16 and job to date cost information. Given what we
17 know and forecasting their cost to complete, I'm
18 forecasting that they stand to lose a substantial
19 amount of money to their current percent complete
20 and what their costs are to date. Needless to
21 say, John David and I are very concerned. Did I
22 read that correctly?

23 A. You did.

24 Q. It looks like Salem has incurred
25 additional costs but hasn't made sufficient

1 progress on completion of its scope of work; is
2 that correct?

3 A. That's correct.

4 Q. This is the same date that there's
5 other email correspondence going out about their
6 absenteeism and failure to do framing work
7 properly and things like that. This failure to
8 perform this appears to me to be, correct me if
9 I'm wrong, but this is a Salem problem, not an
10 owner problem?

11 A. Well, it's the whole job problem. I
12 mean, again, part of their money problems is
13 because we can't process change orders. And we
14 can't process change orders, we can't bill them
15 and can't get paid for them.

16 Q. If you're incurring costs and Salem is
17 incurring costs and this is a cost plus job you
18 just submit the costs, right?

19 A. That's right, but you not paying.

20 Q. At this time you're submitting all of
21 your costs for payment --

22 A. Not all of the costs.

23 Q. -- as if this was a cost plus without
24 a guaranteed maximum price?

25 A. We are submitting costs as per the

1 schedule of values as per the approved change
2 orders, because that's the only way the architect
3 is signing pay requests. I'm telling you the PCOs
4 were behind the change orders, and the change
5 orders were behind because the owner wasn't
6 signing them. That's putting a money impact on
7 Salem.

8 Q. You told me earlier, and I believe I
9 understood this correctly, that in this timeframe
10 your understanding is that we're not dealing with
11 a cost plus with a guaranteed maximum price
12 contract; we're dealing with a cost plus contract,
13 correct?

14 A. That is correct. But we also told you
15 that Salem had a contract for a certain amount of
16 money. And I'm telling you that they couldn't get
17 paid for the extra work they were doing. We
18 couldn't get paid for the extra work that they
19 were doing, that we were having to do to do the
20 contract work.

21 Q. If that's contract work, that would be
22 costs you could submit?

23 A. That's right, but we weren't getting
24 paid for the extra work to do the contract work.
25 It still costs.

1 Q. If it's a cost plus contract you just
2 submit the costs for payment with the pay
3 application, correct?

4 A. No, that wasn't the way this job was
5 done. This job was done by the approved change
6 orders, is all they would let us bill.

7 Q. Because this was actually a cost plus
8 with a guaranteed maximum price job, right?

9 A. Part of it was a guaranteed maximum
10 price. The part of it that follows that document
11 number 1 was a guaranteed maximum price contract.
12 All of the changes -- bottom line, there were
13 twice as many changes as there were contract work,
14 and they weren't getting processed. So they
15 weren't getting paid for all the extra work they
16 were doing and we were doing.

17 Q. If this overage is an owner problem
18 why are you reporting internally a reduction in
19 your profit from \$314,000 expected down to 82?

20 A. We do that every month on every job.
21 Not just this job. Every job. We try to do a
22 year end, a monthly inhouse statement on what the
23 end of the year is going to look like. Not just
24 this job. Every job.

25 Q. So here in January 2015 you're

1 reporting internally a reduction in the expected
2 profit because of Salem's issues, correct?

3 A. Well, no. I mean, overages,
4 supervision, and general conditions, 51,763;
5 miscellaneous metal 17,245; millwork and interiors
6 27,762; painting 25. Salem overages are 150. So
7 you can add all those up. It's 244. They're 150
8 of about 250, 245. Is that what you're asking?

9 Q. I see all of that there, the bulk of
10 the overages, Salem's overage of 150?

11 A. That's right.

12 Q. We have talked about the issues, but
13 no matter what, that overage is at least
14 attributable to Salem's poor performance?

15 A. No, I do not agree with that.

16 Q. You don't believe any of that overage
17 is due to Salem's poor performance?

18 A. I believe some of it is. I do not
19 believe all of it. As a matter of fact I don't
20 believe most of it is attributable to their poor
21 performance.

22 Q. We can at least agree that your
23 testimony acknowledges that a portion of Salem's
24 overages is due to its poor performance, correct?

25 A. Yes.

1 Q. That is on this projection impacting
2 TCC's profitability or expected profitability on
3 the job, correct?

4 A. That is correct.

5 Q. What happens if you get paid all of
6 the amounts claimed here? How would your
7 profitability look then?

8 A. It would match the contract. It would
9 match your Exhibit 1.

10 Q. So your profitability would be at an
11 expected level versus this level which is due in
12 part to Salem's own poor performance?

13 A. That's correct.

14 Q. You know, so by submission of this to
15 the owner, it appears that you're trying to
16 reclaim profit on this job on the back of the
17 owner even though it was caused by Salem?

18 A. The submission of that is because the
19 owner changed the rules. The owner said when we
20 got ready we would sit down and go over all of
21 that. The owner refused to sit down. Trey McCraw
22 said without an approved change order that
23 stressed all those dollars there was nothing he
24 could do. There was no meeting required. Y'all
25 changed the rules. Not me.

1 Q. You think because of that change of
2 rules you can recover expected profit on the job
3 that you acknowledge is not earned because of
4 Salem's own poor performance?

5 A. No, I don't think I ought to collect
6 that.

7 (Griffith EXH. 13, Email
8 Correspondence, Subject: Concord & Cumberland -
9 Profit Projection, marked for identification.)

10 BY MR. FORD:

11 Q. Handing you Exhibit 13. Who is Chase
12 Mordy.

13 A. He was the estimator I think I
14 mentioned earlier.

15 Q. So Exhibit 12 you sent an email asking
16 a question: Any ideas, and that's reflected here
17 in this exhibit as well. What's the basis for
18 your question? What are you getting at?

19 A. Which question is that?

20 Q. In your email, January 20.

21 A. Thank you. I will. What I was more
22 referring to is, like, the steel increases?

23 Q. No. It's the one below that from
24 10:35 a.m. It says: Any ideas? Thank you, John
25 David.

1 A. Any ideas would be on what Chris wrote
2 below.

3 Q. What were you looking for?

4 A. I was looking for what all he thought
5 since he did the estimate made up, made up that
6 244 I believe.

7 Q. So Mordy responds and says: Yes, I
8 have a few. I looked through the old estimate.
9 We made two estimates originally, one using
10 Salem's pricing and another with all
11 subcontractors' numbers not using Salem for any
12 scope of work. The price for using Salem is a lot
13 less than using separate subs for each trade. Do
14 you see that?

15 A. I do.

16 Q. It says: Let me know when you have
17 time to review all this?

18 A. I do.

19 Q. So I asked you a question earlier
20 about the bidding. You said you got a few bids
21 for Salem's scope of work. Is this email
22 referencing these other bids that you got for
23 Salem's scope of work?

24 A. That's correct.

25 Q. Was Salem's scope, were there multiple

1 other potential subcontractors bidding on portions
2 of Salem's scope of work?

3 A. That is correct.

4 Q. How was that broken down in the bid
5 process?

6 A. As I recall, like we would go through
7 the scope -- you and I talked about the scope of
8 the job -- demolition. We'd get somebody that
9 just quoted the demolition. The next phase is the
10 waterproofing. And again, the waterproofing is
11 broken down into two parts, the vertical wall
12 waterproofing and the deck waterproofing. So we'd
13 have a price on both of those. The next was the
14 windows. The next was putting the brick back, and
15 the next was putting the stucco back.

16 There was a little bit of concrete
17 topping had to go on the balconies, very little.
18 The balconies weren't that big. We may have
19 gotten a price on that. Those are the major
20 portions: the demolition, the waterproofing, the
21 windows, the skin. We got prices on those major
22 categories.

23 Q. Why did you go with Salem?

24 A. Overall they were low. As I recall,
25 they were high on at least one item. Salem came

1 and we sat down, went over all of this with the
2 owner. Don't get me wrong. You're right. The
3 owner didn't direct us who to use. But we went
4 over all the numbers with the owner.

5 Salem came back and says, look, if you
6 give me all this work I'll give you \$100,000
7 credit, is what I recall. We will have to look,
8 but a number credit because I think I can save
9 money, save the owner money. If the demolition
10 goes a little bit faster I can let those guys drop
11 back.

12 The ideal situation, again, is going
13 back to those three drops. It works. I know it
14 works. You're tired of hearing it. The idea is
15 the demolition crew, say, finishes in a week, the
16 waterproofing and window crew finish in a week and
17 the skin goes back in a week. So everybody is
18 moving at the same speed, getting in the flow,
19 getting in the rhythm of the job. That's ideal.

20 There was an advantage to giving them
21 all the work. That's real hard to do. Some crews
22 work faster. Demolition is pretty fast work, you
23 know, and you can use, you know, less skilled
24 people to tear stuff up than you can people
25 putting back. So there was an advantage to using

1 them to do it all.

2 We talked about that. Said, look,
3 he's willing to give us 100,000 if you use his
4 numbers. His overall number maybe he was high on
5 stucco and he was low on masonry and low on
6 waterproofing. I don't remember, but as I recall
7 that was the way the numbers worked out. So if
8 you used everybody else I'm sure it was. But if
9 you used the low bidders, multiple guys. As I
10 recall, he wasn't that low.

11 Q. A couple questions. This email first
12 it says: The price for using Salem was a lot less
13 than using separate subs for each trade. You
14 indicated it wasn't that much less. Do you recall
15 how much?

16 A. I don't recall how much, but the bid
17 tab will tell us.

18 Q. Second question, meeting with the
19 owner about selection of Salem. Tell me who,
20 what, when, where on that meeting. Who was the
21 meeting with the owner?

22 A. It was a similar meeting to the
23 meeting with the architect and owner about picking
24 subs to the job. We sit down after the job is
25 bid, go over all the numbers with them. We give

1 executive summary. Here is what our
2 recommendations are, here are alternates. Would
3 have been architect and owner.

4 Q. Pre February 2014 meeting?

5 A. Probably along in that time.

6 Q. Certainly the selection of Salem would
7 have occurred before February?

8 A. Before GMP. That's what GMP is based
9 on. That's right.

10 Q. Architect, does that mean Shawn Mellin
11 was at that meeting?

12 A. Correct.

13 Q. Who on behalf of the owner was present
14 at that meeting where you say you discussed
15 Salem's bid versus other subcontractors' bids?

16 A. I imagine it was Tom Mather. He was
17 the guy then.

18 Q. You imagine. Do you recall it with
19 any specificity?

20 A. I don't.

21 (Griffith EXH. 14, Concord & Cumberland
22 Exterior/Interior Renovation Project Monthly
23 Report, December 2014-January 2015, marked for
24 identification.)

25 BY MR. FORD:

1 Q. Exhibit 14. This is a monthly report
2 for December 2014 to January 2015; is that
3 correct?

4 A. Yes.

5 Q. Did you have any role in preparing
6 this document?

7 A. I probably looked at it before it went
8 out, but I don't remember.

9 Q. Just as a matter of course, would this
10 be the kind of thing that you would review and
11 approve before it's sent out to the project owner?

12 A. Not necessarily. Our project managers
13 are pretty good at this kind of stuff.

14 Q. So a couple things about this one.
15 The executive summary here is dated January 21,
16 2015. So this is a day or two after these last
17 couple exhibits. One issue, there is a report
18 about amount of weather days being exceeded by
19 three days. Do you see that?

20 A. Yes, sir.

21 Q. How is that supposed to work under the
22 contract? Do you provide some proof of the
23 adverse weather over and above the five days that
24 you allow I guess per month?

25 A. Correct.

1 Q. Then you seek that as an extension of
2 time from the architect?

3 A. Correct.

4 Q. Were these three days approved by the
5 architect for weather?

6 A. I'm sure they were. I don't know why
7 they wouldn't be. He approved days like this on
8 every job I remember. That's standard in our
9 business, not just this job.

10 Q. I understood. He lists out the
11 weather and some theft issue. I said he, Mr.
12 Burrell and Mr. Tomberlin. Then summarizes that
13 first paragraph by saying: According to the
14 latest schedule update the team fell behind one
15 additional week as a result of all of the above.
16 We are currently forecasting a project completion
17 date of July 31, 2015; is that right?

18 A. That's what it says.

19 Q. On the next page, similar section, we
20 have contract completion dates and it's still
21 showing a revised contract completion date of
22 7/6/2015 but then a forecast completion date of
23 July 31, 2015; is that right?

24 A. That's correct.

25 Q. It looks like the same 40 days have

1 been approved, but the additional -- sorry -- 25
2 days have not been approved; is that correct?

3 A. That's what that would read, yes.

4 Q. So as I recall, if you recall, we can
5 go back and look, but the prior monthly report,
6 that was the report that had about 18 days of what
7 would seem to be Salem caused delay; is that
8 right?

9 A. I don't remember. I can go look at
10 it. Which one is it?

11 Q. Sure. It's Exhibit 9.

12 A. Do you remember where it says 18 days?

13 Q. I was just doing the math.

14 A. I see the 18 days. I don't know that
15 all that's attributed to Salem.

16 Q. In the executive summary Mr. Burrell
17 and Mr. Thomas report to the owners that there
18 were a few weeks of delay?

19 A. Talks about project team with very few
20 additional unforeseen items being discovered or
21 impacting part of. That being said, since the
22 last month we have fallen behind by a few weeks on
23 our current schedule.

24 Q. It says: This is largely in part due
25 to Salem's inability to maintain?

1 A. Correct, largely in part. So I
2 gathered you to say this is because of Salem.
3 What I read this to be is partly due to Salem's
4 inability and partly due to some additional
5 unforeseen items. How much is how much. I don't
6 know. Did I misunderstand your question?

7 MR. EPTING: He gets to ask the
8 questions.

9 THE WITNESS: Thank you.

10 MR. EPTING: Sometimes he doesn't read
11 too accurately either.

12 MR. FORD: Who me? I'm pretty sure I
13 read it: This is largely in part due to Salem's
14 inability. But I withdraw my question.

15 BY MR. FORD:

16 Q. So at this time when this report goes
17 out to the owner, who had just been dealing with
18 the issue where subsequent to this November report
19 we've got Salem having trouble reframing windows.
20 So my question is, why not report that problem to
21 the owners at this time?

22 A. I don't know. You have to ask Chris
23 what he put in here, why he put what in here and
24 what he didn't put in here. I don't know.

25 Q. In that email exchange there's

1 reference to I think he said 12, 24 days. I'll
2 check to make sure I'm reading it correctly.
3 Looking back at Exhibit 11, Mr. Burrell is
4 reporting Ryan's account --

5 A. I'm sorry. Where are you?

6 Q. Exhibit 11. Mr. Burrell says --

7 A. What page?

8 Q. Third page.

9 A. Talking about Chris's email to Gary,
10 Doug?

11 Q. Correct. Third sentence he says: By
12 Ryan's account this has happened on 12 openings we
13 framed. My guess is that this has cost us between
14 12 to 24 days on the schedule depending on how you
15 look at it. Did I read that correctly?

16 A. That's the way I read it.

17 Q. This January 19, 2015 email precedes
18 this January 21, 2015 letter to the owners. So my
19 question is, why isn't TCC reporting to the owners
20 an additional 12 to 14 days of delay caused by
21 Salem's poor performance?

22 A. It doesn't appear to be reported in
23 this document, but I'm not sure it wasn't reported
24 in OAC meeting documents.

25 Q. Would it be a reasonable thing to do

1 to report that kind of delay to the owners in a
2 monthly update like this?

3 A. Well, looking back at it, I would
4 think, yes, it would be. I would also think it
5 would be prudent to list how many changes we
6 already had and how many had been approved.

7 Q. Was that being listed in the change
8 order log?

9 A. It would be listed in the change order
10 log, but that's not part of this document, is it?
11 It doesn't appear to be.

12 Q. The change order log is a document
13 that's distributed at the OAC meeting, right?

14 A. That's correct. And that's my point.
15 You said it wasn't reported to the owners. I'm
16 not so sure it wasn't reported at OAC meetings but
17 not in this.

18 Q. My point is it wasn't reported to the
19 owners at large?

20 A. I don't know who this went to.

21 Q. TCC addressed it to homeowners and
22 tenants.

23 A. I understand.

24 Q. How did TCC transmit it?

25 A. We gave it to, as I remember -- you

1 have to ask Chris. But I believe it was handed
2 out monthly at the OAC meetings. Now, who they
3 sent it to, April may have sent it to every
4 homeowner. I don't know. May have to ask April.

5 Q. Also we saw in these prior exhibits
6 discussion of cost overages. Do you recall that?

7 A. Yes, sir.

8 Q. But here in the second paragraph Mr.
9 Burrell is reporting to the owners that, quote:
10 That being said -- we can go back and look at the
11 rest up top: That being said, the budget still
12 remains intact, and we have not yet exhausted the
13 contingency dollars in Trident's contract.

14 A. Which again? I'm sorry. I'm not as
15 fast as you. I was looking at 11. Are you back
16 on 14?

17 Q. I have the unfair advantage of knowing
18 what document I'm talking about. I apologize. I
19 was reading from Exhibit 14.

20 A. What page?

21 Q. Second page of that document. So on
22 January 21, 2015 Mr. Burrell and Mr. Tomberlin are
23 reporting to homeowners and tenants and say,
24 quote: That being said, the budget still remains
25 intact and we have not yet exhausted the

1 contingency dollars in Trident's contract. Did I
2 read that correctly?

3 A. I hadn't found that sentence yet.
4 Where are you?

5 Q. Last sentence of the second paragraph.

6 A. That being said, the budget still
7 remains and we have not yet exhausted the
8 contingency dollars. Yes, that's what it says.

9 Q. Based on your testimony thus far, here
10 we are into 2015 and you have explained to me the
11 different conditions in the building and the
12 impact that that had, and then there is internal
13 communication regarding cost overages that have
14 you and Mr. Burrell very concerned. Yet a couple
15 days later you're reporting to the owners that the
16 budget remains intact.

17 A. With the use of the contingency.

18 Q. How can you report to the owners that
19 the budget remains intact when certainly two days
20 earlier you're expressing a concern that an
21 overage that you total at \$244,000?

22 A. The contingency is 237.

23 Q. So you're over the contingency at 244?

24 A. That's right, a few dollars.

25 Q. The contingency is supposed to account

1 for items that are the responsibility of the
2 owner, correct?

3 A. No, sir. No, sir. 5.2.3 of Exhibit
4 1, the contingency is to cover unknown factors
5 that may adversely affect cost which is the
6 responsibility of the contractor. Contractor has
7 the discretion to decide which costs of the work
8 will be covered by this contingency. Contractor
9 shall notify the owner of any changes in excess of
10 \$5000.

11 And by owner, I assume we say that's
12 the owners' agent, architect. I think it was done
13 at OAC meetings. So it was done to both owner and
14 contract -- to the contractor's contingency.
15 Contractor shall give due notification to the
16 owner of any application of contractor's
17 contingency.

18 You want to read the rest of it?
19 Contractor shall maintain up to date contingency
20 log at each progress meeting. Contingency shall
21 not be used to cover the cost of substantial and
22 nonconforming work. Upon completion of the work
23 any remaining balance of contingency will not be
24 included in cost savings. 100 percent on balance
25 will go to the owner.

1 Q. First sentence of that section of
2 Exhibit 1, section 5.2.3: Contingency is to cover
3 unknown factors that may adversely effect costs
4 which are the responsibility of the contractor.

5 Stopping there. Is it your belief
6 that the contingency is present for you to absorb
7 overages incurred by Salem in this instance?

8 A. Adversely effect the cost which are
9 the responsibility of the contractor. So I would
10 say Salem, Tidewater, the painter. It's really
11 for scope gaps. It's not for change orders.

12 Q. Understood. Moving down: Contractor
13 shall notify the owner of any charges in excess of
14 \$5000 prior to applying said costs to the
15 contractor's contingency. Did I read that
16 correctly?

17 A. That's the way I read it.

18 Q. So looking back at Exhibit 12, we've
19 got overages of \$244,000. Are you saying that
20 that amount of money is accountable to the
21 contract contingency?

22 A. You need to look at the contingency
23 that was put out at that time. I don't have that
24 in front of me.

25 Q. That's my next question, I guess, is:

1 The contractor shall give due notification to the
2 owner of any application of contractor contingency
3 funds. Did I read that correctly?

4 A. Yes, sir.

5 Q. It was an obligation of TCC?

6 A. Correct.

7 Q. Did TCC give due notification of the
8 use of the contingency?

9 A. Yes.

10 Q. Did it account for the use of the
11 contingency on a regular basis?

12 A. Yes, sir.

13 Q. In writing?

14 A. Yes, sir.

15 Q. What's the final accounting, if you
16 can recall, of the construction contingency?

17 A. Well, I mean, I think, I believe in
18 one of these monthly meetings we showed where we
19 used it plus some. Now.

20 Q. But here in January 21, 2015 you're
21 reporting an intact budget and that you have not
22 exhausted the contingency dollars, and the
23 contingency is \$236,000, but you have an overage
24 of more than the contingency of 244.

25 A. Okay.

1 Q. So this statement in Exhibit 14 is not
2 conveying accurate information, is it?

3 A. I'm not sure that it is or it isn't.
4 You need the contingency to see how we spent the
5 contingency. I don't know that we spent the
6 contingency on all that 237 on that 244. You need
7 both documents in front of you to talk about the
8 contingency, where we are.

9 An estimate, this schedule of values
10 that we talked about earlier it's an estimate of
11 the job. Some items are over. Some items are
12 under. Looks like to me that at that time we felt
13 like we were over by \$244,000.

14 Q. Does that reflect a project whose
15 budget is remaining intact?

16 A. No, sir.

17 Q. Why didn't you report that to the
18 owners?

19 A. Again, I'm not sure that we did or we
20 didn't without the OAC meeting minutes to go with
21 this.

22 Q. Fair enough. This document did not
23 report --

24 A. That is correct. I'm sorry. I
25 interrupted before you finished.

1 Q. A reasonable stopping point to the
2 question. The bottom line is, Exhibit 14 did not
3 report to the owners that there was cost overage
4 as shown in Exhibit 12 in an amount exceeding the
5 contingency amount of the contract, right?

6 A. That's the way I read it. That being
7 said, the budget still remains intact.

8 Q. But at this time in January 2015 we've
9 been at this project for 11 months; is that
10 correct?

11 A. No. That's incorrect.

12 Q. The contract date is February 27,
13 2014, and this is -- this Exhibit 12 is -- I'm
14 sorry, Exhibit 14. Strike that.

15 The date of the contract, which is
16 Exhibit 1, is 27 February 2014; is that right?

17 A. That is correct, but.

18 Q. This document, Exhibit 14, is dated
19 January 21, 2015?

20 A. I'm sorry?

21 Q. Is that right?

22 A. That is correct with your dates, but
23 your thinking is way off.

24 Q. Tell me why.

25 A. I think I mentioned a problem we had

1 with the windows. Do you remember that? I'm
2 sorry, I can't ask a question.

3 We had a problem with the windows.
4 The windows did not match the contract documents.
5 We also said we weren't going to start the work
6 until the windows were on site because the first
7 thing we were going to do. Whole time we were
8 trying to protect these expensive interiors. Some
9 of these guys had apple wood floors, maple floors,
10 all kind of fancy stuff on the inside. We were
11 never going to start the jobs until the windows
12 were delivered.

13 The windows as I recall weren't
14 delivered until -- I don't know. Again, we'll
15 have to ask Ryan -- September, October. We didn't
16 start work on site until the end of the summer,
17 whether you call that August or September. I
18 don't remember. So what I call starting the work
19 is other than submittals, shop drawings,
20 paperwork.

21 I call starting the work when we start
22 knocking down the first wall or building the first
23 scaffold, let's say, and that was not -- that was
24 I think -- and I'm going from memory -- August or
25 September. So we had been working on site, say,

1 September, October, November, December, January,
2 five months.

3 Q. At this point in January or through
4 December --

5 A. Okay, four months then.

6 Q. There's reporting here with
7 photographs on page TCC 4561 and 4562 of window
8 installation; is that right?

9 A. Which page are you looking at?

10 Q. TCC 4561 and then TCC 4562?

11 A. Drop 3 and 4 windows installed, that's
12 correct, which means the stone tower windows were
13 installed. Drop 3 is one side of the stone tower.
14 Drop 4 is the other side. The windows installed
15 on that date, 1/20/2015.

16 Q. So area 2 drop 5 and 6 window
17 installation Concord Street?

18 A. I'm sorry, which one?

19 Q. Drops 5 and 6, the next page, TCC
20 4562.

21 A. Okay.

22 Q. So you're installing windows in
23 another area, correct?

24 A. That's correct.

25 Q. You're doing demolition,

1 waterproofing, installation in other areas as
2 shown by the next page TCC 4563; is that right?

3 A. Right, 18, 19, 20.

4 Q. At this point you have incurred the
5 issue we have been talking about with framing
6 issues, certainly with window framing issues
7 because we see before this date Salem is having a
8 hard time getting it right, correct?

9 A. That's correct.

10 Q. So we're well -- not well, but we're
11 beyond demolition. We're beyond waterproofing,
12 and we're installing windows after reworking of
13 the framing of the windows; is that right?

14 A. On certain drops, yes.

15 Q. At this point you have encountered
16 differing conditions in the building, correct?

17 A. That is correct.

18 Q. To a substantial degree?

19 A. I would -- I have to look at the RFIs
20 to quantify that. They're numbered. You can just
21 take a simple percentage.

22 Q. So you found things that are
23 different. You have asked for the architect's
24 input, and you're trying to execute direction from
25 them through Salem to reframe the windows and

1 install the windows, right?

2 A. By drop, yes.

3 Q. You're incurring cost overages through
4 Salem and otherwise that have you very concerned,
5 correct?

6 A. That's correct.

7 Q. But at the same time that's going on,
8 I assume you're incurring costs over and above
9 what you had planned to incur?

10 A. That is correct.

11 Q. You are incurring the need for more --
12 delay and the need for more time to complete your
13 work, correct?

14 A. Correct.

15 Q. But you're reporting to the owners in
16 this document, Exhibit 14, a project budget that
17 remains intact?

18 A. That's correct.

19 Q. That's inconsistent with the facts on
20 the ground as you have testified to?

21 A. I don't think so. Read the first
22 three, four sentences above that.

23 Q. You say that: Glick-Boehm provided
24 timely fixes and solutions to the deficiencies; is
25 that right?

1 A. That's correct.

2 Q. Is that correct? Did they?

3 A. As I stated earlier, Glick-Boehm was
4 as fast as anybody I've seen, but their structural
5 engineer was as slow as anybody I've seen
6 depending on what the deficiencies were.

7 Q. Next couple sentences talk about
8 uncovered issues, uncovered issues, and then
9 issues with direct applied stucco at the sheer
10 walls?

11 A. That's correct.

12 Q. So you have encountered a fair amount
13 of change as you have described to me, but you're
14 reporting an intact budget?

15 A. But these items had -- I doubt if
16 these items have even been priced yet because we
17 were pricing them on a cost plus basis. We were
18 doing the work as soon as the architect directed
19 us what to do. As I said, timely fixes and
20 solutions. Sometimes it was description on the
21 scaffold would arrive. Here, let's do this,
22 paperwork I'll get to you in a day or two. We
23 were proceeding with the work. Until we got the
24 RFI submitted and answered we didn't even start
25 pricing it. Most of that pricing was done based

1 on the cost plus basis, because the work was
2 already done.

3 Q. Why didn't you report that to the
4 owners at this time?

5 A. I didn't have the numbers.

6 Q. You could have reported the fact that
7 the numbers were coming and you expected them, yet
8 you reported a budget that's intact?

9 A. You don't read that we uncovered the
10 issues as going to be costs?

11 Q. I see that, but I see the closing
12 sentence that says that being said; is that right?

13 A. Okay. Maybe that could have been
14 clearer maybe. Additional unforeseens cost money
15 and time.

16 (Griffith EXH. 15, Email
17 Correspondence, Subject: Concord & Cumberland,
18 marked for identification.)

19 BY MR. FORD:

20 Q. Handing you Exhibit 15. This is a
21 February 3, 2015 email exchange, and it relates to
22 Tidewater I believe; is that correct?

23 A. That's correct.

24 Q. I think we have already discussed this
25 a bit, but first sentence from Mr. Burrell is to

1 Gary and Doug: I have released Tidewater from
2 window removal and framing. Did I read that
3 correctly?

4 A. I think you did.

5 Q. This would be work where Tidewater is
6 working to supplement Salem's forces; is that
7 right?

8 A. That's correct.

9 Q. There is discussion in here about the
10 manpower and forecast, and then this last
11 paragraph says: A major contributing factor to
12 the significant forecasted financial loss is a
13 result of the overspend on labor. And did I read
14 that correctly?

15 A. That's the way I read it.

16 Q. Is that overspend or significant --
17 sorry. Is that significant forecasted financial
18 loss that which is being discussed in Exhibit 12
19 in that internal email?

20 A. Probably. That one is dated 20
21 January. This is dated 3 February. Probably.

22 Q. The next says: This is the only means
23 we have to lessen the extent of the loss. Do you
24 see that?

25 A. Yes.

1 Q. Again, this was turning Tidewater
2 loose to supplement Salem's forces. This was in
3 an effort to stem the loss that you're reporting;
4 is that right?

5 A. That and to help speed up the process.

6 Q. If this was something other than the
7 responsibility of Salem or TCC, then another means
8 to lessen the extent of the loss would be to
9 charge it to the owner, correct?

10 A. No. This was deducted from Salem's
11 contract, their scope of work.

12 (Griffith EXH. 16, Email
13 Correspondence, Subject: Concord &
14 Cumberland-Variance Report All Suds Estimate vs
15 All Salem, marked for identification.)

16 BY MR. FORD:

17 Q. Next is Exhibit 16. This is a
18 February 2015 email. The first one, I guess the
19 latest actually in the chain, is from you to Mr.
20 Burrell, copying Mr. Mordy, but the initial email
21 is from Mr. Burrell to you; is that right?

22 A. That's correct.

23 Q. Mr. Burrell says: In talking with
24 Chase, our comparison just looking at the bid tab
25 didn't accurately reflect the savings of the owner

1 actually achieved by us giving Salem all the work.
2 Chase ran a variance report comparing our all sub
3 estimate versus all Salem estimate. The savings
4 to the owner was \$630,488; is that right?

5 A. That's correct.

6 Q. There was an earlier email, though I
7 can't put my hands on it right away, where Mr.
8 Mordy was reporting to you a significant
9 difference between this all sub estimate and
10 multiple sub estimate and the Salem estimate for
11 all those scopes of work. I think that was in
12 Exhibit 13. Do you recall that?

13 A. I do recall that.

14 Q. Is this email, this Exhibit 16,
15 talking about the same thing?

16 A. It is. I don't think it's correct,
17 not on -- based on the bid tab that I remember
18 seeing.

19 Q. What do you think is not correct?

20 A. I'm not sure what all sub estimate
21 versus all Salem estimate means. We did a bid tab
22 on each section.

23 Q. But what's being specified here which
24 wasn't specified in Exhibit 13 is that it looks
25 like the a lot less comment equals the \$630,488

1 various between the two exhibits; is that right?

2 A. That's what it says, but I don't
3 believe that's correct because I don't believe
4 you're comparing apples and apples.

5 Q. But Mr. Burrell is reporting it to
6 you. He's doing that I believe -- correct me if
7 I'm wrong. I'll ask him tomorrow. But he's doing
8 that to help explain this overage issue that's
9 discussed back in Exhibit 12; is that right.

10 MR. EPTING: Object to the form.

11 THE WITNESS: I don't know what he's
12 referring to. But as I recall, when I did the bid
13 tab, for instance, Salem in, let's say, their
14 masonry estimate included scaffolding, and the
15 masonry sub that Chase was referring to didn't
16 include scaffolding. He wasn't comparing apples
17 and apples. He was just using sub numbers. I'd
18 go back and look at the bid tab to see.

19 BY MR. FORD:

20 Q. I understand that you have some
21 disagreement with the tabulation; is that right?

22 A. I don't know whether I do or not. I
23 need to look at it.

24 Q. At least here Mr. Burrell is
25 indicating there is a big difference between the

1 two estimates?

2 A. That's what I read there, yes.

3 Q. Then you tell him: Chris, this is not
4 the point we want to make to anyone. Did I read
5 that correctly?

6 A. That's correct.

7 Q. Is that because that would indicate
8 that Salem gave you a bad bid?

9 A. It could mean that.

10 Q. If that's right, Salem's bid -- you
11 know, I've used the term before. I don't know if
12 you have -- but this would seem to be a bid bust
13 if it's off by that much?

14 A. It could be.

15 Q. Would you have to go back and look
16 further in other documents to figure out whether
17 that is a true assessment or not?

18 A. Yes, sir.

19 Q. Where would you go look?

20 A. I would go back and look at the bids
21 and the bid tab.

22 Q. These would be the bid and bid tabs
23 that reflect the bids you got from Salem for the
24 scope of work and the bids you got from multiple
25 contractors for the same scope of work?

1 A. Correct.

2 Q. If there was a bid bust in the context
3 of a cost plus with a guaranteed maximum price,
4 that would be the responsibility of the
5 contractor, not the owner, correct?

6 A. That is correct. If it's in scope
7 items that would be my responsibility.

8 MR. EPTING: Cordes, let's give Roxanne
9 a break.

10 MR. FORD: Sure.

11 (A recess was taken.)

12 MR. FORD: Back on the record.

13 (Griffith EXH. 17, Email
14 Correspondence, Subject: Concord & Cumberland,
15 marked for identification.)

16 BY MR. FORD:

17 Q. Exhibit 17, Mr. Griffith, another
18 email chain from March 2015. This looks like an
19 email exchange regarding insurance. So I wanted
20 to ask you about that. Take a moment to review
21 it, but let me know generally if I'm right.

22 A. I know all about it.

23 Q. Don't tell me all about it, but what
24 is the issue being discussed here? From my
25 review, it looks like how to deal with the cost of

1 I guess project specific CGL coverage for this
2 job; is that accurate?

3 A. That's correct, and it's covered in
4 this contract.

5 Q. Understood. My understanding of the
6 policy is that it is a project specific policy
7 with a tail; is that right?

8 A. Correct.

9 Q. My general understanding of that
10 insurance world is that the coverage applies so
11 long as the work finishes inside of a certain
12 period of time as set forth; is that generally
13 correct?

14 A. Generally correct, and certain scope.
15 It follows the contract.

16 Q. If there is some extension of time,
17 there has to be some purchase of an extension of
18 that time for the purposes of triggering the
19 policy?

20 A. That is correct.

21 Q. Is that what's going on here, you're
22 trying to figure out how to get that additional
23 cost paid?

24 A. Yes.

25 Q. You tell Mr. Burrell: We need to

1 figure out how to add this in a CO?

2 A. That's correct.

3 Q. What do you mean by that?

4 A. If you look at the contract, this was
5 not included in -- or a certain amount was
6 included in GMP and it's in here somewhere. It
7 needs to be updated for the time, as you mention,
8 and the cost. It also goes up based on the cost.
9 It's based on a dollar amount.

10 Q. So the premium increases as the time
11 and cost of the project increases?

12 A. Correct.

13 Q. So you were asking Mr. Burrell I guess
14 to join you in figuring out how to add it to the
15 CO. Why was that an issue?

16 A. Well, again, at the very first of the
17 job we included general conditions in the first
18 PCOs and they got approved. As we went on Shawn
19 asked us to break those out because of
20 concurrency. I'm sorry to repeat myself, but do
21 you remember that?

22 Q. I do.

23 A. This is a similar item, but it's a
24 separate item. And whether we included it, some
25 things Shawn wanted to include with other items.

1 Some things he wanted broke out. Some things he
2 wanted included up to a certain date, and then
3 from that date forward he wanted a different PCO.
4 All this was trying to make him and Mr. Trey to
5 some extent happy on how we were presenting them.

6 Q. Trey wasn't involved here, was he?

7 A. He was.

8 Q. In March?

9 A. I don't know about this particular
10 one, but at the end Trey says, John David, how
11 about letting me pay this direct and it will save
12 your markup. I said that's fine, y'all pay it.
13 Then, of course, we had trouble getting it paid
14 and I got several letters from the insurance
15 company.

16 Q. Is the policy in place?

17 A. Yes.

18 Q. Properly triggered?

19 A. I understand that Trey finally got the
20 last check written and that it is in place and was
21 covered through the end of the job. I only
22 mention Trey because he's the last one to deal
23 with it.

24 Q. He wasn't involved, to my knowledge,
25 in March 2015, correct?

1 A. No.

2 Q. So again, not to repeat myself, but I
3 have to ask on this issue. If this was a cost
4 plus without a guaranteed maximum price contract,
5 you just put that extra cost in the pay
6 application, correct?

7 A. Correct. But again, we were keeping
8 accounting of where the closest we could to what
9 the dollars were.

10 Q. In a cost plus situation you've got
11 open book, and that can be checked out, but you --
12 you know, if it's a cost plus without guaranteed
13 maximum price and you incur costs or after you
14 incur costs, you don't have to worry about a
15 change order; you just put it into the application
16 and send it to the owner, right?

17 A. Shawn would not accept it like that.

18 Q. Is that because he did not have an
19 understanding this was cost plus without a
20 guaranteed maximum price?

21 A. No. He clearly had that understanding
22 because he told us specifically on those first
23 ones that we mentioned when we talked about
24 concurrency to wait until the end and base it on
25 the total cost.

1 Q. Given that Salem or TCC, but the
2 examples have been mostly Salem derived, given
3 that there is delay attributable to the
4 performance of Salem, shouldn't a portion of the
5 additional insurance costs be borne by Trident or,
6 sorry, TCC and not the owner?

7 A. Any attributable that was no fault of
8 the owner should be borne by Trident Construction.

9 Q. As it stands, that additional premium
10 cost has been -- or you submit in this paperwork,
11 Exhibit 2, is to be borne by the owner, correct?

12 A. Again, the owner paid some of it
13 direct and he issued a change order for some of
14 it. I believe that's one of the change orders. I
15 would have to check which PCO and which change
16 order that went in.

17 Q. There hasn't been any prorating to
18 determine TCC's portion of responsibility for
19 those extension premiums, I'll call them?

20 A. We have had discussions with Shawn
21 Mellin concerning that, but they stopped when Trey
22 got involved.

23 Q. When did Trey get involved?

24 A. September of '15.

25 (Griffith EXH. 18, Email

1 Correspondence, Subject: Concord & Cumberland,
2 marked for identification.)

3 BY MR. FORD:

4 Q. Exhibit 18, this is April 2015. So
5 we're moving along chronologically, from Mr. Moore
6 to Mr. Burrell copying you. It's a short one that
7 says: What time do you want to meet Thursday to
8 review the delays at Concord & Cumberland.

9 Do you have recollection of what
10 delays Mr. Moore is requesting a meeting on?

11 A. I do not have a recollection. They've
12 either got to be delays caused by added scope,
13 jumping around, or delays that he caused.
14 Probably both.

15 Q. Sorry?

16 A. I'm sorry?

17 Q. What did you say last?

18 A. Probably both.

19 (Griffith EXH. 19, Email
20 Correspondence, Subject: Salem Manpower, marked
21 for identification.)

22 BY MR. FORD:

23 Q. I've handed you Exhibit 19. I think
24 you are directly mailed on some of this but mostly
25 on the CC line. This is generally an exchange

1 between Salem and TCC regarding, the subject says,
2 Salem manpower. Do you see that?

3 A. I do.

4 Q. What is the healthy difference of
5 opinion regarding Salem manpower at this point in
6 June 2015?

7 A. This is very similar to some of these
8 earlier ones that you do when we're getting on
9 Salem about hurry up. Through no fault of Salem,
10 the owner requested that we go into the slowdown,
11 if you recall that term.

12 Q. So I remember the term. So from your
13 perspective, what induced the request for a
14 slowdown?

15 A. We notified the owner. This is
16 another time we notified the owner of dollars in,
17 I don't know, February, March of '15 that this job
18 was getting out of control dollar wise. The owner
19 had said they had -- I don't remember the numbers
20 -- X amount of dollars for the work. Trident, you
21 got X amount of contingency in your contract, and
22 we have an additional X amount of contingency
23 that's internal to us that you don't have.

24 As I recall, they said they had
25 another, I don't know, 250, 500,000 in

1 contingency, owner contingency. I said that ain't
2 going to do it. As per this document, the
3 contract, we can request a verification of
4 funding. They could not verify funding. I said,
5 look, until y'all can verify funding we can't keep
6 working. They said we know the work's got to be
7 done, we see all the issues y'all have run into,
8 how about let us raise the money, we all keep
9 working.

10 I said at the amount of money we're
11 spending per month working we can't do that. We
12 can't keep doing. We already over the money that
13 you already have said that you have. We're beyond
14 that. They said, John David -- as I recall, Mr.
15 Tom Mather said, John David, I will personally
16 guarantee X amount of dollars, \$400,000, don't get
17 hung up on the number, if y'all will keep working
18 I know I can get the votes, if y'all shut the job
19 down and leave I don't know that I can get the
20 votes, we need this job finished, we know all the
21 problems y'all have had, we've seen them, seen the
22 pictures, we've seen it, if y'all will keep
23 working. We said that's what's best for the job,
24 okay, we'll do that.

25 Q. Mather's statement to you, was that

1 verbal or in writing?

2 A. I don't remember. I know it was
3 verbal. Whether or not there's a document to
4 follow up with that I don't know.

5 Q. Was there surprise on the part of the
6 owners hearing that the job had gotten out of
7 control dollar wise?

8 A. The ones I talked to didn't seem to
9 be. Again, most of those people were in our
10 weekly OAC meeting minutes.

11 Q. If the owners hear in February or
12 March that the project is getting out of control
13 dollar wise, it wouldn't be a surprise that they
14 would be surprised given your report from January
15 21, 2015 that the budget was intact and you hadn't
16 exhausted contingency dollars, correct?

17 A. It happened pretty fast, and we
18 started adding up.

19 Q. So is it your testimony that between
20 January 21, 2015 and February/March that the job
21 got out of control dollar wise?

22 A. No. I think it got out of control
23 dollar wise when we started running into all of
24 these issues on drop one. You can look at how
25 many PCOs on just drop one.

1 Q. Well before January 21, 2015, right?

2 A. It was all along. It was
3 accumulation.

4 Q. But you're not reporting that to the
5 owners?

6 A. We are reporting to the owners. We've
7 been telling them. As a matter of fact, I think
8 we talked to them about it in February and March
9 and they didn't do anything and they didn't do
10 anything and they didn't do anything. And in May
11 we said, look, boys, we told you about this in
12 March, y'all ain't done a damn thing about it, I'm
13 sorry, we can't keep working.

14 Q. If this is a cost plus job there
15 shouldn't be any surprises, right? Pay
16 application monthly includes all of the costs
17 you've incurred in that pay period, correct?

18 A. Not if they don't have the money to
19 pay me.

20 Q. If you're incurring the costs in a
21 cost plus job, you report those costs and ask for
22 payment in the pay application, correct?

23 A. I'm sorry. I am not explaining
24 myself. Shawn Mellin required a PCO, a change
25 order to pay on that pay request. He thought that

1 we were going to settle up at the end because he
2 told us to do it that way. So he knew there was
3 costs that wasn't included in those change orders,
4 but we were trying to keep up with it. We were
5 doing a fair job. I mean, we were behind the PCOs
6 because, again, the owners were so slow about
7 signing PCOs, signing change orders.

8 Q. That doesn't delay you submitting
9 costs to the owner, correct?

10 A. Well, we don't know what they going to
11 approve, what they going to do. So how do we know
12 what's approved and what's not approved.

13 Q. That doesn't have any impact on you
14 incurring costs?

15 A. No. We were incurring costs the whole
16 time.

17 Q. It doesn't have anything to do with
18 owner approving or not approving. If you're
19 incurring costs in a cost plus contract, you
20 report that cost to the owner and ask for payment,
21 correct?

22 A. That's correct. But if the owner is
23 not paying. The owner wasn't paying. The weren't
24 even signing the change orders that the architect
25 recommended.

1 Q. That's because you weren't submitting
2 the costs you were incurring every month, correct?

3 A. We were doing it as fast as he would
4 let us do a change order.

5 Q. You're not billing that cost as fast
6 as you're incurring it?

7 A. No. No. No. No. No.

8 Q. That's because Shawn Mellin was
9 requiring submission of PCOs, correct?

10 A. That's correct.

11 Q. Tell me if I'm just crazy. But in a
12 cost plus arrangement, the PCO process wouldn't be
13 part of that process; that's a process where
14 you're changing the guaranteed maximum price of a
15 contract or stipulated sum of a contract, right?

16 A. Not the way we do it. We do
17 everything on budget. Our cost plus jobs have
18 budgets. The only job I think I mentioned that
19 we've ever done without a budget was the Motley
20 Rice building in Mount Pleasant. Every job I've
21 ever done had a budget, cost plus or otherwise.

22 Q. How would you track a budget to this
23 project?

24 A. Well, the GMP items are covered in
25 this scope. They were tracked by percent

1 complete. Salem had this much money for stucco.
2 We had this much money for scaffold. This much
3 money for all these items that was covered in this
4 contract, and they were billed on a percent
5 complete. This portion of the work was a GMP.
6 It's all the added work that was -- and the impact
7 of the added work that was the cost plus section
8 of it.

9 Q. How did you track the budget for that,
10 the cost plus work, as you describe it?

11 A. As the costs came in we talked about
12 where we were. Again, we talked about it in
13 March. We talked about it in April. We finally
14 talked about it in May. The owner hadn't done a
15 thing to try to raise money or do anything. We
16 told them. They said they couldn't raise the
17 money. They said they could borrow a little
18 money. You have to ask them how much they could
19 borrow and all that.

20 Q. That's not my question. I'm asking
21 you how you track the budget in this job? How did
22 you report the budget for the job to the owners?

23 A. I think it was similar to this email
24 you gave me. I don't know which exhibit that was.
25 Chris was looking at it. I don't remember which

1 one it was. Chris's email, January 19.

2 Q. What exhibit is that, please?

3 A. 13. Well, let me tell you. That's
4 part of 13. I don't think that was the original
5 one. You broke that out into several. It's a
6 chain, but it's on 13.

7 Q. So 13, though, that's an internal
8 communication between Trident personnel?

9 A. What I'm talking about is the email
10 dated January 19 from Chris to Jeanne, Robbie,
11 Chappy, Tim, Todd, Ryan, and John David.

12 Q. That would be the email, Exhibit 13,
13 time stamped 4:23:19?

14 A. 4:23:10, yeah. January 19, 2015,
15 4:23:19. Yes, sir.

16 Q. That's internal reporting of the
17 budget?

18 A. Yes. You asked how we were tracking.

19 Q. How were you tracking it and reporting
20 budget amount to the owner?

21 A. We were talking about it at the OAC
22 meetings and at length with the architect about
23 what the PCOs included and what they excluded.

24 Q. Were you tracking it through something
25 called the forecast of contract amount?

1 A. I don't remember that form.

2 (Griffith EXH. 20, TCC Construction OAC
3 Meetings, marked for identification.)

4 BY MR. FORD:

5 Q. I'll hand you Exhibit 20, which is one
6 of the OAC meeting minutes I believe. Tell me if
7 I'm incorrect. This one is dated -- we're
8 advanced in time here. This is 2/25/2016; is that
9 correct?

10 A. That's what it says, 2/25/16.

11 Q. So is this the typical format for TCC
12 meeting minutes for the OAC meetings?

13 A. Yes.

14 Q. If you skip back, there is something
15 called a change order log. Do you see that?

16 A. That's correct, 5.1 change log.

17 Q. So was this change order log a TCC
18 created document?

19 A. Yes.

20 Q. And it tracks PCOs; is that correct?

21 A. That's correct.

22 Q. That's on the left-hand side; is that
23 right?

24 A. That's correct.

25 Q. Then those relate ultimately to OCOs;

1 is that correct?

2 A. That's correct.

3 Q. Does that stand for owner change
4 order?

5 A. That's correct.

6 Q. So those are submitted change orders
7 that gather in a number of PCOs and are executed
8 by all the parties?

9 A. Correct.

10 Q. That's what changes Exhibit 1?

11 A. Correct.

12 Q. On the last page of that change order
13 log they list -- you, TCC, lists out original
14 contract amount, executed changes, current
15 contract amount, validated changes, changes
16 submitted to the architect, forecasted changes,
17 and then forecasted contract amount; is that
18 correct?

19 A. That's correct. This is -- I can't
20 read it. My glasses aren't good enough, but okay.

21 Q. Is the forecasted contract amount, is
22 that the budget amount that you said was shared at
23 OAC meetings?

24 A. That is plus some other things. I'm
25 glad you pointed this out. Look at the one, I

1 think it's executed. See the bottom line? I
2 can't read it. I'm sorry. It says 539?

3 Q. Yes.

4 A. See validated by the architect, a
5 million, what is that, 4. There you go. That's
6 the problem. We got a million 4 that the
7 architect has validated and the owner has only
8 signed off on 500. I'm sorry, I can't read that
9 number.

10 Q. I see that. Are those numbers
11 included in the forecasted contract amount?

12 A. They are.

13 Q. At this time at this particular
14 meeting the budget amount for this contract, i.e.,
15 the forecasted contract amount, is \$6,486,751; is
16 that correct?

17 A. I can't see that number. If you say
18 that's what it is.

19 Q. I'm looking. It's really the middle
20 of the page on the left-hand side, forecasted
21 contract amount. Do you see that line item?

22 A. I cannot read it on this page. Yours
23 might be clearer than mine. I don't disagree if
24 you can read it. My eyes aren't good enough to
25 read it.

1 Q. I was going to maybe go across the
2 street and get a magnifying glass.

3 A. That's maybe what I need. Mine is
4 blurry. Is yours sharp?

5 Q. I have it highlighted.

6 MR. WALDEN: His is blurry. It's the
7 copy machine. That's my fault. I'm sorry.

8 MR. FORD: That is terrible. For the
9 record, that's Andrew's fault.

10 BY MR. FORD:

11 Q. So I'm looking at here--

12 A. It's still awful small, but okay.

13 Q. By Exhibit 20.

14 A. Yours is a lot clearer.

15 Q. I'm looking at the forecasted contract
16 amount. It says, if I read, \$6,486,751?

17 A. That's what I read, too. I think
18 maybe if I get further away I can see. Okay.
19 If's what that number is, yes.

20 Q. That's the same thing as the budget
21 amount of the contract, correct?

22 A. At that time, that was what the budget
23 was.

24 Q. That's what you're forecasting to the
25 owner?

1 A. Yes, but we still have all these other
2 outstanding issues without numbers on them, but
3 yes.

4 Q. Those issues are being forecast,
5 correct?

6 A. Not all of them, but some of them,
7 yes. The architect has asked us to go back and
8 modify some of these and do some plus and minus,
9 break some out and add some of them together. But
10 he's got them all. But yes, that's what fits this
11 thing. The validated was -- what is that number?
12 I mean, signed executed is 500. Still
13 outstanding.

14 This is what was cutting Salem's butt
15 right there. We couldn't bill for any of that.
16 What is that number, 1 million -- what is that
17 number?

18 Q. \$1,413,000 and change.

19 A. That's what, 500,000. So we could
20 bill for 500, but we'd done another million 4 in
21 work. That's what was cutting Salem's butt.

22 Q. Understood. You told me earlier that
23 99 percent of all these costs that you're claiming
24 now are collected in the PCOs up to the time of
25 the end of the project, all of that is collected

1 in this change order log and is included in this
2 forecasted contract amount of \$6,486,751, correct?

3 A. I don't think that's correct.

4 Q. Up above there is proposed forecasted
5 changes. What is that line item telling the
6 owner?

7 A. Can you blow that up?

8 MR. FORD: Let's take a break.

9 (A recess was taken.)

10 MR. FORD: Back on the record.

11 BY MR. FORD:

12 Q. Mr. Griffith, we're still looking at
13 Exhibit 20, the last page of it, which is also the
14 last page of the February 25, 2016 change order
15 log; is that correct?

16 A. February 25, '16, that appears to be
17 what's on the front of the document.

18 Q. I was asking you about the forecast
19 contract amount. My first question was, you had
20 referred to having a budget. I was asking you how
21 you tracked the budget to the owners. I think we
22 had established that this forecast contract amount
23 is that reporting of the budget amount of the
24 contract; is that a fair assessment?

25 A. It says forecasted contract amount.

1 Q. Is this TCC's reporting to the owners
2 at the OAC meeting, you know, the budget amount
3 that you referred to before?

4 A. That's right, minus the items that
5 we're still negotiating with the architect.

6 Q. So that's a question. My
7 understanding is that the 6 million 486 includes
8 those items; is that correct?

9 A. It includes the items in category
10 submitted, GBA validated, and executed.

11 Q. So that forecast contract amount
12 includes both the submitted amounts and those
13 amounts that have been submitted and validated.
14 So, in other words, the validated and not yet
15 validated amounts, correct?

16 A. That's correct. There are still some
17 others that are being negotiated that it does not
18 address.

19 Q. Earlier I was asking you about the
20 PCOs, and your testimony I believe was that all of
21 these costs reported in Exhibit 2 were reported,
22 at least 99 percent is what you said, in the PCOs
23 up through the end of the job?

24 A. That is correct.

25 Q. So those PCOs and TCC's value of them

1 plus the original contract amount equals
2 \$6,486,751 at this time, February 25, 2016?

3 A. Except the ones that Shawn said hold
4 to the end that are not included, and all of them
5 are not included in this.

6 Q. Would those be forecasted changes or
7 proposed changes?

8 A. They were proposed changes that Shawn
9 asked us to modify or wait until the end.

10 Q. So there is a line item here for
11 proposed or forecasted changes, correct?

12 A. Submitted. I don't see the one you're
13 talking about.

14 Q. Right above forecasted contract amount
15 there is a proposed/forecasted changes?

16 A. Yes, and it's blank.

17 Q. That's right. So if I'm an owner at
18 an OAC meeting and I get this, I would be
19 justified, would I not, in accepting that TCC's
20 forecast of the contract amount is \$6,486,751 and
21 that there are no other proposed or forecasted
22 changes?

23 MR. EPTING: Objection. Object to the
24 form.

25 THE WITNESS: If you only looked at

1 this page and were not there for the rest of these
2 meeting minutes maybe, but you take this whole
3 thing together, no, you wouldn't.

4 BY MR. FORD:

5 Q. So while TCC is preparing the change
6 order log and reporting on it, the forecasted
7 contract amount in great detail to the owner, it
8 is holding information off to the side, some
9 accounting of dollars that it's not reporting to
10 the owner of the OAC meeting?

11 A. That's correct. Look at the page in
12 front of that one. 7.4, 7.3, start at the top of
13 that page. They're talking about adding a
14 warranty extension letter. Painting of entry, HOA
15 would like cost to paint entry doors. HOA to
16 discuss at next meeting. That's the way it was
17 done. Trident to shoot over updated pricing.
18 Screen for windows. Trade to confirm which units
19 want their windows with screens on them. Trade
20 will start supplying information to arrive by
21 Friday morning.

22 All of those items are items that --
23 that's just the ones on the one page in front of
24 it. So for anybody to say that they're going
25 strictly by that thing I think they would be -- I

1 don't know what the word is.

2 Q. So these items you point out, painting
3 of entry doors and screens for windows, are these
4 proposed or forecasted changes?

5 A. Not yet. Until we get a number from
6 Trey on how many, there's no proposal there. Is
7 it 1? Is it 100?

8 Q. Correct me if I'm wrong, these seem
9 like relatively small dollar items?

10 A. They are. These are -- I just moved
11 up one page is all I did.

12 Q. I don't have to do exact math, but the
13 difference between 6 million 486 and the amount
14 you're claiming in this case, the difference
15 between those two numbers is about \$1.5 million?

16 A. Whatever the math is.

17 Q. That doesn't seem to be supported by
18 the notion that there's still some additional cost
19 items coming on painting of unit entry doors and
20 screens for windows, does it?

21 A. No. Those are minor. You're right,
22 they're minor, but they're dollars. You asked if
23 there's any other dollars that the owners or
24 somebody should see. I moved up a page. There's
25 some good examples. Maybe that's a bad example.

1 They're smaller numbers, but there's other item in
2 there.

3 Q. On this log that you're providing on a
4 regular basis, we've got the running tab of all
5 the PCOs, the forecasted contract amount. But in
6 your opinion it's a reasonable thing to do to hold
7 off to the side and not report to the owners what
8 has come to be a difference of \$1.5 million of
9 additional unreported costs?

10 A. I'm not sure I understand exactly what
11 you're saying there. Can you repeat that.

12 The record was read, as requested.)

13 THE WITNESS: I think this addresses
14 all of the ones that Shawn has recommended and
15 sent us stuff to price and define. The ones that
16 we're still working on that he's requested
17 different forms, different dates, it does not
18 include all those, and he knows what those are as
19 well as we do because he's directed us what to do
20 on them.

21 Q. But Shawn is not the one preparing
22 PCOs; TCC is, correct?

23 A. We are, but he's directing us what to
24 price. He's answering the RFIs.

25 Q. It's February 25, 2016 at this point,

1 and we're, what, a week or two away from
2 substantial completion?

3 A. I believe it was some time in March.

4 Q. So even then what -- is there a \$1.5
5 million of costing incurred between 2/25/16 and
6 3/8/16?

7 A. No. No. That costs was ongoing.

8 Q. On the front page of Exhibit 22 --

9 A. Sorry. I got the wrong one.

10 Q. You got me. This is Exhibit 20.

11 A. No. I'm sorry. Just trying to make
12 sure I got the right.

13 Q. Under schedule number 1 it says: TCC
14 is working on punch list; is that correct?

15 A. That's correct.

16 Q. So TCC is working on the punch list at
17 this time. We're two weeks away from substantial
18 completion. TCC is not incurring \$1.5 million of
19 additional costs between this date and 3/8?

20 A. That's correct.

21 Q. So, and TCC is the one preparing PCOs
22 and submitting them to Shawn for approval,
23 correct?

24 A. That is correct.

25 Q. So at this time Sean's got all of the

1 PCOs addressing the work of the project?

2 A. No, he doesn't.

3 Q. He doesn't?

4 A. He does not. I believe if you look at
5 this, this is 137. I think there was 147.

6 Q. This one in Exhibit 2 is PCO 139?

7 A. So, you're right. There's two more on
8 that list that's not on this list, and I think
9 there was ten more. Again --

10 Q. Wait a minute. Is there more than
11 139?

12 A. Yes. Wait a minute. I'm pretty sure,
13 99 percent sure. I'm just remembering the
14 numbers. Without the latest log I think there's
15 147, but I'd have to look at the latest log.

16 Q. Any later PCO not reported on Exhibit
17 20 would have been for work already performed,
18 correct? It wouldn't relate to punch list work?

19 A. Yes, that's right, or maybe those
20 little ones on three. Oh, I'm sorry, the three
21 little ones on the back -- the page in front of
22 the log.

23 Q. So through this date TCC has incurred
24 I assume substantially more costs than \$6,486,751,
25 yet it hasn't recorded it yet in any PCO?

1 A. No, sir. I think that some of those
2 were reported in PCOs prior to those.

3 Q. Earlier you told me it was 99 percent
4 of the costs reported in these PCOs, right?

5 A. I think they are. I think you go back
6 and look at them you'll find them.

7 Q. If that's true, then the amount of
8 these PCOs recorded in Exhibit 20 plus the
9 original contract amount should be included in
10 that forecasted contract amount of \$6,486,651?

11 A. That's not the way we did it.

12 Q. Here on 225 you're reporting no
13 additional proposed forecasted changes?

14 A. Say that again. Which page?

15 Q. On this date, 2/25/2016, the last page
16 of Exhibit 20, you're not reporting on this
17 document any proposed or forecasted changes over
18 and above what's reported here in this change
19 order log?

20 A. That is correct, proposed forecasted
21 changes is zero or blank. It's blank.

22 Q. In other words, there's no proposed or
23 forecasted changes being reported to the owner on
24 this date in this document?

25 A. Correct.

1 Q. This is the document that reports the
2 budget for the job?

3 A. That's correct. I think there's
4 additional information on this sheet.

5 Q. You think there's additional
6 information on the sheet that supports a \$1.5
7 million delta between this forecasted amount and
8 the final billed amount?

9 A. I think some of it does, yes.

10 Q. Where is that exactly?

11 A. Just look at the next line item down
12 or two line items down, approved days by change
13 orders, 40. You remember you talked about that 40
14 early on? Do you remember talking about the 40 in
15 some of the previous reports?

16 Q. I recall it.

17 A. Days by pending forecasting change
18 orders. What is that number? 222. That's time
19 and money. That's one item right there, 222.
20 That's time and money. You have only approved 40
21 days out of 137 change orders.

22 Q. A couple things. One, we've already
23 established Salem is responsible; therefore, TCC
24 is responsible --

25 A. For some portion.

1 Q. -- for some portion of that cost. And
2 you have not endeavored on this document to define
3 a dollar amount impact to the owner, correct?

4 A. Not on that, but we have worked with
5 the architect to try to determine the dollar
6 amount for that amount.

7 Q. Let me ask you this: Do these PCOs
8 reported in Exhibit 20 include general conditions
9 costs?

10 A. Part of it, yes. Part of it.

11 Q. Some of those are pending, correct?

12 A. That's correct. Some of those are
13 pending.

14 Q. So those costs, your inference is that
15 cost is buried in that 222 number, correct?

16 A. No. I said some costs is buried in
17 that 222 number. I say that 222 number has an
18 impact on there. It says -- again, I'm just
19 reading what you asked me to read: Days by
20 pending forecasted change orders. You are
21 correct.

22 Q. Those are, what, not yet validated
23 change orders?

24 A. Yes.

25 Q. But those change orders, those PCOs

1 are reported in this document in the spreadsheet
2 above?

3 A. Some of them. Not all of them. That
4 is correct.

5 Q. For the ones not reported in this
6 document that have yet to be reported to the owner
7 in this format, Exhibit 20, yet Trident has
8 already incurred that cost?

9 A. Say that again. I don't think that
10 statement is correct. I know that statement is
11 not correct.

12 Q. Some of the dollars associated with
13 the days by pending category you say are reported
14 in the PCOs above, correct?

15 A. That's correct.

16 Q. Does the PCO log, the change order log
17 ever report at any time prior to this 2/25/16 date
18 other costs that you have or claim to incur, claim
19 to have incurred, or is that yet to be reported?

20 A. No. Those rough order of magnitudes,
21 if you go through and compare those, those
22 changed. There were a lot of them that reported
23 different numbers as it changed. Shawn requested
24 changes in the way we submitted them. You
25 mentioned general conditions. He asked us to

1 break that out four different ways, four different
2 times.

3 Q. In Exhibit 2 is there a reporting of
4 the value of the claimed 222 days by pending
5 forecasted change orders?

6 A. That cost is included in 10.

7 Q. Where is it?

8 A. You have to look at the days, the days
9 after the date that the 40 days it was approved
10 for those items.

11 Q. Why wouldn't you just report it as a
12 separate PCO if that's what 222 meant? And if
13 that's where \$1.5 million of additional costs is
14 housed, why can't you just prepare a PCO that says
15 this is general conditions costs?

16 A. Again, we have been trying to do what
17 Shawn and Trey recommended since they started
18 getting in the middle of it. We were doing it the
19 way Shawn recommended it at the time. He wants it
20 broke out this way, broke out this way. We've
21 gone back and redone it. We've got I don't know
22 how many PCOs that are modified based on. And
23 then when Trey got involved we modified them some
24 more and until y'all signed them in February.

25 (Griffith EXH. 21, Email

1 Correspondence, Subject: Concord and
2 Cumberland-Stucco Installers, marked for
3 identification.)

4 BY MR. FORD:

5 Q. Exhibit 21, this is a September 2015
6 email referencing stucco installers. Looks like a
7 problem with North Georgia which was a no show.
8 Do you see that?

9 A. Yes.

10 Q. Was that a cause of delay?

11 A. Yes.

12 Q. Was that a cause of additional general
13 condition costs?

14 A. The delay was a general conditions
15 cost.

16 Q. Was that no show the responsibility of
17 TCC, not the owner?

18 A. Yes, except for the fact that they
19 were there to install stucco and we kept finding
20 problems and they sat there and waited because
21 they couldn't install stucco because we kept
22 finding problems that the architect wanted us to
23 fix before we let them start stucco, and the owner
24 or Shawn didn't want to pay them to be there 'till
25 we fixed those issues.

1 Q. Just as an example, is there any
2 critical path analysis that shows that impact to
3 the schedule?

4 A. I'm sure there is. I don't remember
5 whether that was on the critical path at that time
6 or not.

7 Q. Did the meeting minutes generally
8 report and show a schedule with critical path
9 impact analysis?

10 A. I think most of them had -- we talked
11 about schedule update. I know some of them had
12 schedules on them. This one apparently did not,
13 but schedule was the first item on the topic every
14 week that we talked about.

15 (Griffith EXH. 22, Email
16 Correspondence, Subject: Payment, marked for
17 identification.)

18 BY MR. FORD:

19 Q. Exhibit 22.

20 A. The real 22.

21 Q. This is an email exchange from October
22 2015. The top one, the latest one in the chain is
23 from Gary Moore, and it's describing an issue.
24 Did he have a problem keeping track of his costs
25 on this job?

1 A. He did. You can read from this.
2 Apparently, he had some internal issues.

3 Q. Did that delay or even disable TCC
4 from being able to provide an accounting of its
5 costs on the job?

6 A. It did. They, TCC -- Salem, it got so
7 many PCOs, and they were slow. They were
8 concentrating -- which Gary Moore does. I'm glad
9 he does -- concentrating on getting the work done.
10 He got -- he sent his project manager down to the
11 site to try to help track the cost and track all
12 the changes. And Shawn refused to pay for them,
13 said it wasn't in the contract. I believe it is
14 in the contract. Shawn refused to pay. That's
15 another subject.

16 He brought somebody down to try to
17 track all the RFIs and price all the PCOs. In his
18 home office apparently he had some problems, said
19 my books are so messed up due to the two people
20 who left the company and accurate -- this is the
21 only way I can get you or myself an accurate
22 report.

23 Q. The obligation for proper and timely
24 accounting is that of the contractor, right?

25 A. Correct.

1 Q. The inability of a contractor to
2 report costs to the owner, that could cause some
3 problems, correct?

4 A. That is correct.

5 Q. What are some of the problems it could
6 cause?

7 A. Well, I don't think that was -- his
8 was a problem. I'm the one that was furnishing
9 it. Y'all told me in September that you wanted to
10 do an audit. I said come on. I said come on in
11 September. I said come on in October. I said
12 come on in November. I said come on in December.
13 I said come on in December. I think the end of
14 January y'all sent your auditor down to look at my
15 books. I think one of these others you say I
16 asked for a copy. Trey said I'll get you one in a
17 week. I didn't get it until six months later.
18 Based on what I saw, the auditors didn't have a
19 problem with our books.

20 Q. How can we sitting here today believe
21 that Salem's reporting of costs is reliable if his
22 books were so messed up due to two people who left
23 the company?

24 A. I'm sorry. I'm not doing a good job
25 of explaining it. After the first I believe four

1 payouts, which was all based on the original
2 contract that he had that he billed percent
3 complete which you approved and paid, Trident paid
4 every bill. So it's not his books. It's my
5 books. I wrote every check that was charged to
6 this job. He didn't write a single check.

7 (Griffith EXH. 23, Email
8 Correspondence, Subject: Concord & Cumberland,
9 marked for identification.)

10 BY MR. FORD:

11 Q. Exhibit 23. This is a December 2015
12 email from Mr. Burrell to John David Griffith. It
13 says: At some point we're going to have to do a
14 change order to reconcile between items that have
15 been accounted for and change order and items that
16 have been coded to 6560 line item. What is 6560
17 line item?

18 A. I don't remember. I have to look at
19 this. I believe it was Salem's original contract.
20 I believe it's Salem's contract. What page did
21 you say Salem started on? You told me.

22 Q. Let's see. 105 maybe?

23 A. Yes. Well, it looks like it's not on
24 this report, but I think everything in that
25 category was 6560. That's every invoice for that

1 code.

2 Q. I'm sorry, I missed that. What do you
3 think 6560 is?

4 A. I believe that was the -- we talked
5 about AIA codes. I believe that was an AIA code
6 that was attributed to everything that was in
7 Salem's scope. I don't see that number on here,
8 but I think that was the code that was.

9 Q. The AIA codes are codes used in
10 Exhibit 2?

11 A. Well, I'm in 2. I don't see that code
12 in here. Sorry. I'm in Exhibit 2.

13 Q. Understood. If there were costs
14 attributable to line item 6560 you would expect to
15 see it in Exhibit 2's job cost letter?

16 A. Correct.

17 Q. You believe that's Salem's original
18 scope work?

19 A. I believe it is. I'd have to go back
20 and look at their subcontract. Every time we send
21 a subcontract we give them a different cost code
22 number.

23 Q. Is there any added scope work of
24 Salem?

25 A. Yes.

1 Q. Is there a different cost code for
2 that?

3 A. No. Everything that had to do with
4 that subcontractor, the plumber has one
5 subcontract 15,400, electrician has one code
6 number 16,000, concrete is 3000.

7 Q. We'll ask Mr. Burrell about his email
8 about that.

9 A. He probably remembers what the code
10 numbers are. I don't.

11 (Griffith EXH. 24, Email
12 Correspondence, Subject: C&C, marked for
13 identification.)

14 BY MR. FORD:

15 Q. All right. Exhibit 24 this is an
16 April 2016 email, more communication with Mr.
17 Moore at Salem. This one is with you, and you're
18 forwarding it to Mr. Burrell. He says -- this is
19 Moore to you: We have run into some issues with
20 payroll recording. In short, the people in the
21 Charlotte office who were to download the payroll
22 in time to QuickBooks have done at best a very
23 erratic effort. Do you know what's going on here?

24 A. We asked him, and again this was a
25 suggestion by Trey McCraw which I thought was an

1 excellent one, to break down -- again, it's
2 something extra, but I thought it was a good
3 suggestion -- to break down the costs included in
4 Exhibit 2 into schedule of value codes. And since
5 we coded everything that he did to 6560, if that
6 was the number, it wasn't broken down into stucco,
7 masonry, waterproofing, demolition. But when he
8 couldn't do it we did the same thing Shawn asked
9 us to do.

10 This was one of Shawn's suggestions.
11 You go back to the daily reports and take the
12 number of people working on the number of items
13 and we split it up, but we asked him to do it to
14 help do what Trey asked to do.

15 Q. So this effort that's been reflected,
16 this is -- is this an effort to accumulate your
17 total costs on the job?

18 A. No, sir. It was an effort to do as
19 Trey requested, to code his total labor to
20 schedule of values code numbers. Schedule of
21 values code numbers are not by AIA. They start 1
22 and run sequentially.

23 (Griffith EXH. 25, Email
24 Correspondence, Subject: Concord and Cumberland
25 Additional Manpower Needs, marked for

1 identification.)

2 BY MR. FORD:

3 Q. Now I'm jumping back in time a little
4 bit. My apologies. Exhibit 25. So this original
5 email, February 19, 2016 from Mr. Tomberlin to
6 Gary Moore regarding manpower needs, and then he
7 says in the final email of the string: Your
8 absence on site has definitely impacted your
9 crew's attendance and effectiveness these past two
10 weeks. Now is not the time for our effectiveness
11 to wane. Did I read that correct?

12 A. That's the way I read it.

13 Q. We've looked at some of the issues of
14 Salem before. Is Salem still having manpower
15 delivery problems on this project as late as
16 February 2016?

17 A. No. The problem there is it states:
18 Gary, I think your presence will help your time.
19 Your absence on site has definitely impacted your
20 crew's attendance and affected these past two
21 weeks. Now is not the time for our effectiveness
22 to wane.

23 I think that -- maybe my ego is too
24 much. I think my guys work harder when I'm
25 working around the site. I think Gary's guys

1 probably work harder when he's walking around the
2 site. Andrew there might work harder when you
3 walking around as him being on his own. I don't
4 know that. No ill-intent meant. That's what I
5 believe that's saying: We're trying to get
6 through.

7 You have to understand, Gary didn't
8 pay. When we took over we only paid the guys full
9 time on site. He didn't get a dime. He didn't
10 get 15 percent. He got nothing. I think that's
11 another problem he had with his girls. He was
12 probably slow paying them as well. But he stuck
13 with us 'till the end and let us keep his crew
14 there to finish this job, but we're just
15 suggesting if he's there it might up their
16 get-up-and-go, if you will.

17 Q. Generally speaking, a lack of
18 attendance, a lack of effectiveness by
19 subcontractors would be a cause of delay, correct?

20 A. Yes.

21 Q. Was it a cause of delay in this case?

22 A. I'd have to go back and look and see
23 what they were doing. I think we were doing a
24 bunch of the punch list at that time. But yes, it
25 probably was.

1 MR. FORD: Let me take two minutes off
2 the record.

3 (A recess was taken.)

4 MR. FORD: Back on the record.

5 BY MR. FORD:

6 Q. Exhibit 20, who prepared the meeting
7 minutes? Who prepares the meeting minutes?

8 A. Chris.

9 Q. Does that include the preparation of
10 the change order log?

11 A. Yes.

12 Q. To the best of your recollection, you
13 told me you were at most or at all here in town,
14 but was Chris at all of the OAC meetings?

15 A. I would say he was unless he was on
16 vacation. Every now and then you have a conflict,
17 owners wants to meet at a different time. But I
18 would say 99 percent of the time.

19 Q. Is he also the author of the actual
20 change order forms in this project, not the forms
21 but the subject of the documents?

22 A. The document 2 was done by our
23 accounting department. He did the front, the
24 cover page and compiled it.

25 Q. The job cost ledger is prepared by

1 your accounting department?

2 A. Yes. Again, we have a special
3 accounting program written up for these jobs
4 because so much of them are cost plus.

5 MR. FORD: That's all the questions I
6 have.

7
8 (The deposition was concluded at 6:00
9 p.m.)

10 (The witness, after having been advised
11 of his right to read and sign this transcript,
12 does not waive that right.)
13
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SIGNATURE OF DEPONENT

DEPONENT: JOHN DAVID GRIFFITH
DEPOSITION DATE: November 14, 2018
REPORTER: ROXANNE M. EASTERWOOD, RPR
AWR JOB # 22826
CASE CAPTION: TCC OF CHARLESTON, INC. vs. CONCORD
& CUMBERLAND HPR

(Please return both Signature of Deponent pages)

I, the undersigned, JOHN DAVID GRIFFITH, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: November 14, 2018
REPORTER: ROXANNE M. EASTERWOOD, RPR
CASE CAPTION: TCC OF CHARLESTON, INC. Vs. CONCORD
& CUMBERLAND HPR

PAGE	LINE	CHANGE	REASON

JOHN DAVID GRIFFITH

DATE

I, Roxanne M. Easterwood, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Roxanne Easterwood

Roxanne M. Easterwood, RPR
My Commission expires
February 3, 2025

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, pages 1 through 269, is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of November 2018 at Charleston, Charleston County, South Carolina.



Roxanne Easterwood

Roxanne M. Easterwood, RPR
My Commission expires
February 3, 2025

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iii. Additional \$29,000

Lastly, Trident asks an additional \$29,000 because Trident was asked to assist with the leaking in the stone tower after the project was complete. Trey McCraw asked Trident to set it up on a time and material basis, which it did. Trey McCraw was in charge of the work, ABS was the testing service, First Plastering repaired the problem (in the tower façade and not related to Trident). It went on for four months. Trident sent two PCOs to Trey McCraw as owner's representative; he paid neither (and Mr. Mellin said this was not part of this contract). The actual cost of the work is \$32,540.10. It has not been paid, as Trey McCraw realized that would require admitting that he had hired Trident on a time and material basis.

iv. Interest, Insurance Premiums, Costs, and Fees

These will be part of a post-trial brief submitted based on the Panel's ruling.

CONCLUSION

"Mr. Trey, TCC proceed[ed] under the agreement that TCC would be compensated for the work that TCC did to repair the deficiencies to this building."

- John David Griffith, Exh. 94.

Trident did what was required of it and agreed-to in order to fix the building. The owner agreed to compensate Trident for its costs but reneged on that agreement, retaining the money and the benefit of a fixed building. As a matter of contract, equity, and good conscience, this Panel cannot allow that to stand. Trident is owed its costs and must be paid.

[signature on following page]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-10-2955

TCC OF CHARLESTON, INC.

Plaintiff,

vs.

CONCORD AND CUMERLAND, LLC.,
CONCORD & CUMBERLAND HPR, LEO
HALL, DIANE HALL, BEA H. SMITH,
MARGARET C. POPE, WILLIAM D.
FOSTER, JR., GENE G. FOSTER,
MATTISON J. MACGILLIVRAY, TERESA
MACGILLIVRAY, PAMELA L. VAUGHN,
NELIA A. PATRICIO, Trustee of the Nelia
A. Patricio Revocable Trust Agreement,
STUART D. REEVES, EDWARD T.
STROM, BARBARA K. HENDERSON,
JAMES R. CLARKE, PAUL A. BRIM,
ROBERT K. SEIDL, JENNIFER M. SEIDL,
ROBERT KENNETH SEIDL, II, M. BERT
STOREY, THOMAS R. MATHER,
EDWARD T. STROM, 304 CONCORD &
CUMBERLAND, LLC, MARION M.
SIMPSON F/K/A MARION MOORE
MCDONALD SIMPSON, KATHY
GARDNER, GREGORY J. GARDNER,
FREEMAN WATERFRONT PROPERTIES,
LLC, JO-ANN COOPER, BETTY Y.
SEGAL, ROBERT M. LEVIN AND
BONITA K. LEVIN, DONALD D.
LEONARD, BETTY L. BEATTY,
MATTELLEN, LLC, AND THOMAS R.
DEBNAM, Trustee of the Trust Agreement of
Thomas R. Debnam,

Defendants.

**CONCORD & CUMBERLAND
HPR'S MOTION TO
RECONSIDER, ALTER OR
AMEND THE COURT'S ORDER
ON MOTON TO LIFT STAY AND
MOTIONS TO VACATE OR
CORRECT ARBITRATION
AWARD**

INTRODUCTION

Pursuant to Rules 52(b), 59(e), and 60 of the South Carolina Rules of Civil Procedure, Concord & Cumberland HPR¹ (“HPR”) hereby moves the Court to reconsider, alter or amend its Order granting the Motion to Lift Stay and denying the Motion to Vacate or Correct the Corrected Arbitration Award entered January 30, 2020 (the “Order”).²

LEGAL STANDARD

A Rule 59(e) motion allows parties to request the alteration or amendment of a judgment as well as provides a “vehicle to seek ‘reconsideration’ of issues and arguments.” Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); see, e.g., Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992) (finding the “purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits”) (internal quotations omitted). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam, 361 S.C. at 24, 602 S.E.2d at 780 (emphasis in original).

ISSUES

In summary, the Order should be reconsidered and amended for the following reasons:

¹ The undersigned represents Concord & Cumberland HPR, only, in the present matter regarding the arbitration. The arbitration was only between Plaintiff and the HPR. Concord and Cumberland, LLC is listed as a party to the Order and is represented by Cordes Ford, Esq. We respectfully request that reference be corrected, as Concord and Cumberland, LLC was not a party to the arbitration.

² Following the hearing of the motions on December 16, 2019, the parties submitted Proposed Orders at the Court’s request on December 23, 2019. See Exhibits A and B.

1. The Court's Order is improperly based on new findings of fact. On page 8, the Court states: "The Court finds no error or manifest disregard of the law in the panel's finding, *especially in light of a contemporaneous email from HPR's agent confirming the agreement.*" (Emphasis added). The Panel made no such finding regarding any "contemporaneous email," and the Court has no legal basis to make the finding in its Order. Indeed, the Panel found no contemporaneous evidence, nor – as was expressly and wrongly argued by TCC at the hearing of the motion – subsequent evidence, to contradict TCC's promised release and waiver of liens and claims found in the express, written terms of the Conditional Release and Waiver of Liens accompanying Pay Application 17 (the "Release").

2. Second, also on Page 8 of the Order, the Court found "no error or manifest disregard of the law in the panel's finding *that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.*" (Emphasis added.) As with the example above, the Panel made no such finding describing such agreement, and the Court has no legal basis to include such a finding in its Order.

3. The Court did not rule on or address at all the HPR's argument based on the Panel's actual finding issued in its October 23, 2019 Order on HPR Motion for Change of Corrected Arbitration Award, which is attached as Exhibit J to the HPR's December 11, 2019 Memorandum of Law. In that Order, the Panel, contrary to the Court's new findings above, stated that it was, in order to avoid enforcement of the Release, relying upon an agreement and certain actions of the HPR that occurred "prior to" the issuance of the Release.

4. The Court did not rule on or address the Release document itself. In short, the Panel made no finding that the Release was in any way ambiguous, and the Panel acknowledges

that the Release was last in time. Thus, if the Court maintains its denial of the Motion to Vacate, it must do so having determined and held, consistent with the Panel's factual findings, that the Release was an unambiguous contract, executed by TCC under oath, which was last in time as compared to any other agreement or action that the Panel found the HPR to have undertaken and upon which the Panel based its disregard of the Release. Based on the sequence of events as found by the Panel, the Court, in order to deny the HPR's Motion to Vacate, would have to conclude that the Panel did not manifestly disregard black letter contract law. Of course, the HPR posits that the law demands otherwise, as set forth in its prior Motion to Vacate, in its Memorandum of Law, and in its proposed Order submitted December 23, 2019.

5. While the Court agrees with both parties that manifest disregard of the law is grounds for vacatur in South Carolina, the Court did not consider the circumstances that meet the manifest disregard standard. As the standard exists, there must be circumstances to meet it. In the case of Patten v. Signator Ins. Agency, Inc., 441 F.3d 230, 235 (4th Cir. 2006), the Fourth Circuit Court of Appeals held that "an arbitrator has acted in manifest disregard of the law if he 'disregard[s] or modif[ies] unambiguous contract provisions,'" id. (quoting Mo. River Serv., Inc. v. Omaha Tribe of Neb., 267 F.3d 848, 855 (8th Cir. 2001)), and having found that an arbitrator had done so, reversed the District Court's denial of a motion to vacate, and remanded the matter for further proceedings. Id. at 237. The Court's Order does not consider or rule upon whether the manifest disregard standard is met by an arbitration panel's disregard of unambiguous contract provisions, and the HPR requests that the Court do so.

BACKGROUND

The relevant timeline, as explained in the Panel's findings in its August 19, 2019 Corrected Arbitration Award and in its subsequent, October 23, 2019 Order on HPR Motion for Change of Corrected Arbitration Award, is as follows:

1. At some unspecified point in time "prior to" the seventeenth pay application, and between unspecified representatives, Plaintiff and HPR "agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." Order on HPR Motion for Change of Corrected Arbitration Award at 1; compare with this Court's Order at page 8, discussed supra. Additionally, "prior to" the seventeenth pay application, "some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens" that TCC had executed. Id.

2. TCC issued a seventeenth pay application in February 2016. This pay application included the written, sworn to, signed, and notarized Release, which stated that TCC "release[s] and waive[s] all claims and liens existing . . . against Concord & Cumberland HPR . . . on account of, or in anyway resulting from, or in connection with construction located at 175 Concord St., Charleston, SC."

3. TCC then issued a final, eighteenth pay application in March 2016 claiming ALL of its alleged project costs, without regard to the guaranteed maximum price contract ("GMP"), and with a newly proposed change order ("Change Order 10") including costs incurred PRIOR to the execution and date of the fully executed, sworn to Release.

Given this sequence of events, as adopted by the Panel, HPR believes the Court has misunderstood or failed to fully consider the arguments and issues presented in its Motion to

Vacate or Correct the “Corrected Arbitration Award” (“Motion to Vacate”) and seeks reconsideration of the same.

ARGUMENT

First, the Panel acknowledged directly and indirectly multiple previous mistakes in its written decisions leading to its August 19, 2019 Corrected Arbitration Award. For instance:

- The Panel did not initially issue a “Reasoned Award” in its original Award, as requested and bargained for by the parties;
- When challenged, the Panel stated that its Award was based on the HPR’s failure to pay Payment Application 17, which was, in fact, fully paid and never at issue;
- Upon admitting their mistake, the Panel changed their reasoning, and added a previously unawarded PCO (PCO 146) to continue to support a figure close to the original award;
- The Panel issued a “corrected” award and found that the HPR waived their rights to assert the Release as a bar to portions of TCC’s claims due to an agreement and payments of PCOs that occurred prior to execution of the Release, but refused to explain its reasoning as to how such a result comported with applicable contract law and the unambiguous language of the last-in-time Release.

With these errors and unexplained conclusions as a backdrop, the HPR pursued vacatur and requests that this Court reconsider its Order based on the following three reasons: (1) the Court improperly makes and relies upon new, unsupported findings of fact; (2) the Court did not consider, or misunderstood and contradicts, certain Panel findings; and (3) the Court erroneously concludes that the Release was, at most, only misconstrued or misapplied.

A. The Order Inappropriately Makes and Relies upon New Unsupported Findings of Fact.

In its Motion to Vacate and Memorandum in Support, HPR argued that the Corrected Arbitration Award should be vacated because the arbitrators manifestly disregarded the law in declining to enforce the Release. In response to this argument, the Court’s Order found “no error or manifest disregard of the law in the panel’s finding, *especially in light of a contemporaneous email from HPR’s agent confirming the agreement.*” Order at 8 (emphasis added). However, there is no indication that the Panel considered, interpreted, or made any finding of fact or conclusion of law regarding such an email in its Corrected Arbitration Award. The Corrected Arbitration Award only states, “Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.” Corrected Arbitration Award at 4. At most, the Panel stated that there was an “agreement to agree” at the end of the project—nothing more – and never refers to an email.

Further, not only did the Panel fail to find that a contemporaneous agreement existed, but TCC’s counsel did not argue that one existed at the vacatur hearing, despite what is stated in TCC’s Proposed Order. TCC’s counsel actually argued that there was a “subsequent” agreement to the lien waiver, which indeed has no basis in fact, and was set forth out of the necessity to counter the HPR’s legal argument. See Concord and Cumberland HPR’s Memorandum of Law, dated December 11, 2019, pp. 7-10 (providing the well-settled law on (1) the unenforceability of agreements to agree, (2) the enforceability of lien waivers, (3) the law of contract formation, (4) the inability of prior understandings to govern over subsequent written agreements, and (5) the appropriate legal standard for vacating an award based on South Carolina’s, and the Fourth

Circuit's, "manifest disregard of the law" standard, which is notably different than "serious error.")

However, although not presented to the Court or acknowledged by the Panel, the Court issued a finding that there was a "contemporaneous" agreement. This finding of fact, as well as TCC's representation to the Court of a "subsequent" agreement, is unsupported by the record and facts of this case. And, although unsupported, clearly, through the plain language of the Order, the Court considered and adopted this argument. For the Court to do so was in error.

The Order itself concedes the same, explaining "[i]t is not the prerogative of this Court to substitute its own judgment for that of the arbitrators who presided over the arbitration proceeding." Order at 10. By making an unsupported finding of a "contemporaneous" agreement, through an email not addressed by the Panel, the Court has done more than review the Panel's findings; it has crafted its own findings of fact. For this reason, the Order should be reconsidered and conclusions drawn based only on the Corrected Arbitration Award and, importantly, the supplemental Order on HPR Motion for Change of Corrected Arbitration Award, not extraneous evidence or unsupported arguments of TCC.

B. The Order Fails to Consider or Misunderstood and Contradicts Certain Panel Findings.

Additionally, the Order fails to consider or misunderstood the Panel's finding in its Order on HPR Motion for Change of Corrected Arbitration Award, which clarified the Panel's Corrected Arbitration Award. In that Order, the Panel wrote:

HPR erroneously interprets and concludes that the Panel's Corrected Award found that "some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens" of Payment Application No. 17. **That is not what this panel found.**

Rather, this Panel found from the evidence presented that **prior to the submission of Payment Application No. 17** “TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.” This panel also found evidence that **prior to Payment Application No. 17** “some of the PCOs and TCC’s claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens” that had been executed by TCC.

Order on HPR Motion for Change of Corrected Arbitration Award at 1 (emphasis added).

Therefore, the Panel found that any agreement between TCC and HPR that could have somehow indicated that HPR waived, or was not enforcing, the Release *precedes, not succeeds*, Pay Application 17 and the accompanying Release. Clearly, even if there was an agreement to agree that HPR would pay additional costs, such agreement would be superseded by the explicit terms of the later Release.

Nevertheless, it appears the Court’s Order fails to consider or misunderstands this proposition. The Order states, “[t]he Court finds no error or manifest disregard of the law in the panel’s finding *that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.*” Order at 8 (emphasis added). As discussed above, the Panel did not make such a finding, and the Court is without basis to do so here. Rather, this language arises in the proposed order submitted by TCC, and, at best, reflects TCC’s desire for what the Panel might have concluded. But even if the Panel had made such a finding, the Court’s conclusion would omit the final step of the timeline. As the Panel’s Order on HPR Motion for Change of Corrected Arbitration Award clarifies, after this agreement, an enforceable Release was executed, which would then subsume and resolve the earlier agreement. Simply put, per the Panel’s own findings and the facts of this case, there was no agreement post-dating the Release. Therefore, it was a manifest

disregard of the law to completely disregard the Release, an enforceable contract, and the Order should be reconsidered.

C. The Order Errs in Concluding that the Conditional Release and Lien Waiver Was Only Misconstrued or Misapplied.

Similarly, the Order errs in concluding that the lien waiver was only potentially misconstrued or misapplied, prohibiting overturning the Panel's decision. Order at 5. Rather, the Release was ignored and manifestly disregarded, resulting in the Panel refusing to apply the clearly defined, indisputable legal principle that a binding contract must be enforced. See Concord and Cumberland HPR's Memorandum of Law, dated December 11, 2019. There has been no dispute that the Release is not an enforceable contract, only that contemporaneous or subsequent actions estop its enforcement. As explained above, and as stated by the Panel, the actions, to the extent they occurred, were prior to, not subsequent to, or even contemporaneous to, execution of the Release. As the only basis provided for not enforcing the Release is manifestly contrary to the law, the Release must be enforced. Accordingly, the Court's Order should be reconsidered and amended to reflect the same.

CONCLUSION

For the reasons stated above, the HPR respectfully requests that the Court reconsider, alter or amend its Order granting the Motion to Lift Stay and denying the Motion to Vacate or Correct the Corrected Arbitration Award and order a rehearing of the matter to remedy the manifest disregard of the law. Alternatively, the HPR requests that the Court alter or amend its Order granting the Motion to Lift Stay and denying the Motion to Vacate or Correct the Corrected Arbitration Award and order that the Award be modified by enforcement of the Conditional Release and Waiver of Lien dated February 8, 2016.

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

s/ F. Cordes Ford IV

F. Cordes Ford IV (S.C. Bar No. 71644)
R. Andrew Walden (S.C. Bar No. 101004)
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February 10, 2020

Charleston, SC

Attorneys for Defendant

Alderman, Jade

From: Ford, Cordes
Sent: Monday, December 23, 2019 11:48 AM
To: Jefferson, Deadra L. Secretary (Chanda C. Sheppard)
Cc: Jaan Rannik; Andrew K. Epting; Jefferson, Deadra L. Law Clerk (Jacqueline Venezia); Walden, Andrew; jdaigle@ycrlaw.com; Ford, Cordes
Subject: RE: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955
Attachments: PROPOSED Order Vacating Arbitration Award (2).DOCX

Dear Ms. Sheppard:

As requested by Judge Jefferson, please find attached Concord & Cumberland HPR's Proposed Order in the above referenced matter. Also, per Judge Jefferson's instructions, we are not filing this document. Counsel for TCC of Charleston, Inc. and Ms. Beatty are copied on this email. Should you need anything further, please let us know.

Have a wonderful holiday and

Best regards –

Cordes Ford

Partner
Womble Bond Dickinson (US) LLP

d: 843-720-4631
m: 843-425-7270
e: Cordes.Ford@wbd-us.com

5 Exchange Street
PO Box 999 (29402)
Charleston, SC 29401



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From: Jefferson, Deadra L. Secretary (Chanda C. Sheppard) <DJeffersonSC@sccourts.org>
Sent: Tuesday, December 17, 2019 12:26 PM
To: Walden, Andrew <Andrew.Walden@wbd-us.com>; Jefferson, Deadra L. Law Clerk (Jacqueline Venezia) <DJeffersonLC@sccourts.org>
Cc: Jaan Rannik <jgr@epting-law.com>; Andy Keetch <akeetch@canteyhanger.com>; Ford, Cordes <Cordes.Ford@wbd-us.com>
Subject: RE: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955

Monday, December 23 by 12:00pm will be fine. Thank you and have a great weekend.

From: Walden, Andrew [<mailto:Andrew.Walden@wbd-us.com>]

Sent: Tuesday, December 17, 2019 12:14 PM

To: Jefferson, Deadra L. Secretary (Chanda C. Sheppard) <DJeffersonSC@sccourts.org>; Jefferson, Deadra L. Law Clerk (Jacqueline Venezia) <DJeffersonLC@sccourts.org>

Cc: Jaan Rannik <jgr@epling-law.com>; Andy Keetch <akeetch@canteyhanger.com>; Ford, Cordes <Cordes.Ford@wbd-us.com>

Subject: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Ms. Sheppard and Ms. Venezia:

At the hearing yesterday, Judge Jefferson requested proposed orders in 5 days. Because 5 calendar days would be Saturday and 5 business days would be Monday, we are operating as if Judge Jefferson would like the proposed orders on Monday, December 23, 2019. We would greatly appreciate you either confirming our understanding or correcting us, if wrong.

Thank you!

Andrew

R. Andrew Walden

Associate

Womble Bond Dickinson (US) LLP

d: 843-720-4634

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) FOR THE NINTH JUDICIAL CIRCUIT  
) CASE NO. 2016-CP-10-2955

TCC OF CHARLESTON, INC. )

Plaintiff, )

vs. )

CONCORD AND CUMERLAND, LLC., )  
CONCORD & CUMBERLAND HPR, LEO )  
HALL, DIANE HALL, BEA H. SMITH, )  
MARGARET C. POPE, WILLIAM D. )  
FOSTER, JR., GENE G. FOSTER, )  
MATTISON J. MACGILLIVRAY, )  
TERESA MACGILLIVRAY, PAMELA L. )  
VAUGHN, NELIA A. PATRICIO, Trustee )  
of the Nelia A. Patricio Revocable Trust )  
Agreement, STUART D. REEVES, )  
EDWARD T. STROM, BARBARA K. )  
HENDERSON, JAMES R. CLARKE, )  
PAUL A. BRIM, ROBERT K. SEIDL, )  
JENNIFER M. SEIDL, ROBERT )  
KENNETH SEIDL, II, M. BERT STOREY, )  
THOMAS R. MATHER, EDWARD T. )  
STROM, 304 CONCORD & )  
CUMBERLAND, LLC, MARION M. )  
SIMPSON F/K/A MARION MOORE )  
MCDONALD SIMPSON, KATHY )  
GARDNER, GREGORY J. GARDNER, )  
FREEMAN WATERFRONT )  
PROPERTIES, LLC, JO-ANN COOPER, )  
BETTY Y. SEGAL, ROBERT M. LEVIN )  
AND BONITA K. LEVIN, DONALD D. )  
LEONARD, BETTY L. BEATTY, )  
MATTELLEN, LLC, AND THOMAS R. )  
DEBNAM, Trustee of the Trust Agreement )  
of Thomas R. Debnam, )

Defendants. )

**ORDER VACATING ARBITRATION  
AWARD AND REMANDING FOR  
FURTHER ACTION**

THIS MATTER comes before the Court on a Motion to Vacate the Corrected Arbitration Award or, Alternatively, to Modify or Correct the Corrected Arbitration Award. The Motion was

filed by counsel for Concord & Cumberland HPR, and a hearing was held on December 16, 2019. Present for the hearing were counsel for Plaintiff TCC of Charleston, Inc. (“TCC”), counsel for Concord & Cumberland HPR (“HPR”), and counsel for unit owner and individual defendant Betty Beatty.

### **BACKGROUND**

This is a construction contract payment dispute arising from a repair project at condominiums located at 175 Concord Street in Charleston, South Carolina (the “Project”). The HPR was the Project owner. TCC was the Project’s general contractor. The dispute centers on TCC’s final pay application, Pay Application 18, and TCC’s resulting claim for \$2,385,503.57. The parties do not dispute payment in full of the first seventeen pay applications. The dispute was referred to arbitration by agreement. After hearing, issuance of an initial Award, and exchange and consideration of subsequent motions, the Arbitration Panel (the “Panel”) issued a Corrected Arbitration Award granting TCC \$2,016,066.73, plus interest and costs.

The HPR now seeks relief from this award and asks the Court to vacate pursuant to S.C. Code Ann. § 15-48-130. The HPR asserts that the Panel exceeded its authority by manifestly disregarding the law, as it failed to enforce an unambiguous, sworn-to, last in time, Conditional Release and Waiver of Lien (“Lien Waiver”) that TCC executed and delivered to the HPR in exchange for the HPR’s payment of Pay Application 17. Further, the HPR asserts that the Panel improperly awarded costs related to a Stone Tower investigation, as that particular matter was not part of the Project, nor part of TCC’s claim submitted to the Panel. Alternatively, the HPR asks this Court to modify or correct the award pursuant to S.C. Code Ann. § 15-48-140 for the same reasons.

After full consideration of the filings and arguments of counsel, and substantive United States Supreme Court, Fourth Circuit, and South Carolina case law on this issue, this Court grants the HPR relief and remands this case back to the Panel to recalculate the arbitration award by giving the Lien Waiver its lawful effect.

### **FINDINGS OF FACT**

Based upon the Court file, exhibits and arguments of counsel, I make the following findings of fact:

1. TCC commenced this action by filing a lawsuit in Charleston County against the HPR on June 6, 2016. TCC amended the Complaint on June 10, 2016 to add the individual condominium unit owners as captioned herein. Contemporaneously with filing the initial Complaint on June 6, 2016, TCC filed a Motion to Stay and Compel Arbitration. The HPR consented to Arbitration in a Consent Order filed with this Court on December 30, 2016, and the arbitration proceeded on the claims between TCC and the HPR.

2. The Parties entered into an Arbitration Agreement on January 18, 2017, and the Panel agreed to issue a “Reasoned Award” as stated in Panel Order No. 1.

3. The arbitration hearing was held January 21 – 24, 2019, and the Panel issued its initial Award on April 16, 2019. After the exchange of post-hearing motions and the Panel’s issuance of a Post Award Order, the HPR submitted a Motion to Change Award to the Panel on July 15, 2019. To preserve its right to judicial review, the HPR also filed an initial Motion to Vacate with this Court. Subsequently, the Panel issued a Corrected Arbitration Award on August 19, 2019. The HPR then submitted a Motion to Change the Corrected Arbitration Award, asserting the Panel’s manifest disregard of well-settled contract law, which resulted in the Panel’s October 23, 2019 “Order on HPR Motion for Change of Corrected Arbitration Award.” This Order is last

in time and was the Panel's last word on the matter. The HPR then filed the present Motion to Vacate Corrected Arbitration Award on November 18, 2019 and its Memorandum of Law in support on December 11, 2019.

Lien Waiver

4. In the HPR's last Motion to Change, it argued that the Panel made an evident mistake by finding that the Lien Waiver was unenforceable due to subsequent agreements on some PCOs (proposed change orders) and claims for additional costs.

5. In response, the Panel clarified its findings of fact by emphasizing that the agreement and actions it was relying on in its award were prior to, not after, TCC's execution of the Lien Waiver, dated February 8, 2016. Specifically, the Panel wrote in its last Order:

HPR erroneously interprets and concludes that the Panel's Corrected Award found that "some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens" of Payment Application No. 17. **That is not what this panel found.**

Rather, this Panel found from the evidence presented that **prior to the submission of Payment Application No. 17** "TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." This panel also found evidence that **prior to Payment Application No. 17** "some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens" that had been executed by TCC.

(Emphasis added.)

6. This Lien Waiver that accompanied Pay Application 17 was sworn to and signed by TCC's project manager, Chris Burrell, on February 8, 2016. It is undisputed that the HPR paid Pay Application 17 in full in exchange for the accompanying Lien Waiver.

7. The Record contains no finding by the Panel that the Lien Waiver was ambiguous, and TCC has made no argument to that effect. By its plain language, the Lien Waiver "release[d]



and waive[d] all claims and liens existing as of February 8, 2016, . . . on account of, or in anyway resulting from, or in connection with construction located at 175 Concord Street . . . .” The instrument is reproduced here in full:

STATE OF SOUTH CAROLINA    )  
COUNTY OF CHARLESTON        )

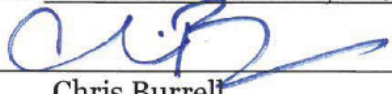
**CONDITIONAL RELEASE AND  
WAIVER OF LIEN**

The undersigned TCC of Charleston, Inc., in consideration of receipt of payment in the amount of \$648,542.79, for materials, labor and services rendered and supplied as of February 8, 2016, and does hereby release and waive all claims and liens existing as of February 8, 2016, against Concord & Cumberland HPR C/O McAlister Preferred Properties on account of, or in anyway resulting from, or in connection with construction located at 175 Concord St, Charleston, SC in the County of Charleston, State of South Carolina.

The undersigned further agrees to hold harmless, reimburse and fully indemnify Owner and its successors and assigns any losses and/or expenses should any claim or right to a lien be asserted on account of labor, services, materials, fixtures or apparatus heretofore furnished by or at the request of or under contract with the undersigned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Charleston, South Carolina, this 8th day of February, 2016.

Co. Name: Trident Construction, LLC

By:  (L.S.)

Chris Burrell

Title: Project Manager

SWORN to and subscribed before me this 8th day of February, 2016.



Notary Public of South Carolina

My Commission expires: MY COMMISSION EXPIRES  
MAY 30, 2016



8. Although TCC's counsel argued at the vacatur hearing that there was a "subsequent" agreement to the Lien Waiver, I find no evidence of a "subsequent" agreement in the findings of the Panel or in the Record. As cited above, the Panel made clear that any such agreement was prior to the Lien Waiver.

9. Thus, without disturbing the factual findings of the Panel, indeed, based on its findings, I find the Lien Waiver was an unambiguous, last in time, enforceable contract between TCC and the HPR.

10. As such, I find that any costs incurred by TCC in connection with the Project through February 8, 2016, but which TCC submitted to the HPR for payment in Pay Application 18, are improper, as such submission runs contrary to the unambiguous language of the Lien Waiver given by TCC to the HPR.

11. I find that the failure to enforce the unambiguous, sworn to Lien Waiver is a manifest disregard of the law, as discussed more fully below, and is sufficient grounds for vacatur.

#### Scope of Dispute

12. The Arbitration Agreement specifies the "scope of arbitration will be governed by § 15.4.1 of the AIA Document A201-2007, General Conditions of the Contract entered into between the parties and S.C. Code § 15-48-110."

13. Section 15.4.1 of the AIA A201-2007, General Conditions specifies that "any Claim subject to, but not resolved by, mediation shall be subject to arbitration . . ."

14. Section 15.3.1, regarding mediation, states that the claims subject to mediation are "[c]laims, disputes, or other matters in controversy arising out of or related to the Contract . . ."

15. I find that the scope of the claims properly before the Panel are only those claims associated with the Contract on this Project.

16. I find that the Stone Tower costs, by TCC's own admission, are not related to this Project. TCC stated in its submission to the Panel that "Trident asks an additional \$29,000 because Trident was asked to assist with the leaking in the stone tower after the project was complete." (Emphasis added.)

17. As such, I find that the Panel exceeded their powers in issuing an award based, in part, on matters that did not arise from the Contract and Project at issue, but which arose later, apparently from some later, different agreement, if any, and which was not submitted to this Court in TCC's Amended Complaint nor referred by this Court to Arbitration.

### **CONCLUSIONS OF LAW**

This case has a lengthy procedural history, but this Court's decision is discreet, simple and bound by law. "[A]n arbitrator has acted in manifest disregard of the law if he 'disregard[s] or modif[ies] unambiguous contract provisions.'" Patten v. Signator Ins. Agency, Inc., 441 F.3d 230, 235 (4th Cir. 2006) (quoting Mo. River Serv., Inc. v. Omaha Tribe of Neb., 267 F.3d 848, 855 (8th Cir. 2001)). This Court's decision, although not made without pause and due deference to the arbitration process, is driven by the following rationale – if disregard for an unambiguous, sworn-to, last-in-time contract is not a manifest disregard of the law, then what is? See id. ("[A]lthough the authority of an arbitrator is broad, and subject to great deference under the applicable standard of review, 'it is not unlimited.'")

#### **Manifest Disregard of the Law**

The Supreme Court of the United States recognizes that courts can vacate arbitration awards when arbitrators have demonstrated a "manifest disregard of the law." See First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 942, 115 S. Ct. 1920, 1923 (1995) (citing Wilko v. Swan, 346 U.S. 427, 436-37, 74 S. Ct. 182, 187-88 (1953) (overruled on other grounds), which held that

parties are not bound when the arbitrator's decision is in "manifest disregard" of the law). While an arbitrator's "serious error" is not enough for a court to vacate an arbitration award, Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 671, 130 S. Ct. 1758, 1767 (2010); Group III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 151, 819 S.E.2d 781, 786 (Ct. App. 2018), it is when the arbitrator goes beyond serious error and makes an award based upon his "own brand of industrial justice" (or "his own personal notions of right and wrong") that the decision becomes unenforceable. Stolt-Nielsen at 671, 130 S. Ct. at 1767; Group III Mgmt. at 152, 819 S.E.2d at 786. When this scenario unfolds, a court must vacate the arbitration award because the arbitrator has exceeded his powers. Id. at 672, 130 S. Ct. at 1767 ("[A]n arbitration decision may be vacated . . . on the ground that the arbitrator 'exceeded [his] powers,' for the task of an arbitrator is to interpret and enforce a contract.").

South Carolina law reflects the understanding of vacatur embraced by the Supreme Court and Fourth Circuit: an arbitration award must be vacated where "arbitrators exceeded their powers." S.C. Code Ann. § 15-48-130(a)(3). A court may vacate an award "when the arbitrator exceeds his or her powers and/or manifestly disregards or pervasively misconstrues the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009). "An arbitrator's 'manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." Gissel at 241, 676 S.E.2d at 323-24 (citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). Notably, "the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." Id. (citing Trident Tech. Coll. v. Lucas & Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985)).

A two-part test governs a court's decision to vacate for manifest disregard: "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the

arbitrator[] refused to heed that legal principle.” Wachovia Secs., L.L.C. v. Brand, 671 F.3d 472, 483 (4th Cir. 2012) (quoting Long John Silver’s Rests., Inc. v. Cole, 514 F.3d 345, 349 (4th Cir. 2008)).

### Law of Contracts

Here, the applicable legal principle – contract law – is clearly defined and not subject to reasonable debate. In order to create a contract “there must be an agreement between two or more parties. There must be an offer, there must be an acceptance, and there must be a meeting of the minds of the parties involved.” Hughes v. Edwards, 265 S.C. 529, 536, 220 S.E.2d 231, 234 (1975) (citing Masonic Temple v. Ebert, 199 S.C. 5, 18 S.E.2d 584 (1942); Lee v. Travelers' Ins. Co., 173 S.C. 185, 175 S.E. 429 (1934)). The Lien Waiver at issue was an offer to pay money in exchange for a release of all claims for costs arising from construction through February 8, 2016. TCC’s execution of the lien waiver, followed by the HPR’s payment in full, constitutes mutual acceptance and a meeting of the minds. In sum, when the HPR paid the amount of \$648,542.79 as consideration for the Lien Waiver, all three elements existed and a fully enforceable contract was created. There is no other way to interpret those facts, and part one of the legal test is satisfied.

Further, part two is also satisfied, as the Panel failed to heed basic contract law. First, allowing a prior oral agreement to supersede a later sworn-to written agreement, such as the Lien Waiver, requires the manifest disregard of close to 150 years of well-defined, explicit, and clearly applicable black letter law. See e.g., The Delaware, 81 U.S. 579, 606, 20 L. Ed. 779 (1871) (“Written instruments cannot be contradicted or varied by evidence of oral conversations between the parties which took place before or at the time the written instrument was executed.”)

Second, an agreement to agree in its own right is unenforceable in South Carolina and certainly could not be the basis for refusing to enforce the Lien Waiver. “[I]n general, ‘agreements

to agree do not amount to a contract.” Trident Constr. Co., Inc. v. Austin Co., 272 F. Supp. 2d 566, 575 (D.S.C. 2003) (quoting Blayton Enter., Inc. v. Burger King Corp., 680 F. Supp. 253, 660 n. 20 (D.S.C. 1988)); 30 S. C. Jur. Contracts § 1 (2004); see also Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (“South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.”); Hughes at 536, 220 S.E.2d at 234 (citing Ins. Co. of N. Am. v. United States, 159 F.2d 699 (4th Cir. 1947)) (“There can be no contract so long as, in the contemplation of the parties thereto, something remains to be done to establish contract relations.”). Here, the Panel stated that “TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.” In other words, the Panel found an agreement prior to the Lien Waiver to take actions on PCOs and claims in the future, but the Panel described no “definite price” for the same nor any “method for ascertaining it.” See Trident Constr. Co., Inc. at 576; see also Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 568, 577, 762 S.E. 2d 696, 700 (2014) (citing Aperm of S.C. v. Roof, 290 S.C. 442, 447, 351 S.E. 2d 171, 173 (Ct. App. 1986)) (stating that, for a contract to be binding, material terms cannot be left for future agreement). That is a quintessential agreement to agree. Absent more, such an agreement is too indefinite to be binding. See id. In any event, it is subsumed by the later unambiguous Lien Waiver.

### **CONCLUSION**

This Court concludes as a matter of law that the Lien Waiver is a fully enforceable contract entered into with an offer, acceptance, and consideration of \$648,542.79. The Lien Waiver’s plain language “release[s] and waive[s] all claims and liens existing as of February 8, 2016 . . . on account of, or in anyway resulting from, or in connection with construction located at 175 Concord

St, Charleston, SC . . . .” This Court concludes that the Lien Waiver is unambiguous, last in time and controlling. A prior agreement, indeed, one that appears merely to be an agreement to agree, cannot control over a sworn-to, last in time, mutually agreed to contract. The Panel has exceeded its authority in reaching the present result. Accordingly, this matter must be referred back to the Panel to correct its manifest disregard of the law and to recalculate the award giving the last in time Lien Waiver its lawful effect. See Stevens & Wilkinson of S.C., Inc., 409 S.C. at 577, 762 S.E. 2d at 700 (citing Jordan v. Sec. Grp., Inc., 311 S.C. 227, 230, 428 S.E. 2d 705,707 (1993)) (finding that where the contract language is plain and capable of legal construction, that language alone determines the instrument’s force and effect).

Further, the arbitration award must be remanded back the Panel to correct the inclusion in the award of costs incurred outside of this Project and the governing Contract. S.C. Code Ann. § 15-48-140(a)(2) (“[T]he court shall modify or correct the award where . . . [t]he arbitrators have awarded upon a matter not submitted to them.”) Here, the Arbitration Agreement referred to the Contract at issue on this specific Project and limited disputes to issues arising out of the Contract. TCC admits that the Stone Tower costs arose outside of and after this project. As such, costs associated with the Stone Tower remediation were not before the Panel and must be removed as a matter of law.

Accordingly, it is

ORDERED ADJUDGED AND DECREED that this case is remanded to the Panel to recalculate the award by giving the Lien Waiver effect and by removing any amounts associated with matters not submitted to the arbitration.



IT IS SO ORDERED.

---

Deadra L. Jefferson  
Judge, Ninth Judicial Circuit

December\_\_\_\_\_, 2019

## Alderman, Jade

---

**From:** Jaan Rannik <jgr@epting-law.com>  
**Sent:** Monday, December 23, 2019 11:51 AM  
**To:** Jefferson, Deadra L. Secretary (Chanda C. Sheppard)  
**Cc:** Jefferson, Deadra L. Law Clerk (Jacqueline Venezia); Walden, Andrew; Ford, Cordes; Andrew K. Epting  
**Subject:** RE: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955  
**Attachments:** TCC's Proposed Order resolving motions.docx

### EXTERNAL EMAIL: Open Attachments and Links With Caution.

Dear Ms. Sheppard,

Per Judge Jefferson's request, please find TCC's proposed order resolving the motions heard by the Court on December 16 attached to this email. Counsel for the HPR is copied on this email.

Happy holidays to all.

With thanks and best regards,  
Jaan

Jaan G. Rannik, Esq.  
Andrew K. Epting Jr., LLC  
46A State Street, Charleston, SC 29401  
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F: 843-377-1310  
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**From:** Jefferson, Deadra L. Secretary (Chanda C. Sheppard) <DJeffersonSC@sccourts.org>  
**Sent:** Tuesday, December 17, 2019 12:26  
**To:** Walden, Andrew <Andrew.Walden@wbd-us.com>; Jefferson, Deadra L. Law Clerk (Jacqueline Venezia) <DJeffersonLC@sccourts.org>  
**Cc:** Jaan Rannik <jgr@epting-law.com>; Andy Keetch <akeetch@canteyhanger.com>; Ford, Cordes <Cordes.Ford@wbd-us.com>  
**Subject:** RE: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955

Monday, December 23 by 12:00pm will be fine. Thank you and have a great weekend.

---

**From:** Walden, Andrew [<mailto:Andrew.Walden@wbd-us.com>]  
**Sent:** Tuesday, December 17, 2019 12:14 PM  
**To:** Jefferson, Deadra L. Secretary (Chanda C. Sheppard) <[DJeffersonSC@sccourts.org](mailto:DJeffersonSC@sccourts.org)>; Jefferson, Deadra L. Law Clerk

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Cc: Jaan Rannik <[jgr@epling-law.com](mailto:jgr@epling-law.com)>; Andy Keetch <[akeetch@canteyhanger.com](mailto:akeetch@canteyhanger.com)>; Ford, Cordes <[Cordes.Ford@wbd-us.com](mailto:Cordes.Ford@wbd-us.com)>

Subject: TCC of Charleston, Inc. v. Concord & Cumberland HPR; 2016-CP-10-2955

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Dear Ms. Sheppard and Ms. Venezia:

At the hearing yesterday, Judge Jefferson requested proposed orders in 5 days. Because 5 calendar days would be Saturday and 5 business days would be Monday, we are operating as if Judge Jefferson would like the proposed orders on Monday, December 23, 2019. We would greatly appreciate you either confirming our understanding or correcting us, if wrong.

Thank you!

Andrew

**R. Andrew Walden**

Associate

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
)

TCC OF CHARLESTON, INC.)

Plaintiff,)

v.)

CONCORD AND CUMERLAND, LLC.,)

CONCORD & CUMBERLAND HPR,)

LEO HALL, DIANE HALL, BEA H.)

SMITH, MARGARET C. POPE,)

WILLIAM D. FOSTER, JR., GENE G.)

FOSTER, MATTISON J.)

MACGILLIVRAY, TERESA)

MACGILLIVRAY, PAMELA L.)

VAUGHN, NELIA A. PATRICIO, Trustee)

of the Nelia A. Patricio Revocable Trust)

Agreement, STUART D. REEVES,)

EDWARD T. STROM, BARBARA K.)

HENDERSON, JAMES R. CLARKE,)

PAUL A. BRIM, ROBERT K. SEIDL,)

JENNIFER M. SEIDL, ROBERT)

KENNETH SEIDL, II, M. BERT)

STOREY, THOMAS R. MATHER,)

EDWARD T. STROM, 304 CONCORD &)

CUMBERLAND, LLC, MARION M.)

SIMPSON F/K/A MARION MOORE)

MCDONALD SIMPSON, KATHY)

GARDNER, GREGORY J. GARDNER,)

FREEMAN WATERFRONT)

PROPERTIES, LLC, JO-ANN COOPER,)

BETTY Y. SEGAL, ROBERT M. LEVIN)

AND BONITA K. LEVIN, DONALD D.)

LEONARD, BETTY L. BEATTY,)

MATTELLEN, LLC, AND THOMAS R.)

DEBNAM, Trustee of the Trust Agreement)

of Thomas R. Debnam,)

Defendants.)

Case No.: 2016-CP-10-2955

**ORDER ON MOTION TO LIFT
STAY AND MOTIONS TO
VACATE OR CORRECT
ARBITRATION AWARD**

This matter came before the Court for a hearing on December 16, 2019 with regard to (i)

TCC of Charleston's ("TCC's") Motion to Lift Stay and (ii) the Concord & Cumberland HPR's

(“the HPR’s”) Motion to Vacate or Modify Arbitration Award.¹ After reviewing the materials and authorities filed with this Court and considering the arguments presented at the hearing, the Court rules as follows.

I. MOTION TO LIFT STAY

On January 3, 2016, Judge Roger Young signed a consent order staying this matter pending arbitration between TCC and the HPR. That arbitration has taken place, with a Corrected Arbitration Award being signed on August 12, 2019. The arbitration having taken place, the stay is no longer in effect by the terms of the order signed by Judge Young. Moreover, as agreed to by counsel for the HPR, the HPR’s filing of their motion to vacate the arbitration award is itself a consent to lift the stay.

II. MOTION TO VACATE OR CORRECT THE CORRECTED ARBITRATION AWARD

A. Legal Standards

Because “[a]rbitration is a favored method of settling disputes in South Carolina,” *Pittman Mortg. Co., Inc. v. Edwards*, 327 S.C.72, 76 (1997), “[t]he scope of judicial review for an arbitrator’s decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all.” *Group III Mgmt., Inc. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 149 (Ct. App. 2018) (internal quotations omitted). “Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award.” *Pittman*, 327 S.C. at 76.

¹ While this Order refers to the HPR’s “motion” (singular), the HPR filed two separate motions to vacate — one filed on July 16, 2019 relating to the initial award delivered by the arbitrators, and one filed November 18, 2019 relating to the corrected award signed by the arbitrators on August 12, 2019. The only award properly before the Court is the corrected award, and this award forms the basis for the Court’s ruling on the HPR’s motions.

Reviewing an arbitration award, the court’s function is limited “to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it.” *Id.* at 150 (internal quotation omitted). “Even a clearly erroneous interpretation of the contract cannot be disturbed.” *Gissel v. Hart*, 382 S.C. 235, 241 (2009) (internal quotation omitted).

“Therefore, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.” *Group III*, 425 S.C. at 151 (quoting *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987)).

A court may vacate an arbitration award only under very narrow circumstances:

- (i) the four statutory grounds enumerated in S.C. Code Ann. § 15-48-130(a)²; and
- (ii) one common law ground—manifest disregard of the law, as stated in *Gissel v. Hart*, 382 S.C. 235, 241 (2009).

Regarding the former, “[a]rbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate.” *Pittman*, 327 S.C. at 77. It is the scope of the arbitration agreement, and not the pleadings, that determines what matters have been referred to the arbitrators. *Id.*

Regarding manifest disregard of the law, “[a] court may vacate an arbitration award under the manifest disregard standard only when a plaintiff has shown that: (1) the disputed legal principle is clearly defined and is not subject to reasonable debate; and (2) the arbitrator refused to apply that legal principle.” *Group III*, 425 S.C. at 154–55. More precisely, “manifest

² Of which only one—the arbitrators exceeding their authority—is advanced by the HPR as grounds for vacating this award; accordingly, the other grounds set forth in this statute are not discussed.

disregard of the law is established only where the arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.” *Id.* at 155 (alterations in original). The manifest disregard standard “is not an invitation to review the merits of the underlying arbitration.” *Id.* (internal quotation omitted).

With regard to modification of an arbitration award, a court may modify the award only “so as to effect its intent,” S.C. Code Ann. § 15-48-140(b), and only if one of three grounds set forth in S.C. Code Ann. § 15-48-140(a) is applicable. These grounds are: (i) an evident mistake in the calculation of figures or the description of any person, thing, or property referred to in the award; (ii) award by the arbitrators on a matter not submitted to them, so long as correcting the award does not affect the merits; or (iii) imperfection in the form of the award unrelated to the merits of the controversy.

B. Public Policy Behind the Exacting Legal Standard

There is a strong State and Federal policy in favor of arbitration of disputes. *Pittman*, 327 S.C. at 75; *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 103 (1985) The Parties agreed that each would appoint their own arbitrator and that the party-appointed arbitrators would jointly select the third arbitrator. This is a case involving construction, and the HPR selected John McCants, Esq., and TCC selected Frank Elmore, Esq., each known for his extensive experience in construction litigation. Mr. McCants and Mr. Elmore selected Alan Campbell, an engineer, as the third arbitrator. The qualifications of this panel to preside over a full trial on the merits in their area of expertise is an example that justifies the strong policy in favor of arbitration.

After four days of testimony, during which 200 exhibits were submitted into evidence, the panel issued a *unanimous* decision in favor of TCC.

Given the panel’s experience in disputes of this nature, it is not without significance or logic that the Parties stipulated to final and binding arbitration. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011) (recognizing arbitration’s benefit of giving parties the “ability to choose expert adjudicators to resolve specialized disputes”). Notwithstanding this stipulation, the Court continues and considers the HPR’s motion.

C. HPR’s Arguments for Vacating or Modifying the Award

1. Not A Reasoned Award

The HPR argues that the arbitrators’ failed to deliver a “reasoned award” as required by the arbitration agreement, requiring vacating or modification of the award. A “reasoned award” falls somewhere between a standard arbitration award containing no explanation whatsoever and a thorough “findings of fact and conclusions of law.” *Tully Const. Co. / A.J. Pegno Const. Co., J.V. v. Canam Steel Corp.*, No. 13-cv-0307-PGG, 2015 WL 906128, at *13–14 (S.D.N.Y. Mar. 2, 2015). An award is a “reasoned award” if it “sets out the arbitrator’s key findings and, where necessary, the reasons for those findings.” *Id.* at *14.

The Court finds that the 9-page order submitted by the arbitrators explains the basis for the amounts awarded and the grounds for the award and therefore constitutes a reasoned award.

2. Manifest Disregard of Applicable Law

The HPR argues that the arbitrators manifestly disregarded the law in declining to enforce the lien waiver attached to Pay Application 17 and in “wrongfully eviscerat[ing] the GMP³” referred to in the contract between TCC and the HPR. A review of the applicable law and of the arbitrator’s final award shows the HPR’s position to be untenable.

³ “GMP” stands for Guaranteed Maximum Price.

As this Court noted during the hearing, the arbitrators made express findings that are consistent with the applicable law and provided reasoning supporting those findings. For example, with regard to the lien waiver, the arbitrators dedicated an entire page of their order to a discussion of why the lien waiver was not enforceable in the circumstances, stating:

Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

Award at 5. The Court finds no error or manifest disregard of the law in the panel's finding, especially in light of a contemporaneous email from HPR's agent confirming the agreement.

With regard to the contract price, the panel found that "[i]t is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid" and that certain proposed change orders "were paid on a cost-plus basis" pursuant to agreements between TCC and agents of the HPR. The Court finds no error, let alone manifest disregard of the law, in the panel's finding that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.

These findings by the panel indicate that, far from disregarding the law, the panel considered and applied the law, and reached a result that the HPR simply disagrees with. The HPR has not carried its burden of showing the arbitrators manifestly disregarded the law, and this argument for vacating the arbitration award is unavailing.

3. Exceeding Authority

The HPR also argues that the award should be vacated, or in the alternative modified, because the arbitrators exceeded their authority in awarding \$29,000 relating to the "Stone

tower,” a portion of the exterior of the property not in the original scope of the contract. The Court disagrees.

As noted *supra*, arbitrators only exceed their authority when they rule on something not submitted to them. Here, as the Court noted during oral argument, the language of the referral in the arbitration agreement is very broad, applying to “certain disputes [that] have arisen regarding performance and payment on the Project,” with “Project” being referred to in the agreement as “exterior repairs to Concord & Cumberland located at 175 Concord Street, Charleston, South Carolina.” The Stone Tower work relates to the exterior of the building and is within the scope of the referral to the panel. To the extent there is doubt about the scope of the referral, the doubts are to be resolved in favor of arbitration. Moreover, the HPR acknowledges that TCC asked for this precise relief in their pretrial brief, that the issue was tried, that the relief was asked for requested by TCC in its post-trial proposed order to the panel.

The Court therefore finds that the award relating to the Stone Tower was within the scope of the arbitrators’ authority, as the Parties gave them this authority. The arbitrators did not exceed their authority and this basis for vacating or modifying the award likewise is unavailing.

4. Evident Miscalculation

The South Carolina Arbitration Act grants the Court authority to modify or correct an award if some technical issue with the award means that its intent would not be effective without modification. *See* S.C. Code Ann. § 15-48-140(b) (“If the application is granted, the court shall modify and correct the award so as to effect its intent . . .”). The Court finds no such technical issue, such as any “evident miscalculation of figures,” “evident mistake in the description of any person, thing, or property,” imperfection in the form of award, or any other basis provided under the statute. The award is not subject to modification or correction.

III. CONCLUSION

As the Court also noted during the hearing, even were the Court to believe the arbitrators committed error on these topics, the United States Supreme Court has stated, “[i]t is not enough . . . to show that the [arbitrator] committed an error—or even a serious error.” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010). It is not the job of the Court to substitute its own judgment for that of the arbitrators who presided over the trial of the case. Otherwise, parties would not arbitrate their disputes, but would try all of their cases in Court, nullifying the strong State and Federal policies in favor of arbitration.

Having reviewed the arbitration panel’s award and considered the arguments of counsel:

- 1) The stay is lifted; and
- 2) The HPR’s motions to vacate or modify are denied.

IT IS SO ORDERED.

This _____ day of December, 2019

The Hon. Deadra L. Jefferson
Judge, Ninth Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
)

TCC OF CHARLESTON, INC.)

Case No.: 2016-CP-10-2955

Plaintiff,)

v.)

CONCORD AND CUMERLAND, LLC.,)

CONCORD & CUMBERLAND HPR,)

LEO HALL, DIANE HALL, BEA H.)

SMITH, MARGARET C. POPE,)

WILLIAM D. FOSTER, JR., GENE G.)

FOSTER, MATTISON J.)

MACGILLIVRAY, TERESA)

MACGILLIVRAY, PAMELA L.)

VAUGHN, NELIA A. PATRICIO, Trustee)

of the Nelia A. Patricio Revocable Trust)

Agreement, STUART D. REEVES,)

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HENDERSON, JAMES R. CLARKE,)

PAUL A. BRIM, ROBERT K. SEIDL,)

JENNIFER M. SEIDL, ROBERT)

KENNETH SEIDL, II, M. BERT)

STOREY, THOMAS R. MATHER,)

EDWARD T. STROM, 304 CONCORD &)

CUMBERLAND, LLC, MARION M.)

SIMPSON F/K/A MARION MOORE)

MCDONALD SIMPSON, KATHY)

GARDNER, GREGORY J. GARDNER,)

FREEMAN WATERFRONT)

PROPERTIES, LLC, JO-ANN COOPER,)

BETTY Y. SEGAL, ROBERT M. LEVIN)

AND BONITA K. LEVIN, DONALD D.)

LEONARD, BETTY L. BEATTY,)

MATTELLEN, LLC, AND THOMAS R.)

DEBNAM, Trustee of the Trust Agreement)

of Thomas R. Debnam,)

Defendants.)

**TCC OF CHARLESTON, INC.'S
MEMORANDUM IN OPPOSITION
TO CONCORD & CUMBERLAND
HPR'S MOTION TO
RECONSIDER, ALTER, OR
AMEND THE COURT'S ORDER**

TCC of Charleston, Inc. (“TCC”) provides this memorandum in opposition to Concord & Cumberland HPR’s (“the HPR’s”) motion to reconsider the denial of the HPR’s motion to vacate the arbitration award.

In denying the motion to vacate, the Court correctly applied South Carolina law regarding the restricted standard of judicial review of arbitration awards and found no basis for vacatur. The Court did not err, and the motion for reconsideration should be denied.

I. The HPR’s Contentions

A. Manifest Disregard of the Law

The HPR continues to argue¹ that the arbitration panel (“the Panel”) manifestly disregarded the law in not enforcing the lien waiver provided with Pay Application 17. *E.g.*, Motion at 9–10. This Court previously addressed this contention, stating “far from disregarding the law, the panel considered and applied the law, and reached a result that the HPR simply disagrees with.” Order at 8. The Court also noted that it is not the Court’s prerogative to “substitute its own judgment for that of the arbitrators who presided over the arbitration proceeding,” citing *Stolt-Nielsen*.² Order at 10.³

B. Absence of Ruling

The HPR contends the Court did not consider, rule upon, or address certain arguments the HPR advanced, meriting reconsideration. In each case, the contention is erroneous.

¹ This argument has been raised to and rejected by both the arbitration panel and this Court.

² *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010).

³ Moreover, the Panel did not manifestly disregard the law in finding that the HPR could not claim a particular lien waiver as a defense to TCC’s claims on the basis that, in previous instances, the HPR had paid claimed amounts in spite of a subsequent lien waiver being executed. Award at 4–5.

1. The Lien Waiver

The HPR contends that the Court “did not rule upon or address the Release document itself.” Mot. at 3. The Court properly noted, however, that its purview was only to determine if there were grounds for vacatur, not to revisit the merits of the Panel’s rulings. *See Group III Mgmt., Inc. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 150 (Ct. App. 2018) (noting that in reviewing an arbitration award, the court’s function is limited “to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it”). The Court properly exercised this authority and determined there were no grounds for vacatur.

2. Argument Raised to Arbitrators Prior to Issuance of Final Award

The HPR also contends that the Court did not rule on an argument it advanced regarding a Panel order predating the final award issued by the Panel. Mot. at 3. However, the Court expressly declined to rule on matters other than those contained in the final award, noting that “[t]he only award properly before the Court is the corrected award” dated August 19, 2019. Order at 2, n.1.

3. Manifest Disregard Standard

Finally, the HPR posits that the Court did “not consider or rule upon whether the manifest disregard standard is met by an arbitration panel’s disregard of unambiguous contract provisions.” Mot. at 4. The Court found no such disregard; instead, the Court referred to the Panel’s finding of a separate agreement between the parties which the Panel deemed enforceable. Order at 8. The Court’s function in this regard was limited “to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it.” *Group III Mgmt., Inc. v. Suncrete of Carolina, Inc.*,

425 S.C. 141, 150 (Ct. App. 2018). “Even a clearly erroneous interpretation of the contract” by the arbitrators, were there such an error, would not be disturbed. *Gissel v. Hart*, 382 S.C. 235, 241 (2009).

C. Erroneous Findings

The HPR further raises as error two portions of the Court’s Order; neither is a basis for reconsideration of the Court’s ruling.

1. Email Agreement

First, the HPR objects to the inclusion of the clause “especially in light of a contemporaneous email from HPR’s agent confirming the agreement” on page 8 of the Court’s Order, arguing that the email was not referred to in the Panel’s order or otherwise before the Court. This clause is found in the third paragraph of the Court’s discussion regarding the Panel’s “express findings” and reasoning regarding the lien waiver, findings that the Court noted were “consistent with the applicable law.” Order at 7. The Court then quoted the Panel’s corrected award and concluded it demonstrated “no error or manifest disregard of the law,” only then making the reference to which the HPR objects.

The agreement in question was referred to by TCC’s counsel during the hearing in response to arguments advanced by the HPR’s counsel, but it was not made an exhibit and was not expressly referred to in the Panel’s order. As the HPR concedes, though, the Panel’s award refers to “[c]redible testimony at the hearing . . . that TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.”

To the extent that it was error to refer to an email submitted into evidence during the arbitration, it is harmless error as the Court had a separate basis for concluding there was no

manifest disregard of the law by the Panel — namely, the Panel’s reasoned discussion contained in the award.

2. Agreement Regarding Out-of-Scope Items

Second, the HPR objects to the Order’s reference to the “panel’s finding that the GMP⁴ provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis,” contending the Panel made no such finding. Mot. at 3. However, the Panel awarded TCC amounts above the GMP (Award at 8–9) and noted that the PCOs (proposed change orders, which included out-of-scope items) “were paid on a cost-plus⁵ basis.” Award at 3. The Panel further acknowledged and enforced the agreement “to address outstanding PCOs and TCC’s claims for additional costs at the end of the job.” Award at 4. Thus, the Panel *did* find that the GMP was not dispositive, that there was a separate agreement between the parties for the handling of additional costs, that the separate agreement was enforceable, and that TCC should be awarded additional costs above the GMP on a time and material basis. The Court did not misstate the substance of the Panel’s finding.

II. Conclusion

For the foregoing reasons, the HPR’s contentions are unavailing, and the motion for reconsideration should be denied.

[signature on following page]

⁴ “Guaranteed Maximum Price.”

⁵ “Cost plus” is synonymous with “time and material.”

Respectfully submitted,

EPTING & RANNIK, LLC

This 12th day of March, 2020
Charleston, SC

/s/ Jaan G. Rannik
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ATTORNEY FOR TCC OF CHARLESTON, INC.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-10-2955

TCC OF CHARLESTON, INC.

Plaintiff,

vs.

CONCORD AND CUMERLAND, LLC.,
CONCORD & CUMBERLAND HPR, LEO
HALL, DIANE HALL, BEA H. SMITH,
MARGARET C. POPE, WILLIAM D.
FOSTER, JR., GENE G. FOSTER,
MATTISON J. MACGILLIVRAY, TERESA
MACGILLIVRAY, PAMELA L. VAUGHN,
NELIA A. PATRICIO, Trustee of the Nelia
A. Patricio Revocable Trust Agreement,
STUART D. REEVES, EDWARD T.
STROM, BARBARA K. HENDERSON,
JAMES R. CLARKE, PAUL A. BRIM,
ROBERT K. SEIDL, JENNIFER M. SEIDL,
ROBERT KENNETH SEIDL, II, M. BERT
STOREY, THOMAS R. MATHER,
EDWARD T. STROM, 304 CONCORD &
CUMBERLAND, LLC, MARION M.
SIMPSON F/K/A MARION MOORE
MCDONALD SIMPSON, KATHY
GARDNER, GREGORY J. GARDNER,
FREEMAN WATERFRONT PROPERTIES,
LLC, JO-ANN COOPER, BETTY Y.
SEGAL, ROBERT M. LEVIN AND
BONITA K. LEVIN, DONALD D.
LEONARD, BETTY L. BEATTY,
MATTELLEN, LLC, AND THOMAS R.
DEBNAM, Trustee of the Trust Agreement of
Thomas R. Debnam,

Defendants.

**CONCORD & CUMBERLAND HPR'S
REPLY TO TCC OF CHARLESTON,
INC.'S MEMORANDUM IN
OPPOSITION OF THE MOTION TO
RECONSIDER, ALTER, OR AMEND
THE COURT'S ORDER**

At the December 16, 2019 hearing in this matter, the Court stated the following: "If I sign an order today, and I amend it tomorrow, that one before doesn't matter because I've amended it,

which means I can . . . completely change my reasoning. It . . . in essence, invalidates what I said today.” (**Exhibit A**, Transcript at 35:12-16).

The Court’s logic on this point is flawless. Later orders amend, change, and even invalidate earlier orders, just as later agreements amend, change, and even invalidate earlier agreements. The HPR seeks reconsideration of the Court’s January 30, 2020 Order on Motion to Lift Stay and Motions to Vacate or Correct Arbitration Award upon this logic and the law that follows it.

First, the Court has misapprehended the chronology of the Panel’s Corrected Arbitration Award, dated August 19, 2019, and the Panel’s subsequent Order on HPR Motion for Change of Corrected Arbitration Award, dated October 23, 2019.¹ (Ex. H and Ex. J to the HPR’s Memorandum of Law, filed December 11, 2019). It is this final, October 23, 2019 order that amends, changes, and invalidates the Panel’s prior finding set forth in its August 19, 2019 award, just like the Court’s hypothetical amended order “tomorrow” amends, changes, and invalidates the Court’s hypothetical order of “today.”

In the October order, the Panel clarifies its previous finding from the August award by stating that any agreement “to address outstanding PCOs and TCC’s claims for additional costs at the end of the project” arose “**prior to** the submission of Payment Application No. 17” and “that **prior to** Payment Application No. 17 ‘some of the PCOs and TCC’s claims for additional costs were *subsequently submitted and paid* by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens’ that had been executed by TCC.” (Ex. J to the HPR’s Memorandum of Law, filed December 11, 2019) (emphasis added). This language of the October order changes the August award and states unequivocally that the Panel based its

¹ At section 1.B.2. of TCC’s Memorandum, TCC attempts to reinforce this misapprehension. The HPR does not advance an argument that the Court failed to rule on “a Panel order predating the final award issued by the Panel.” The opposite is true. The HPR seeks the Court’s review and application of the Panel’s last-in-time Order dated October 23, 2019, which clarifies its earlier Corrected Arbitration Award.

refusal to enforce the Lien Waiver and Release that accompanied Payment Application No. 17 on an agreement and payments that occurred **prior to** the execution and delivery of that Lien Waiver and Release.

Thus, like the Court's hypothetical "order today" being invalidated when she "amend[s] it tomorrow," in this case, the prior agreement and acts of payment found by the Panel are "invalidated" by the subsequent, unambiguous Lien Waiver and Release executed and delivered with Payment Application No. 17. Importantly, the Panel finds no subsequent act or agreement that amends, changes, or invalidates this final Lien Waiver and Release.

In contrast, TCC represented to the Court the following: "[The Panel] did not disregard the law. They found that there was a *subsequent agreement* that controlled and they applied it. They applied the law." (**Ex. A**, Transcript at 30:4-6) (emphasis added). This representation is false. The Panel has made no such finding. TCC later identified the referenced agreement by stating that "[w]hat happened here is the attorney for . . . the HPR at the time, Mr. Chris Ogiba, agreed with counsel for TCC, and, in writing, said we agree that certain matters will have to be resolved at the end of this job." (**Ex. A**, Transcript at 33:7-11). Finally, the Court's Order, presently under reconsideration, then adopted TCC's proposed order language finding that the Panel did not disregard the law "especially in light of a *contemporaneous email* from HPR's agent confirming the agreement." (Order at 8) (emphasis added). As written in the HPR's motion, this finding by the Court is improper, as it makes a new finding not iterated by the Panel.

However, given that the Panel's actual finding - that the "agreement" was prior to the Lien Waiver and Release - reveals a manifest disregard of the law, TCC has endeavored to place the evidence of such agreement as late in time as possible in order to avoid vacatur. At the hearing, TCC wrongly claimed the agreement was subsequent. In its proposed order, TCC wrongly claimed

it was contemporaneous. All the while, TCC conspicuously failed to present the email. It is attached hereto as **Exhibit B**. The date is clear – June 26, 2015. The email precedes the Lien Waiver and Release, executed on February 8, 2016, by more than **seven months**.

Never mind that the email does not support TCC's essential proposition – that the supposed agreement allows for an end of project submission of a brand new change order based only upon its alleged total project costs, rather than on any particular event of change; and never mind that the email is only between attorneys, not the parties; and never mind that that the email's content was never converted into a written change order approved by the architect and signed by the parties pursuant to the guaranteed maximum price contract; and never mind that the email expressly discusses the additional negotiation or compromise of some portion of some of the then-current PCOs only – a classic agreement to agree; and never mind that TCC repeatedly represented to the HPR in February and March of 2016 (seven months later) that there were no new proposed/forecasted changes (see Change Order logs attached as **Exhibit C**); and never mind that neither Mr. Ogiba nor Mr. Epting testified at the arbitration proceeding to authenticate this email.

What matters here is that prior emails, and agreements therein, cannot amend, change, or invalidate a later, signed writing that unambiguously resolves all claims that were or may have been subject of that prior agreement, just as this Court described when discussing how a later order amends, changes and invalidates an earlier order.

This is especially true in this case where the email in question contemplates further negotiation of PCOs **pending** in June of 2015, and seven months later in February of 2016, TCC represented repeatedly to the HPR that the forecasted contract amount was less than \$6.5 million and there were no proposed/forecasted changes. As set forth previously, these representations by TCC, and the contemporaneous delivery of the February 8, 2016 Lien Waiver and Release, induced

payment by the HPR of Payment Application No. 17. What happened next, on March 24, 2016, was the issuance of disputed Payment Application No. 18, asserting a final contract amount exceeding \$7.5 million, accompanied by a brand new proposed change order based on TCC's total project costs, no backup documentation, and no prior PCO or event of change. (Exhibit D, Payment Application No. 18, March 24, 2016). Yet, based on the text of the "Ogiba email," which explicitly references change order requests pending over seven months earlier, TCC implausibly claims the authority to make such a submission.

The resolution of this matter is simple, and should be based on the Panel's findings of fact, this Court's logic, and the clearly applicable law that follows it. The February 8, 2016 Lien Waiver and Release, which is last in time and unambiguous, controls under law. To reach its result, the Panel manifestly disregarded this clearly applicable law.

Further, TCC's representations to this Court about the "Ogiba email" of June 26, 2015 were entirely incorrect and misleading. There was no agreement or understanding between TCC and the HPR contemporaneous with or after February 8, 2016, when TCC signed the Lien Waiver and Release, that would permit TCC to submit Payment Application No. 18 with costs and expenses newly claimed to have been incurred prior to February 8, 2016. Payment Application No. 18, as submitted, was unjustified and justifiably totally unexpected by the HPR.

Accordingly, the HPR respectfully requests that this Court apply its logic and the law to this matter, amend its Order, and order enforcement of the Lien Waiver and Release.

[Signature page follows]

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

s/ Cordes Ford

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April 21, 2020

Charleston, SC

*Attorneys for Defendant Concord & Cumberland
HPR*

EXHIBIT “A”

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF COMMON PLEAS NONJURY

3
4
5 TCC OF CHARLESTON, INC.,) TRANSCRIPT
6)
7 PLAINTIFF,) OF
8 VS.) RECORD
9 CONCORD AND CUMBERLAND, LLC AND)
CONCORD AND CUMBERLAND, HPR, ET AL,) 2016-CP-10-2955
10 DEFENDANTS.)

11
12
13 December 16th, 2019
14 Charleston, South Carolina
15
16

17 B E F O R E:

18 THE HONORABLE DEADRA L. JEFFERSON, Judge.
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A P P E A R A N C E S:

JAAN G. RANNIK and ANDREW K. EPTING
ESQ.
Attorneys for the Plaintiff

F. CORDES FORD and ROBERT ANDREW WALDEN
ESQ.
Attorneys for the Defendant Concord and Cumberland, HPR

JASON DAIGLE and COLE SHANNON
ESQ.
Attorney for Betty Beatty

Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

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I N D E X

(WHEREUPON, there were no exhibits marked or testimony
taken during this hearing.)

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P R O C E E D I N G S

THE COURT: TCC of Charleston, Inc. versus Concord and Cumberland, LLC, Concord and Cumberland, HPR, et cetera, and they're about one, two -- I assume these are -- they're about 37 other parties. We'll give you a copy.

So, before we get started, who's appearing on behalf of the Plaintiff?

MR. RANNIK: Good morning, Your Honor. Jaan---

THE COURT: Good morning.

MR. RANNIK: Jaan Rannik is my name, and---

THE COURT: Is that Y-O-N?

MR. RANNIK: It's J-A-A-N, for---

THE COURT: Good thing I asked, right?

MR. RANNIK: ---extra confusion.

THE COURT: J-A-H-N, and how's your last name spelled?

MR. RANNIK: I'm sorry. It's J-A -- double A. So, J-A-A-N.

THE COURT: Oh, J-A-A -- okay. Let me start all over. J-A-A-N?

MR. RANNIK: Yes, Your Honor.

THE COURT: And your last name?

MR. RANNIK: It's Rannik. R-A double N I-K.

THE COURT: Okay.

MR. EPTING: And I'm Drew Epting, Your Honor.

1 THE COURT: Yes, sir.

2 Okay. And now let's take the Defendants in order.

3 Now, Mr. Ford, you're sitting at the table. So, tell
4 me who you represent.

5 MR. FORD: Yes, Your Honor. Cordes Ford on behalf of
6 Concord and Cumberland, HPR, and, and that's the entity at
7 issue today. I also represent a number of the named
8 individual Defendants, but the action against them is
9 stayed, and this -- these motions deal with the HPR under
10 arbitration that proceeded.

11 THE COURT: Okay. So, you represent HPR in this
12 motion, which is the---

13 MR. FORD: Yes.

14 THE COURT: ---Con -- well, let me see.

15 MR. FORD: Con -- yeah, Concord and Cumberland---

16 THE COURT: Which is Concord and Cumberland, HPR?

17 MR. FORD: Correct.

18 THE COURT: Okay.

19 MR. FORD: And Andrew Walden is with me on behalf of
20 the HPR also.

21 THE COURT: All right.

22 MR. FORD: And I also have representatives from the
23 Board of the HPR in the audience.

24 THE COURT: Okay. But are there any other lawyers
25 representing any other parties or any other Defendants?

1 Yes, sir.

2 MR. DAIGLE: Yes, Your Honor. Jason Daigle.

3 THE COURT: Yes, sir.

4 MR. DAIGLE: D-A-I-G-L-E.

5 THE COURT: And you represent?

6 MR. DAIGLE: Betty Beatty.

7 THE COURT: That's---

8 MR. DAIGLE: Betty---

9 THE COURT: ---Betty---

10 MR. DAIGLE: B-E-A-T-T-Y.

11 THE COURT: I was just trying to find her on my list.

12 Here we go.

13 was she previously a Segal or is this just -- oh, I see

14 Betty Beatty. There's a Betty Segal. Got you.

15 Okay. And is there anybody else representing anybody

16 else?

17 MR. DAIGLE: I've, I've got Cole Shannon here with me

18 on it as well.

19 THE COURT: Cole Shannon.

20 All right. Now, this is Concord and Cumberland, HPR's

21 motion to vacate the arbitration award or, alternatively, to

22 modify or correct the arbitration award filed July 16th of

23 2019, and a Plaintiff's Motion to Lift Stay, which was filed

24 6/17/19. We'll take them in the order they were filed.

25 So, Plaintiff's Motion to Lift Stay.

1 You may proceed.

2 MR. RANNIK: Thank you, Your Honor.

3 THE COURT: You welcome.

4 MR. RANNIK: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. RANNIK: Judge, very simply, this case was stayed
7 by an Order, a Consent Order, signed by Judge Young back
8 in -- at the end of 2016, and the case was stayed to allow
9 for final and binding arbitration to proceed between the HPR
10 and TCC of Charleston.

11 Very simply, that arbitration has proceeded. It went
12 to trial last January. The Order was issued in March, and,
13 finally -- the Final Order was entered in April --

14 THE COURT: Of what year?

15 MR. RANNIK: -- and we're here simply to ask the
16 Court---

17 THE COURT: Of what -- of this year?

18 MR. RANNIK: Yes, of, of this year. Yes, Your Honor.
19 And we're here simply to ask the Court to lift the stay so
20 that this matter can proceed.

21 THE COURT: What did the Consent Order say?

22 MR. RANNIK: If I may approach, Judge?

23 I have a, a copy if --.

24 THE COURT: What date was the Consent Order filed?

25 MR. RANNIK: It was filed on the 3rd of January, 2017.

1 THE COURT: I can -- I'll ask for it if I need it. I,
2 I probably have it right here electronically.

3 MR. RANNIK: Okay. But what it says, Judge, is --
4 okay.

5 THE COURT: Go ahead. I'm listening.

6 MR. RANNIK: It, it says whereas the parties have
7 consented to an arbitration of the dispute between
8 Plaintiffs and Defendant, Concord and Cumberland, HPR, and
9 stay of Plaintiff's foreclosure request as to remaining
10 Defendants, which it then lists, therefore, this matter is
11 stayed as to all Defendants to allow the arbitration to
12 proceed between the regime and Plaintiff.

13 THE COURT: So, tell me, and this may be just an overly
14 simplistic question, if it was stayed to complete the
15 arbitration, why doesn't it just dissolve by virtue of the
16 fact that arbitration's been completed?

17 why does it need an Order?

18 MR. RANNIK: Judge, I think you may be right that the
19 stay, the stay may actually just be lifted by operation of
20 law. However, I believe there's some disagreement as to
21 that between the parties, and, therefore, we're seeking an
22 Order of the Court stating that the Order -- that the stay
23 has been lifted.

24 THE COURT: Yeah, I don't know if I can -- okay.

25 MR. FORD: Your Honor, on that point, I, I would say

1 that what the Motion to Lift Stay is trying to do is to
2 enroll the awards of judgment, and that can't occur if
3 there's a pending motion to vacate or correct.

4 THE COURT: So, won't it be moot by virtue of this
5 motion you filed?

6 MR. FORD: That I filed?

7 THE COURT: Uh-huh. (Affirmative).

8 MR. FORD: Yes. In other words, the stay can't be
9 lifted until the motion to vacate and correct is heard and
10 resolved.

11 THE COURT: But it was lifted -- it was enacted for the
12 purpose or put in place for the purpose of doing the
13 arbitration, right?

14 So, wouldn't then, logically, once the arbitration's
15 completed, there is -- I mean the whole purpose for which it
16 was put in place has been---

17 MR. FORD: Under 15---

18 THE COURT: ---completed.

19 MR. FORD: ---48-120, any, any party -- either party
20 can make a motion to enroll the awards of judgment.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. FORD: That hasn't -- that such a motion hasn't
23 been filed, although I think there's some language in the
24 Motion to Lift Stay that would indicate that that's what
25 they're trying to do, but that can't occur pursuant to that

1 statute if there is a motion to vacate or correct---

2 THE COURT: That wasn't my question---

3 MR. FORD: ---pending.

4 THE COURT: My question was about the stay --

5 MR. FORD: Okay.

6 THE COURT: -- which is, if you have a stay in place,
7 stays are in place for a purpose.

8 Once that purpose has been accomplished, what's the
9 purpose of the stay?

10 The stay to have your arbitration, that's taken place,
11 right?

12 MR. FORD: It has.

13 THE COURT: So then what would be the further purpose
14 of having the stay?

15 MR. FORD: To -- well, to resolve the remaining issues
16 that are pending before the Court with regard---

17 THE COURT: But you've agreed---

18 MR. FORD: ---to the award.

19 THE COURT: ---that your motion makes it moot all --
20 doesn't it?

21 Cause your motion is to vacate the arbitration award or
22 modify or correct it, which also begs the question, if it
23 needs to be modified or corrected, why wouldn't you go to
24 the person who wrote it if you claim it's incorrect in some
25 way?

1 MR. FORD: We did that.

2 THE COURT: Uh-huh. (Affirmative).

3 MR. FORD: We asked the Panel to address a number of
4 things. They---

5 THE COURT: And I have a Corrected Arbitration Award
6 that was filed December 6th of 2019.

7 MR. FORD: I, I think it was maybe October. It, it
8 wasn't December.

9 THE COURT: Okay. I'm just looking at the filing
10 date---

11 MR. FORD: Right. This---

12 THE COURT: ---on this document.

13 MR. FORD: So there's an---

14 THE COURT: This may be an exhibit to the motion.

15 MR. FORD: There's a procedural history that I can,
16 you know, relate, relate to Your Honor if that would be
17 helpful.

18 There was an award issued earlier in the year, and we
19 pursued our rights under the statute to ask for the, the
20 Panel to make corrections to it. They have, in fact, made
21 changes to it, and it has resulted, resulted in a Corrected
22 Arbitration Award. That's the title of the document. And
23 we have supplemented by filing a Motion to Vacate that
24 corrected award.

25 THE COURT: And it was arbitrated by Allen Campbell,

1 John McCants, and L. Frank Elmore, correct?

2 MR. FORD: That's correct.

3 THE COURT: And it's dated August 12th of 2019, the
4 Amended Order?

5 MR. FORD: That's correct.

6 THE COURT: Well, it says Corrected Order.

7 MR. FORD: Right.

8 The sud -- that, that is really the, I would say, the
9 controlling award of the Panel because they, they heard --
10 they -- well, they didn't -- there wasn't a hearing, but
11 they received briefing on issues where we raised issues
12 where we said there, there needed to be changes made, and
13 they received briefing from both sides, and issued
14 post-award orders, and, ultimately, this Corrected
15 Arbitration Award.

16 We asked for a change of that, and they issued a, a, I
17 guess, the final order, and now we've exhausted our remedies
18 at the Panel level, and now we've come to the Court seeking
19 the Court to vacate the award---

20 THE COURT: Why would I do---

21 MR. FORD: ---pursuant to 15-30---

22 THE COURT: What authority would I have to do that?

23 MR. FORD: I'm sorry?

24 THE COURT: What authority would I have to do that?

25 MR. FORD: You, you have authority under Section

1 15-48-130, Your Honor, and, in this case, the Panel, in our
2 view, has exceeded their powers, and manifestly disregarded
3 the law in issuing their award.

4 THE COURT: What type -- what -- when y'all agreed to
5 arbitrate this, was it pursuant to a contract?

6 MR. FORD: It was. This is---

7 THE COURT: And what did that arbitration contract
8 provision say?

9 MR. FORD: This was an AIA form construction contract
10 with a guaranteed maximum price. It had an arb, arbitration
11 provision.

12 The AIA form calls for AAA Arbitration, but the parties
13 struck that language, and simply referred to the State
14 statute, the Uniform Arbitration Act, as governing the
15 arbitration of the dispute, Your Honor. When the Plaintiffs
16 filed suit, they also filed a Motion to Stay, to pursue
17 arbitration, the arbitration provisions in the agreement.
18 And so we agreed to have that arbitrated and, and the
19 statute calls for, in this case, we chose to use three
20 panelists.

21 The Plaintiffs selected Mr. Elmore. We selected
22 Mr. McCants. And the two of them chose, as the third
23 arbitrator, Mr. Campbell.

24 THE COURT: What does the Arbitration Agreement say?
25 Does it say it's final?

1 Does it say that their findings are final?

2 what does it say exactly?

3 MR. FORD: It, it says that the arbitration should be
4 conducted pursuant to the Uniform Arbitration Act, and it
5 references the statutes that, that I'm referencing to you,
6 15-48-10, et sec. Enrollment occurs under 120. Motions to
7 vacate can be filed under 130. And Motions to Correct can
8 be filed under 140.

9 THE COURT: How did you -- how do you contend they
10 exceeded their powers cause that---

11 MR. FORD: In a couple of---

12 THE COURT: That is governed by your agreement.

13 MR. FORD: No, Your Honor. There's, there's two
14 issues.

15 The, the first issue, which we raise in the first
16 motion, while there were pending motions to change of the
17 Panel, was that they didn't provide a reasoned award. The
18 Arbitration Agreement between the parties, and the first
19 Order of the Panel required a reasoned award to be issued.

20 what we received was a, was a brief two page document
21 that didn't have much discussion at all about---

22 THE COURT: But the amended one doesn't, which is the
23 controlling document.

24 It's nine pages, isn't it?

25 MR. FORD: The, the amended one certainly provides more

1 information, but on a very crucial issue, and, Your Honor,
2 we believe there is no reasoning provided, and it really
3 is---

4 THE COURT: So why didn't you go back and ask them to
5 give you the reason?

6 MR. FORD: We, we did ask them to correct and enforce
7 essentially a, a release and waiver of lien document, which
8 is unambiguous on its face. Yet they refused, refused to
9 enforce it.

10 THE COURT: But didn't they put a whole paragraph in
11 the Order about that?

12 MR. FORD: They, they did, Your Honor, and what they
13 said was that they declined to enforce it for a couple of
14 reasons.

15 One, and, again, this is -- was, was a guarantee
16 maximum price contract, and just to back up a little bit
17 more and provide some context, there was another lawsuit
18 before, which was a construction defect suit. It resulted
19 in a settlement for my client, which was the Plaintiff in
20 that case. Those dollars were taken forward to this
21 construction contract, which was a 4-million-dollar
22 guarantee maximum price contract.

23 There were changes that occurred in the work,
24 additional work, and that was dealt with in Change Orders,
25 which turned it into almost a 6-million-dollar contract.

1 And then, at the very end of the job, and after work was
2 complete, there was essentially a 2-million-dollar Change
3 Order that was presented.

4 We think that violated this lien waiver and release
5 document titled Conditional Release and Waiver of Lien that
6 is, again, clear and unambiguous on its face.

7 What the Panel found was that there was an agreement
8 between the parties to address additional costs at the end
9 of the job, and that's what they say in their Corrected
10 Arbitration Award.

11 THE COURT: Yeah, but my question is a very simple one.

12 You said that they did not provide reasoning for why
13 they did not agree to your position, and I would assume that
14 you presented your position to them. And, according to this
15 amended document, it says effective condition of lien
16 waivers accompanying Payment Application Number 17, and
17 prior payment applications. And it appears to me that they
18 addressed that issue, and they put their reasoning for it in
19 this amended document, which starts at Page 4.

20 MR. FORD: And, Your Honor, we---

21 THE COURT: And goes on to Page---

22 MR. FORD: You're looking on Line and---

23 THE COURT: ---5, and then they make a correction of
24 the award.

25 My concern is the way you're arguing this is you want

1 me to substitute my judgment for three arbitrators that
2 heard this, and I don't think there's any provision in the
3 law for that.

4 MR. FORD: Well---

5 THE COURT: It, it is contrary to public policy, and if
6 I were to follow it, then anybody could come back and argue
7 that they just didn't like the arbitrator's award, and I
8 should substitute my judgment, and put my own reasoning in
9 it.

10 MR. FORD: Right.

11 THE COURT: And I don't think the law supports that
12 proposition.

13 I mean why have arbitration if you can do that?

14 MR. FORD: Well, it's important that a Panel not
15 manifestly disregard the law, and that has been held as a
16 basis for overturning an award. In here, we believe that
17 the law was manifestly disregarded.

18 The lien waiver document is unambiguous on its face.
19 The Panel didn't find any ambiguity with it. An unambiguous
20 contract is the law. Yet it was ignored to reach the result
21 that we have now.

22 That can't stand, and, and, and there's a public policy
23 argument for me to stand here asking you to change it, Your
24 Honor. Parties who are contracting on the front end have to
25 have confidence in the arbitration process, and if they

1 believe that an unambiguous contract can be ignored, then,
2 then they're probably going to run from arbitration, and,
3 and, you know---

4 THE COURT: I don't think---

5 MR. FORD: ---flood the Courts with more---

6 THE COURT: I don't think---

7 MR. FORD: ---litigation.

8 THE COURT: ---there's any support for that
9 proposition, and we wouldn't be---

10 MR. FORD: I---

11 THE COURT: ---flooded in the market with all these
12 arbitration agreements with -- from everything from your
13 cell phone, to your house, to everything else. If people
14 didn't have confidence in them, the market would not be
15 inundated with them.

16 MR. FORD: If this result---

17 THE COURT: Apparently---

18 MR. FORD: Yeah.

19 THE COURT: ---there's some benefit to the marketplace.
20 That's why we have them.

21 MR. FORD: Understood. But I---

22 THE COURT: Yeah.

23 MR. FORD: My, my point is that if this result stands,
24 it would erode confidence in the arbitration process because
25 an unambiguous contract was ignored by the Panel without a

1 legal basis. They said there was an agreement by the
2 parties prior to this lien waiver to address costs at the
3 end of the project. Yet that is nothing more than an
4 agreement to do something in the future, which is not
5 enforceable.

6 There was a later release and lien waiver executed and
7 sworn to by TCC that induced the HPR to make a payment of
8 \$648,000 in exchange for a release of all prior claims and
9 liens arising on this construction job. Yet the Panel
10 ignored that.

11 THE COURT: Well, not in my reading. It says knowing
12 that TCC had signed conditional release and waiver of liens,
13 HPR, nonetheless, agreed to PCOs, signed the Change Orders,
14 and made payment for claims that may of otherwise been
15 released or barred by the conditional release and waiver of
16 liens. HPR can not now claim that the conditional release
17 and waiver of liens bars TCC claims, and there is certainly
18 supporting case law for that proposition.

19 MR. FORD: Your Honor, and you, you read that
20 correctly. There is, there was a---

21 THE COURT: But they still correct the math, don't
22 they?

23 MR. FORD: They, they do need to correct the math. I
24 think---

25 THE COURT: No, they do. It says correction of award.

1 The corrected total award is based, in part, on the sum of
2 approved and unpaid PCOs and the amounts of, and it states
3 the amounts, one -- let's see. PCO 143, and 144R, 146.
4 Plus retainage in an amount as itemized in TCC Exhibit 161
5 for a total of 958,573.

6 Additionally, a portion of the disputed amount of
7 1.417, well, it's 1.4-million-dollars, give or take, and a
8 portion of the stone towers also awarded. However, both
9 parties testified that PCO 145 for the transom door in the
10 amount of \$9,608, which is Exhibit 131, should not be
11 included.

12 And so basically they adjust the amount, do they not?

13 MR. FORD: They, they adjust the amount by \$9,000 and,
14 and change because one of the PCOs, which is a proposed
15 Change Order, potential Change Order, was submitted to the
16 Panel, but we agreed, at the time, that that was not subject
17 to that arbitration proceeding. So, it was withdrawn. So,
18 that was the correction on the dollar amount.

19 With regard to the issue of their addressing our
20 concerns about enforcement of the lien waiver and release,
21 they cite -- it's, it's Exhibit J, Your Honor, to the, to
22 the Memorandum. It's order on HPR Motion for Change or
23 Corrected Arbitration Award issued October 23rd, 2019.
24 They, they addressed our question, and, and answered it this
25 way.

1 They said that TCC and HPR agree to address outstanding
2 PCOs as cited, and, and you read, and they said this Panel
3 also found evidence that prior to Payment Application 17,
4 some of the PCOs and TCC's claims for costs, were
5 subsequently submitted and paid. And then they say if
6 that's -- well, that's it, and that's the point.

7 They say that, prior to Payment Application 17, and
8 prior to the execution of this sworn notarized Release and
9 waiver of Lien, there was some discussion about addressing
10 PCOs and claims after the project. And the law is that you
11 can't amend a writing, signed enforceable contract by prior
12 oral conversations or alleged contracts.

13 THE COURT: But you can do it by action. You can amend
14 an Order by action, especially when it's accompanied with
15 consideration, which is appears---

16 MR. FORD: Correct.

17 THE COURT: ---what they're saying in this Order.

18 MR. FORD: You can do it -- you can't do it by prior
19 action, and there must be consideration. There has---

20 THE COURT: But that's not what the Order says, is it?

21 MR. FORD: It doesn't. There, there has to be an
22 enforceable agreement after the latest agreement, which is
23 this Release and Lien waiver, which, again, is unambiguous,
24 to amend it. There is no later, later contract or
25 enforceable contract.

1 At best, the Panel is referencing an earlier agreement
2 and they say then it's an agreement to address these issues,
3 which is merely an agreement to agree or an, an agreement to
4 negotiate or do something uncertain in the future, which is
5 unenforceable.

6 That is not a contract. The Lien Waiver is. That
7 the -- but, but that, that is -- I mean that's -- on, on
8 that issue, that is the essence of the argument.

9 The, the stone tower issue is another substantive issue
10 that, that we've addressed to the Court in our memorandum.
11 This is a smaller dollar issue. It's a 29,000 issue. But
12 it arises from work that was done, as the, the Plaintiffs
13 say, after completion of this project.

14 So, not as part of a contract, but after and pursuant
15 to some different agreement, which may or may not be subject
16 to arbitration, we don't know. But it wasn't, it wasn't
17 part of the, the claim as filed in the, the Amended
18 Complaint. It wasn't part of the lien asserted against the
19 property. It doesn't make up any portion of, of that dollar
20 amount claimed, and it wasn't referred to arbitration.

21 It wasn't before the Panel. It wasn't, as far as I
22 know, even served upon the HPR for consideration. It's not
23 subject to the arbitration, and because it, it was ruled
24 upon, that portion of the award should be vacated and
25 dismissed as not properly before the Panel. This Court

1 didn't refer that matter to arbitration.

2 THE COURT: I'm sorry. Repeat that.

3 MR. FORD: This stone tower issue---

4 THE COURT: Does -- the Court doesn't refer it. Your
5 agreement defines what arbitration covers.

6 MR. FORD: The, the agreement on this project, which is
7 the repair project at the condominium, this stone tower work
8 was investigation that occurs---

9 THE COURT: But he says---

10 MR. FORD: ---per the Plaintiff.

11 THE COURT: But he says in your -- in the Order that
12 y'all didn't con -- y'all conceded that point, and you
13 wanted them---

14 MR. FORD: He doesn't say we conceded it.

15 THE COURT: I---

16 MR. FORD: He just says it was presented.

17 THE COURT: ---think y'all---

18 MR. FORD: And it did show up about a day before the
19 hearing in---

20 THE COURT: Let me see what it says.

21 MR. FORD: ---proposed exhibits. But my point is more
22 fundamental to the, to the contract that you're referring
23 to. Our contract is for the, the repair project.

24 The Plaintiffs say that stone tower work happened.
25 They incurred the cost that they claim after that project

1 was complete, that project that's governed by the contract
2 with the arbitration provision. So, it was put in a file of
3 exhibits. I think they're 151 of them.

4 THE COURT: And he says they don't include it, and
5 y'all agree it shouldn't be included. So, I'm confused as
6 to what you're talking about.

7 MR. FORD: Well, it's funny. The transom door issue,
8 which they withdrew, that is related to this stone tower
9 work, it happened at about the same time, and we asked the
10 panel to, to pull back or, or, or, or subtract out the cost
11 for the stone tower work.

12 THE COURT: Uh-huh. (Affirmative).

13 MR. FORD: They did not. They, they, they decided to
14 keep it in --

15 THE COURT: That's not what this says.

16 MR. FORD: -- even, even though it's related to the,
17 the transom door work.

18 THE COURT: Are you sure that's what this says cause
19 this says that---

20 MR. FORD: And what are you looking at, Your Honor?
21 I'm sorry.

22 THE COURT: I'm looking at the Corrected Award. It
23 says additionally, a portion of the disputed amount, which
24 is the 1.4-million-dollar amount, and a portion of the stone
25 tower's also awarded. However, both parties testified that

1 PCO 145, for the transom door in the amount of 9,608, should
2 not be included.

3 So, that's some portion of the stone tower, correct, or
4 is that a totally separate item?

5 MR. FORD: Well, it, it, it -- that work was done, and,
6 again, you know -- that work was done about the same time as
7 the stone tower work. It's, it's -- the timing of it is the
8 same. That's why the one -- PCO 145 was pulled out by
9 agreement. It had come up in testimony.

10 The stone tower issue did, did not, and, and wasn't --
11 it wasn't addressed, in, in our view, at all, and wasn't
12 properly before the Panel just like the transom door issue
13 wasn't properly before the Panel.

14 THE COURT: Anything further?

15 MR. FORD: Those are the two issues, Your Honor.
16 Obviously there's a substantial amount of briefing and
17 exhibits that we've attached. We've tried to attach the
18 record of, of the awards, and the back and forth on that,
19 and, and one other thing on the public policy issue,
20 something strange happened in, in their providing to us
21 responses on our motions.

22 Again, the first award was a, a two pager with, with
23 very little reasoning in our view. They, they later
24 addressed motions, I think they're with regard to attorney's
25 fees, and they -- and the calculation of interest, and they

1 say that, you know, as part of their 2-million-dollars and
2 change that they awarded, two million twenty-three, they,
3 they stated clearly to us, in their decision, that Pay
4 Application 17 was not paid, and they awarded interest on
5 Pay Application 17.

6 We received that and we were, we were, were shocked
7 because Pay Application 17 was indeed paid. It's, it's the
8 Pay Application that is, is based upon this Lien Waiver that
9 I discussed earlier that was paid to the tune of \$648,000.
10 Yet they wrote that it wasn't paid.

11 THE COURT: Did you bring that to their attention?

12 MR. FORD: We absolutely did. We brought it to their
13 attention. Said that is an evident mistake that must be
14 corrected, must lead to a recalculation, and, and what they
15 said in response was oh, no, no. We made a mistake by
16 referencing Pay Application 17. And instead of pulling that
17 amount out and pulling interest out, they pivoted and added
18 the award of a PCO 146 that the first award didn't award.

19 And so they worked to recreate a number that was
20 similar to the 648, and replace that in their Corrected
21 Arbitration Award, which, Your Honor, I mean to have written
22 that Pay Application 17 wasn't paid, how, how does one write
23 that, and not believe it to be true?

24 THE COURT: I don't know.

25 MR. FORD: It, it calls into question---

1 THE COURT: You'll have to ask them. I can't get into
2 their minds to know.

3 MR. FORD: It---

4 THE COURT: If they've recalculated it, and they've
5 survived -- provided a sufficient basis for recalculating
6 it, and the math adds up, I can not -- I, I can't---

7 MR. FORD: It just---

8 THE COURT: ---like I said, in someone's mind, three
9 people's minds, and know---

10 MR. FORD: Un---

11 THE COURT: ---other than what they've written.

12 MR. FORD: Understood. It just calls into question the
13 whole, the whole credibility of the process, Your Honor, to
14 make such an error like that, and to say that oh, we just,
15 we just mistakenly wrote that, that's a huge issue for, for
16 my client, and it just shows they, they weren't paying
17 attention, Your Honor, and, again, that harms the---

18 THE COURT: But didn't you pick one of the arbitrators?

19 MR. FORD: ---credibility of the process.

20 THE COURT: Didn't you pick one?

21 MR. FORD: Absolutely. We picked Mr. Mc---

22 THE COURT: And they picked one?

23 MR. FORD: Yes.

24 THE COURT: And then who picked the third one?

25 MR. FORD: They, they deliberated together and picked

1 the third.

2 THE COURT: Okay. So, you're telling me you have
3 absolutely no confidence in the person you picked?

4 MR. FORD: I -- Your Honor, I, I certainly disagree
5 with, with the result, and that's why I'm here.

6 THE COURT: Yeah, but that's not the question.

7 You're telling me you have absolutely no---

8 MR. FORD: I---

9 THE COURT: ---confidence in the professional
10 competence of the person that I would imagine you
11 deliberated and selected?

12 MR. FORD: Understood, Your Honor. And, and, and,
13 again, I can't get into their minds either. We, we haven't
14 had a hearing after the initial award. We've submitted
15 briefing on these issues. I---

16 THE COURT: Did you request an additional hearing?

17 MR. FORD: We just did it on the briefs, Your Honor. I
18 didn't request an additional hearing.

19 THE COURT: So y'all made that decision, right?

20 MR. FORD: I suppose I could of asked for a hearing,
21 Your Honor. But, but the point is, I -- it, it, it baffles
22 the mind to me that that can be written, that they could
23 base their decision on Pay Application 17 not being paid
24 when that was never in dispute, and the parties agree that
25 it had been paid.

1 MR. RANNIK: Well, Your Honor, to begin with, I don't,
2 I don't know how much, judging the Court's orientation here,
3 I don't know how much their---

4 THE COURT: I've read the entire file --

5 MR. RANNIK: Exactly.

6 THE COURT: -- if that helps you.

7 MR. RANNIK: It, it does and I don't know how much
8 there is left for me to, to tell the Court.

9 THE COURT: Well, you need to respond to his
10 argument---

11 MR. RANNIK: Happily.

12 THE COURT: ---and --

13 MR. RANNIK: Happily.

14 THE COURT: Yeah.

15 MR. RANNIK: Well, first, Your Honor, the -- and I can
16 respond to the merits arguments and I will, but the first
17 thing is what the Court actually has before it.

18 Your Honor has stated that the Court does not have
19 authority to reconsider the findings and the conclusions of
20 the Panel to the extent that they do not exceed their
21 authority or manifestly disregard the law and that's
22 correct. Neither one of those occurred in this case.

23 For a manifest disregard of the law to occur, the
24 Plaintiff -- the, the party claiming it has to show that the
25 Panel understood the law, and just chose not to enforce it,

1 chose not to apply it. Here, the exact opposite's true.

2 As Your Honor noted, they -- the Panel went into detail
3 as to why these particular arguments were being rejected.

4 They did not disregard the law. They found that there was a
5 subsequent agreement that controlled and they applied it.
6 They applied the law.

7 Secondly, with regard to exceeding authority, the only
8 way that a Court can or that a Panel can exceed its
9 authority under South Carolina law is to decide something
10 that was not presented to it. What is presented to the
11 Panel is governed by the Arbitration Agreement. The
12 Arbitration Agreement in this case, and I have a, a copy of
13 it if, if the Court would---

14 THE COURT: Wasn't it submitted as an exhibit --

15 MR. RANNIK: I do believe that it---

16 THE COURT: -- or was it not?

17 MR. RANNIK: I do believe that it was. Otherwise---

18 THE COURT: I think it was attached to the original
19 motion, correct?

20 MR. RANNIK: I, I believe it was.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. RANNIK: Yes, Your Honor.

23 THE COURT: And it's a fairly broad Arbitration
24 Agreement.

25 MR. RANNIK: It, it is indeed.

1 THE COURT: Uh-huh. (Affirmative).

2 MR. RANNIK: It calls for final and binding arbitration
3 pursuant to the Arbitration Act, and it states that -- it
4 applies to exterior repairs to Concord and Cumberland
5 located at 175 Concord Street. It's quite broad.

6 with regard to the stone tower issue, the stone tower,
7 like so many of the other items on this project, were out of
8 the scope of the original contract, and so were done by
9 Change Order. But the work was done. The work was
10 performed. It was exterior work performed at this address,
11 and it falls right under the Arbitration Agreement, which,
12 again, the wording that the parties agreed to was this is
13 final and binding arbitration.

14 The Panel that heard this case has over sixty years of
15 construction law experience. There were over 200 exhibits
16 put into evidence over four days of testimony.

17 The Panel did not get this wrong, but even if the Panel
18 got it wrong, that's not the function of the Court to
19 reconsider unless there was a manifest disregard of the law,
20 which I would submit there absolutely was not, or the Panel
21 exceeded its authority, which it absolutely did not.

22 with regard to the reasoning of the award, we have a
23 nine page corrected award. I, I, I don't believe that's --
24 there's much argument that this constitutes a reasoned award
25 under the law.

1 with that, Your Honor, I'm happy to answer any further
2 questions.

3 THE COURT: I don't, I don't have any.
4 Anything further at this time?

5 MR. FORD: I, I have to correct a, a very important
6 statement made by, by Mr. Rannik that's just wrong. He says
7 the Panel found a subsequent agreement to amend the Lien
8 waiver of the condition, the Conditional Release and Waiver
9 of Lien. That is not what the Panel found.

10 All they found was an agreement to do something in the
11 future, which they said occurred prior to Payment
12 Application 17. The law does now allow prior oral
13 communications to amend a later writing, which is the
14 Conditional Release and Waiver of Lien that was sworn to by
15 TCC.

16 It wasn't just a signed writing. It was a sworn to
17 writing. And there's nothing subsequent to that to amend
18 it, and the Panel didn't find that.

19 And, and with regard to the stone tower, they write --
20 the Plaintiffs write that that work occurred after the
21 project, which is after the project subject to this
22 contract. They wrote that, and that's all.

23 Thank you.

24 THE COURT: Okay. Yes, sir.

25 MR. RANNIK: Your Honor, if I might?

1 Just for some contrast on this lien, lien waiver
2 question, the same lien waiver was provided with every
3 single Pay Application over the course of this job from the
4 first to the last.

5 Mr. Ford said that there was a subsequent or a prior
6 oral agreement. That's not true either.

7 What happened here is the attorney for Concord and
8 Cumberland, the HPR at the time, Mr. Chris Ogiba, agreed
9 with counsel for TCC, and, in writing, said we agree that
10 certain matters will have to be resolved at the end of this
11 job. That was done after a number of these lien waivers had
12 been signed and executed. And then, rather than rewrite the
13 lien waiver, the parties just kept the same lien waiver with
14 this understanding as memorialized in an email by the
15 counsel for the HPR that there would be certain matters
16 resolved at the end.

17 The Panel found that to be compelling evidence that the
18 HPR should be estopped from asserting the lien waiver on the
19 final Pay Application as a means for rejecting payment for
20 the work that was agreed upon.

21 Thank you.

22 MR. FORD: If I may briefly, Your Honor?

23 THE COURT: Uh-huh. (Affirmative).

24 MR. FORD: The -- Mr. Rannik now refers to a writing by
25 Mr. Ogiba that is clearly prior. If it's a -- if it's an

1 agreement then to agree in the future, again, it's not
2 enforceable.

3 THE COURT: I have to rely on what it says in this
4 Order---

5 MR. FORD: It---

6 THE COURT: ---and the Order doesn't say it was
7 prior---

8 MR. EPTING: It doesn't---

9 THE COURT: ---which arose and existed as of the date
10 of the execution of the Conditional Release, Release and
11 Waiver of Liens.

12 MR. FORD: So -- well -- so I'll address that real,
13 real quick, Your Honor.

14 But -- they, they also -- the Panel doesn't reference
15 Mr. Ogiba's writing at all. All, all they say is what they
16 say, and---

17 THE COURT: And what they say is enough to support a
18 reasonable interpretation of contract law---

19 MR. FORD: Except that they---

20 THE COURT: ---which is contrary to your position.

21 MR. FORD: Except that if you look at -- except if you
22 look at Exhibit J where we ask them to clarify that point,
23 all they do is refer to prior actions---

24 THE COURT: That's not---

25 MR. FORD: ---or agreements.

1 THE COURT: ---what this Order says. It doesn't say
2 it's prior. It says they existed and arose at the date of
3 the execution of the Conditional Release and waiver of
4 Liens. And knowing that you had signed, your parties had
5 signed the Conditional Release and waiver, they,
6 nonetheless, took these other actions contrary to that.

7 MR. FORD: Are you reading from the October 23rd,
8 2019?

9 THE COURT: No, I'm reading from the controlling award,
10 which is the last one, which is the amended one.

11 MR. FORD: And---

12 THE COURT: If I sign an order today, and I amend it
13 tomorrow, that one before doesn't matter because I've
14 amended it, which means I can, I can completely change my
15 reasoning. It in -- it, in essence, invalidates what I said
16 today.

17 So, once you sign an -- once you ask for clarification
18 of an award, and they provide you with one, you don't get to
19 refer back to that previous document because, arguably, they
20 have done what you've asked, which is to provide clarity of
21 their ruling, and basically invalidate what they did before
22 or to augment what they've done before by providing you with
23 additional reasoning.

24 So, I don't think there can be any good faith argument
25 that this amended award from August is not the controlling

1 document.

2 MR. FORD: I---

3 THE COURT: You're saying I should read them all
4 together as one document?

5 MR. FORD: Well, it's, it's an Order of the Panel.

6 THE COURT: Yeah, but you asked them---

7 MR. FORD: Exhibit J.

8 THE COURT: But you asked them to amend it, and they
9 did, and it says corrected -- it is a corrected award. So
10 that is the one that is the agreement -- I mean the award.

11 MR. FORD: But it, it, it is and we filed on that
12 except that the, the corrected award doesn't refer to a
13 later agreement that amends the Lien Waiver and Release
14 document. They clarify, they clarify---

15 THE COURT: Did you bring that to their attention?

16 MR. FORD: Yes, and their Order is attached as Exhibit
17 J to the Memorandum.

18 THE COURT: The only Order that matters is this
19 August 12th, 2019, Order, which is the corrected award.
20 And if there's something else missing, you should of brought
21 it to their attention.

22 I don't -- I'm not gonna read every one of these awards
23 and, and look at them independently. There's no case law
24 that supports that. That's like saying that, that, if a
25 judge amends a ruling, that I look back at the previous

1 ruling that has been amended. That makes no sense.

2 what's the purpose of me having amended it if I want
3 you to read the other one?

4 MR. FORD: The -- Your, Your Honor, we have, we have
5 done everything in our power to ask them to, to review this.

6 THE COURT: Okay.

7 MR. FORD: And, and this is the whole string of our
8 asking and their responding, and they found it necessary
9 enough to---

10 THE COURT: No, it looks like they---

11 MR. FORD: ---to clarify---

12 THE COURT: No, it looks like extrapolated and
13 basically rewrote another award, and what they basically did
14 was they expounded on every single thing in the previous
15 awards, and brought you the clarity that you sought
16 regarding those issues. I don't think -- unless you find a
17 case for me that says I'm suppose to read all of these
18 awards as one award, I don't think it works like that. If
19 they've done a corrected award, then that is the totality of
20 their ruling.

21 MR. FORD: I, I can ask the Court to correct an, an
22 error in the award if it's a manifest disregard of the law,
23 and that is indeed what I'm asking the Court to do.

24 THE COURT: Yeah, but the case law doesn't support your
25 proposition. The U.S. Supreme Court says that, even if it's

1 a gross error in their interpretation of the law, it's not a
2 basis for me to substitute my judgment and say that I get to
3 rewrite your Order. That defeats the whole purpose of
4 having arbitration.

5 MR. FORD: I understand. It can be an error of law. I
6 acknowledge that. It can not be a manifest disregard of the
7 law, and the, and the, the simple point is they have
8 manifestly disregarded this Lien waiver, which is
9 unambiguous and controlling, because they have found and
10 cited no subsequent agreement, which is what Mr. Rannik
11 said, but that is not supported by the Corrected Arbitration
12 Award or their Order responding to us on that issue.

13 THE COURT: I have to be -- you know, Mr. Ford, you've
14 known me a long time.

15 MR. FORD: Understood.

16 THE COURT: I'm very direct. I think you just want me
17 to issue a ruling -- you want me to reinterpret all this
18 evidence, and you want me to issue a ruling based on how I
19 would of heard it, and the case law just simply does not
20 support that.

21 what I hear you saying is I don't agree with what they
22 did. I don't agree with how they interpreted the law, and
23 if I -- that's a Pandora's Box. That would defeat the
24 entire purpose of having arbitration.

25 why would you go to arbitration?

1 You might as well just leave it on the trial docket---

2 MR. FORD: I---

3 THE COURT: ---and let a judge decide it nonjury or let
4 a jury decide it. But the U.S. Supreme Court has been very
5 clear that even, arguably, if they acted -- as long as they
6 acted within the scope of their agreement, and I've read the
7 agreement. It's broad. It covers -- which is how all
8 Arbitration Agreements are because the person who drafted it
9 never wants there, arguably, to be any issue left out of the
10 scope of it that can be left for litigation. Because,
11 again, it defeats the entire purpose of having arbitration
12 if we've got little tentacles hanging out here that can
13 still be tried because if, you know, just from an economic
14 standpoint, it makes no sense.

15 But the Supreme Court, and I'm talking about the U.S.
16 Supreme Court, says that even if a serious error on the part
17 of the arbitrator, even if there is a serious error, it
18 doesn't warrant overturning the decision. Once you've
19 decided to turn it over to that Panel, you, arguably, have
20 turned every issue that covers that agreement into their
21 hands, and that's why it allows you to select somebody. It
22 allows them to select somebody. And then, I guess, the
23 agreement provided for these other two folk to select
24 somebody.

25 And the whole purpose of it is for it to be resolved in

1 a summary fashion. And, and, you know, an arbitration is
2 agreement is a contract. People enter into it arm's length,
3 and there must be something that's beneficial on either side
4 for them to come to that agreement.

5 I don't -- I'm bound by what that Order actually says.
6 Not what y'all say it's saying. And the plain language of
7 it doesn't support the proposition that this was some --
8 something that happened well in advance, and somehow
9 disregards the release.

10 And I think they articulated their position on it, but
11 I'm gonna think about it. I need to do a little more
12 research. Y'all can give me Proposed Orders within five
13 days. It should include any findings of fact and
14 conclusions of law that are supported by the record.

15 Thanks.

16 Have a great day.

17 MR. FORD: Thank you, Your Honor.

18 MR. RANNIK: Thank you, Your Honor.

19 THE COURT: You welcome.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Charleston County, South Carolina, on the 16th day of December, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 12th, 2019

A handwritten signature in cursive script, appearing to read "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

EXHIBIT “B”

11/01/2018

From: Chris Ogiba <chrisogiba@mvalaw.com>
To: Andrew K. Epting
Sent: 6/26/2015 8:26AM
Subject: FW: Meeting Summary

Drew:

As you and I discussed yesterday afternoon, it would probably be prudent to keep communications flowing between you and me in order to avoid any confusion or miscommunication. To answer John David's questions, my understanding is that the scaffolding will remain up. John David indicated during the meeting that it would be more costly to take down the scaffolding and put it back up in 30 days, than to leave it up from now until then. In terms of funds available to cover the scaffolding, balconies, and remaining demolition (which I believe was estimated to be approximately \$50K), the HOA is going to be exploring short term bank financing or alternative financing methods, including potentially certain willing owners prepaying their estimated special assessments in the near term (i.e., even before the special assessment vote). Understanding that the lead up to reaching 100% work effort on the job may be up to 4 weeks, I believe that it was agreed that Trident will begin that process of ramping up now in order to be at 100% on the first week in August. Obviously, the pace of that ramp up will be dictated by subcontractor availability.

In the meantime, the board is planning to send out a notice for a special meeting to vote on a special assessment on Tuesday, June 30. That special assessment will include additional construction costs over and above the existing contract in an amount not to exceed \$3,250,000. The special meeting will be held on August 1. I suspect, though have not confirmed, that it may be helpful to have a Trident representative at that meeting to help explain the numbers. As soon as that special assessment passes, Trident will be back up to full speed, with a substantial completion date of November 30. The HOA, Trident, and GBA will work to diligently assess and process ongoing payment applications and change order requests, with an understanding that some portions of some of the PCOs may require additional negotiation or compromise at or near the end of the project.

Please let me know if your understanding is any different.

Thanks,

Chris

From: John David Griffith [mailto:JDG@TridentCon.com]
Sent: Thursday, June 25, 2015 6:13 PM

11/01/2018

To: tom mather (tmather@icloud.com); Johan Schultz (smjsbooboo@aol.com); msimpson17@aol.com;
April Gawrych (agawrych@mcalistdevelopment.com); Chris Ogiba; Drew Epting (AKE@epting-law.com)
Cc: Chris Burrell
Subject: Meeting Summary

Would someone please summarize exactly what we decided to day. My understanding is somewhat different from my Chris's?

1. I understood that we were going to leave the scaffold in place.
2. What are we to do about the swap from the scaffold to doing work on the balconies? If we try to do both, we will go over the \$400,000.
3. We talked about the board getting a short term commitment from a bank? To guarantee the slow down work? To ramp up the work? To full on the work?
4. Whatever that number is effects how much work we can do until the either bank commitment or additional assessment is finalized.
5. We talked a lot about "ramping back up." One question there is When? Second question there is How Much? Is it full on or just more than what we agreed to now? If more, how much more?

Sorry for the uncertainty. But again, Chris and I recall (while most all of the same discussion) differently what the direction to TCC is?

Thank you, John David

John David Griffith

Vice President

small trident_teambuild_cmyk

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11/01/2018

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EXHIBIT “C”

Concord & Cumberland
Change Order Log
02/16/2016

PCO #	Description	ROW	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
001	Interior Trim (Not including Unit 104)							(43,654)			Executed	OCO #003
002	Access Controls Side Gate			-	-			6,289	-		Executed	OCO #001
003	RFI #9 Parapet To Garage Intersection										VOID	
004	RFI #14 - Direction on ground floor columns in stucco area					21,223					GBA Validated	OCO #006
005	SI #2 (RFI #15) - Head/Sill Detail Repair Applied Stucco							2,433	5		Executed	OCO #003
006	SI #3 North Elevation Wall Plane Issues							139,25			Executed	OCO #004
007	SI #4 (RFI #13) - NE Corner Expansion Joint							8,291	4		Executed	OCO #001
008	RFI #16 Precast Parapet Cap Replacement					-					VOID	
009	RFI #19 Existing Sill Conditions at Stucco							4,506	2		Executed	OCO #003
010	RFI #11 Existing Conditions at Existing Wall CMU Intersection NE Corner										Costs included in PCO #006	
011	RFI #11 Rework Window Sill Framing To Accommodate Stucco Detail							34,209	8		Executed	OCO #003
012	RFI #24 Rusted Framing On Balconies Drop 5 & 6							64,95			Executed	OCO #004
013	Drop 1 and 2 Delay Due To Unforeseen Conditions (Demo/Out of Plane/Sill Height Issues)							50,572	29		Executed	OCO #003
014	RFI #12 - Stucco to remain clarification (Col Line K thru L)			-	-	-				4,464	VOID	Not a scope change
015	Excessive Window Opening Prep at Stone Tower							13,844			Executed	OCO #004
016	Interior Finish Additional Scope Items					17,898					GBA Validated	OCO #006
017	Drop C Out of Plane Issues - Unit 102							347			Executed	OCO #004
018	RFI #34 Out of Plane CMU Area 8										VOID	Costs included in PCO #030
019	Drop 7 and 9 Stucco Shear Wall Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
019R	Drop 7 and 9 Stucco Shear Wall Repairs (Remove and Replace Stucco)							28,884	15		Executed	OCO #003
020	Drop 14 and 16 Stucco Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
021	RFI #36 Columns at A4 Drop 18 Terrace							18,34			Executed	OCO #004
022	RFI #25 Loose CMU NW Corner										VOID	Included in PCO #013
023	RFI #97 Alter Railings Due To Out of Plane Issues					30,074					GBA Validated	OCO #006
024	Additional Demolition Labor Not Shown On Original Drawings					152,190					GBA Validated	OCO #006
025	Waterproofing Impact Due To Increased Duration and Existing Conditions			19,813							Submitted	Submitted to GBA
026	RFI #26 Rusted Columns at Column Line K										VOID	Included in PCO #012
027	RFI #27 Rebar Protruding From Slab							7,56			Executed	OCO #005
028	RFI #32 /RFI #43 Brick Layout Conflict Existing Relieving Angles							10,073	7		Executed	OCO #005
029	RFI #23 Wall at CMU Intersection Area 8										VOID	Included in PCO #030
030	RFI #23 Loose CMU SW Corner							4,599	5		Executed	OCO #003
031	RFI #38 Relieving Angles Different Elevations										VOID	Cost included in PCO 028
032	RFI #40 Balcony Sheathing Clarification							2,421			Executed	OCO #005
033	RFI #41 NE Expansion Joint							786	-		Executed	OCO #003
034	VOID										VOID	
035	RFI #44 Stucco Drop Balcony Ceilings										VOID	
036	RFI #39 Area 7 Brick and Stucco Intersection										VOID	
037	RFI #46 Copper Roof Drop 2 To Drop 1							1,321			Executed	OCO #005
038	RFI #49 Drop 2 401 Balcony Unforeseen Condition					744	1				GBA Validated	OCO #006
039	VOID										VOID	
040	December Weather Claim										VOID	
041	January Weather Claim										VOID	
042	Balcony Framing Rust Repair (Drop 10, 13, 17)							847			Executed	OCO #005
043	Drop 14 and 16 Stucco Shear Wall Repairs (Remove and Replace Stucco)					27		33,436			Executed	OCO #005
044	Drop 20 4th Floor Out of Plane Issues							3,294			Executed	OCO #004
045	Drop 18 and 19 Out of Plane Issues							61,184			Executed	OCO #004
046	RFI #50 and RFI #55 Cast Stone Revisions					1,439					GBA Validated	OCO #006
047	Drop 7 Out of Plane Issues										VOID	Costs included in PCO #051
048	February Weather Claim										VOID	
049	Cumberland Stair Tower Improvements									18,210	VOID	Owner doesn't want to proceed
050	Terrace 8 Drops 5 & 6 Out of Plane Issues										Executed	OCO #004
051	Drop 7, 8, 9 Out of Plane Issues							22,700			Executed	OCO #004
052	Terrace C Drop 8 Out of Plane Issues							96,228			VOID	Costs included in PCO #51
053	Drop 10 Out of Plane Issues							49,516			Executed	OCO #005
054	Out of Plane and Framing Issues Multiple Drops					65,844	69				GBA Validated	OCO #008
055	Drop 14, 15, 16 Out of Plane Issues						48	110,060			Executed	OCO #005
056	Drop 17 Out of Plane Issues						76	38,824			Executed	OCO #005
057	Drop 17 Terrace Wall Attachment and Framing Issues										VOID	Cost included in PCO 061
058	Balcony Slab Elevation Conflicts										VOID	
059	Correct Wood Framed Parapets										VOID	Cost included in out of plane numbers
060	GI Balcony Extension (6-Mth) - Policy Expires April 2015							55,329			Executed	OCO #004
061	RFI #53 knee Wall at 4th Floor Balcony Drop 6, 10, 17)						26	1,5423			Executed	OCO #005
062	Extended General Conditions Due To Unforeseen Conditions (End Date 09.15.15)										VOID	Cost included in PCO #102R

Concord & Cumberland
Change Order Log

02/16/2016

PCO #	Description	ROW	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
063	Terrace Intermediate Waterproofing										VOID	
064	Drop 6 Out of Plane										VOID	Costs included in PCO #078
065	Terrace B Stucco Behind Stone Removal							226			Executed	OCO #005
066	Terrace C Built Up Roofing Removal					3,666					GBA Validated	OCO #006
067	Terrace G Out of Plane										VOID	Costs included in PCO #056
068	J Door Columns Twisted at Unit 404 Terrace G										VOID	
069	Drop 16 Excessive Stucco Removal										VOID	Costs included in PCO #043
070	Drop 11 Terrace Out of Plane Issues							3,755			Executed	OCO #005
071	Stucco Time Delay Impact & Remobilization										VOID	
071R1	Stucco Time Delay Impact & Remobilization					9,651				42,794	GBA Validated	OCO #008
072	RF #63 Blocking For Brick Ties Drop 19 and 20							440			Executed	OCO #005
073	Existing Pipe in Wall Drop 9							1,183			Executed	OCO #005
074	RF #56 Wood Framing/Sheathing Drop 8 and 15 Parapets							2,836			Executed	OCO #005
075	RF #73 Drop 9 Rework Railing Due To Out of Plane Issues							727			Executed	OCO #004
076	RF #78 Balcony Slab Wood Supports							2,582			Executed	OCO #005
077	RF #73 Drop 14 Rework Railing Due To Out of Plane Issues							727			Executed	OCO #005
078	RF #59 Drop 5 and 6 Terrace Wall Out of Plane Issues							14,671			Executed	OCO #005
079	Window Installer Impact Due To Increased Duration and Existing Conditions			59,442							Submitted	Submitted to GBA
080	Excessive Window Opening Prep and Added Wood Blocking					371,697					GBA Validated	OCO #006
081	Additional Temporary Protection					142,543					GBA Validated	OCO #006
082R	Salem's Extended General Conditions (End Date 09/15/15)										VOID	
082R1	Salem's Extended General Conditions (End Date 11/30/15)									557,607	VOID	
082R2	Salem's Extended General Conditions (End Date 11/30/15)									552,119	VOID	
082R3	Salem's Extended General Conditions (End Date 11/30/15) - Labor			54,949							Submitted	Submitted to GBA
083	Salem's Lost Productivity Due To Unforesees										VOID	
084	RF #88 4th Floor Terrace Roof Ends					8,927					GBA Validated	OCO #006
085	RF #61 4th Floor Steel Column Replacement					4,042					Executed	OCO #005
086	Metal Stud/Sheathing/Insulation Allowance Credit					(83,925)					Executed	OCO #005
087	RF #86 Area 3 and 6 Stucco Wall and Stair					6,745					GBA Validated	OCO #006
088	RF #77 South Expansion Joint Transition					11,292					GBA Validated	OCO #007
089	RF #87 Drop 18/15 Cast Stone Support at Corner					857					OCO #006	
090	RF #69 Stucco Balcony Ceiling Intersection							3,123			Executed	OCO #005
091	RF #68 Cast Stone Attachment Details							4,157			Executed	OCO #005
092	RF #89 Existing Stone Band Versus Foam Band at Foyer Entries					1,056					GBA Validated	OCO #006
093	SSI #5 Parapet Blocking Due To Out of Plane Corrections					4,412					OCO #006	
094	RF #52 Break Metal Diverter Top of Expansion Joint Drop 1					209					GBA Validated	OCO #006
095	RF #3 Terrace B Waterproofing To Stone Supported By Brick					609					OCO #006	
096	RF #59 Revised Threshold Extensions Due To Out of Plane Adjustments					22,906					GBA Validated	OCO #009
097	RF #72 Rework Copper Roofs at Alcoves Due To Out of Plane Adjustments (Drop 8 and 15)					6,100					GBA Validated	OCO #007
098	RF #95 Replacement Drain Collar Assemblies					5,500					GBA Validated	OCO #006
099	RF #94 Custom Pressure Treating Going Around Existing Door (Drop 8 and 15)					682					GBA Validated	OCO #006
100	RF #91 Protruding Slab Edge Drop 10, 13, 17					8,838					GBA Validated	OCO #006
101	Deuglass Replacement Drop 11 and 12					7,139					GBA Validated	OCO #006
102	TCC Extended General Conditions Due To Slow Down (End Date 11/30/15)										VOID	Cost included in PCO #102R
102R2	TCC Extended General Conditions Due To Slow Down (End Date 11/30/15)			90,372	147						Submitted	Submitted to GBA
103	Salem Extended General Conditions Due To Slow Down (End Date 11/30/15)					(37,663)					VOID	
104	Project Specific GI Insurance Extension										GBA Validated	OCO #008
105	Terrace D - Excessive Demolition Impact										VOID	
106	RF #101 - Terrace D and E wall framing					2,347				13,440	VOID	
107	Unit 104 Trim Credit					(1,858)					GBA Validated	OCO #008
108	Credit for Cumberland Stairwell Carpet					(7,451)					GBA Validated	OCO #006
109	RF #106 Terrace E Kneewall Out of Plane Issues					7,486					VOID	Material already on hand
110	RF #105 Terrace E Kneewall Out of Plane Issues					411					OCO #009	
111	RF #111 Copper Roof End Openings										GBA Validated	OCO #008
112	RF #112 Terrace D CMU To Kneewall					113					GBA Validated	OCO #008
113	RF #109 Terrace B Soffit					814					GBA Validated	OCO #008
114	RF #110 Terrace E Kneewall Return									1,500	VOID	
115	RF #113 Terrace G D and E Existing Soffit and Fascia					1,132					GBA Validated	OCO #008
116	RF #114 Balcony Ceiling Drop 11 and 12					1,482					GBA Validated	OCO #008
117	RF #115 Brick Heller Angles Drop 11 and 12					15,104					GBA Validated	OCO #008
118	Add battens at their cement ceilings					4,769					GBA Validated	OCO #008

Concord & Cumberland
Change Order Log

02/16/2016

PCO #	Description	ROWL	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
119	September Weather Impact			43,379	8						Submitted	Submitted to GBA
120	Drop 18 and 19 Brick Delays			11,198	2						Submitted	Submitted to GBA
121	RH #116 Terrace G Slint Roof End Existing Condition					694					GBA Validated	OCO #008
122	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)										VOID	VOID
122R	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)			260,149							Submitted	Submitted to GBA
123	October Weather Impact			21,692	4						Submitted	Submitted to GBA
124	Partial Settlement PCO 102R TCC's Extended General Conditions					100,000					GBA Validated	OCO #008
125	Partial Settlement PCO 122 Additional Scaffolding					150,000					GBA Validated	OCO #008
126	RFF #123 Drop 11 Ceiling Fur Down at 3rd Floor Balcony			947							Submitted	Submitted to GBA
127	Unit 401 Balcony Drain Reworks										Pending subcontracting	Pending subcontracting
128	November Weather Impact			5,538	1						Submitted	Submitted to GBA
129	December Weather Impact			5,393	1						Submitted	Submitted to GBA
130	Waterproofing Impact Due To Increased Duration and Existing Conditions					60,762					GBA Validated	OCO #009
131	Window Installer Impact Due To Increased Duration and Existing Conditions					25,097					GBA Validated	OCO #009
132	Salem's Extended General Conditions (End Date 11/30/15) - Labor					64,617					GBA Validated	OCO #009
133	TCC Extended General Conditions (7/7/15 thru 11/30/15)					34,800					GBA Validated	OCO #009
134	Partial Settlement PCO 122 Additional Scaffolding/Equipment (7/7/15 thru 11/30/15)					85,632					GBA Validated	OCO #009
135	Sandblast Garage Wall To Receive Waterproofing			7,038	2						Submitted	Submitted to GBA
136	January Weather Impact			28,777	9						Submitted	Submitted to GBA
137	Tile Repairs 1st Floor Entrances			979							Submitted	Submitted to GBA
TOTALS		-	-	609,667	174	1,413,829		539,316	75	1,225,694		

Original Contract Amount 3,923,939
Executed Changes 539,316
Current Contract Amount 4,463,255

GBA Validated Changes 1,413,829
Changes Submitted to Architect For Review 609,667
Proposed/Forecasted Changes +
Forecasted Contract Amount 6,486,751

Original Contract Completion Date 05/27/2015
Approved Days By Change Orders 40
Revised Contract Completion Date 07/06/2015
Days By Pending/Forecasted Change Orders 222
Forecasted Completion Date Accounting For Pending Change Orders 02/12/2016
Forecasted Completion Date Per Latest Schedule Update 02/12/2016

Row Labels	Count of Status	Sum of Owner Changes
Executed	43	\$ 539,316
GBA Validated	45	\$ 1,413,829
Pending	1	\$ -
Submitted	14	\$ 609,667
VOID	41	\$ -
(blank)		\$ -
Grand Total	144	\$ 2,562,812

Concord & Cumberland
Change Order Log
02/25/2016

PCO #	Description	ROOM	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
001	Interior Trim (Not Including Unit 104)							13,654			Executed	OCO #003
002	Access Controls Side Gate			-	-			6,289	-		Executed	OCO #001
003	RF #9 Parapet To Garage Intersection										VOID	
004	RF #14 - Direction on ground floor columns in stucco area					21,223					GBA Validated	OCO #006
005	SI #2 (RF #15) - Head/Sill Detail Repair Applied Stucco							2,433	5		Executed	OCO #003
006	SI #3 North Elevation Wall Plane Issues							13,925			Executed	OCO #004
007	SI #4 (RF #13) - NE Corner Expansion Joint							8,291	4		Executed	OCO #001
008	RF #16 Precast Parapet Cap Replacement					-					VOID	
009	RF #19 Existing Sill Conditions at Stucco							4,506	2		Executed	OCO #003
010	RF #11 Existing Conditions at Existing Wall CMU Intersection NE Corner										VOID	Costs included in PCO #006
011	RF #21 Rework Window Sill Framing To Accommodate Stucco Detail							34,209	8		Executed	OCO #003
012	RF #24 Rusted Framing On Balconies Drop 5 & 6							64,951			Executed	OCO #004
013	Drop 1 and 2 Delay Due To Unforeseen Conditions (Demo/Out of Plane/Sill Height Issues)							50,572	29		Executed	OCO #003
014	RF #12 - Stucco to remain clarification (Col Line K thru L)			-	-					4,464	VOID	Not a scope change
015	Excessive Window Opening Prep at Stone Tower							13,844			Executed	OCO #004
016	Interior Finishes Additional Scope Items					17,898					GBA Validated	OCO #006
017	Drop 8 Out of Plane Issues - Unit 102							347			Executed	OCO #004
018	RF #34 Out of Plane CMU Area 8										VOID	Costs included in PCO #030
019	Drop 7 and 9 Stucco Shear Wall Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
019R	Drop 7 and 9 Stucco Shear Wall Repairs (Remove and Replace Stucco)							28,884	15		Executed	OCO #003
020	Drop 14 and 16 Stucco Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
021	RF #36 Columns at A4 Drop 18 Terrace							1834			Executed	OCO #004
022	RF #25 loose CMU NW Corner										VOID	Included in PCO #013
023	RF #97 Alter Railings Due To Out of Plane Issues					30,074					GBA Validated	OCO #006
024	Additional Demolition Labor Not Shown On Original Drawings					152,190					GBA Validated	OCO #006
025	Waterproofing Impact Due To Increased Duration and Existing Conditions			19,813							Submitted	Included in GBA
026	RF #26 Rusted Columns at Column Line K							256			VOID	Included in PCO #012
027	RF #27 Rebar Penetrating From Slab							10,073	7		Executed	OCO #005
028	RF #32/RF #43 Brick Layout Conflict Existing Relieving Angles										Executed	OCO #005
029	RF #23 Wall at CMU Intersection Area 8										VOID	Included in PCO #030
030	RF #52 loose CMU SW Corner							4,599	5		Executed	OCO #003
031	RF #38 Relieving Angles Different Elevations							2,421			VOID	Cost included in PCO 028
032	RF #40 Balcony Sheathing Clarification							786	-		Executed	OCO #005
033	RF #41 NE Expansion Joint										Executed	OCO #003
034	VOID										VOID	
035	RF #44 Stucco Drop Balcony Ceilings										VOID	
036	RF #39 Area 7 Brick and Stucco Intersection										VOID	
037	RF #46 Copper Roof Drop 2 To Drop 1							1,321			Executed	OCO #005
038	RF #49 Drop 2 401 Balcony Unforeseen Condition					744	1				GBA Validated	OCO #006
039	VOID										VOID	
040	December Weather Claim										VOID	
041	January Weather Claim										VOID	
042	Balcony Framing Rust Repair (Drop 10, 13, 17)							847			Executed	OCO #005
043	Drop 14 and 16 Stucco Shear Wall Repairs (Remove and Replace Stucco)						27	33,436			Executed	OCO #005
044	Drop 20 4th Floor Out of Plane Issues							3,294			Executed	OCO #004
045	Drop 18 and 19 Out of Plane Issues							6,184			Executed	OCO #004
046	RF #50 and RF #55 Cast Stone Revisions					1,439					GBA Validated	OCO #006
047	Drop 7 Out of Plane Issues										VOID	Costs included in PCO #051
048	February Weather Claim										VOID	
049	Cumberland Stair Tower Improvements									18,210	VOID	Owner doesn't want to proceed
050	Terrace B Drops 5 & 6 Out of Plane Issues							22,700			Executed	OCO #004
051	Drop 7, 8, 9 Out of Plane Issues							96,228			Executed	OCO #004
052	Terrace C Drop 8 Out of Plane Issues										VOID	Costs included in PCO #51
053	Drop 10 Out of Plane Issues						69	49,516			Executed	OCO #005
054	Out of Plane and Framing Issues Multiple Drops					65,844					GBA Validated	OCO #008
055	Drop 14, 15, 16 Out of Plane Issues						48	110,060			Executed	OCO #005
056	Drop 17 Out of Plane Issues						76	38,824			Executed	OCO #005
057	Drop 17 Terrace Wall Attachment and Framing Issues										VOID	Cost included in PCO #61
058	Balcony Slab Elevation Conflicts										VOID	
059	Correct Wood Framed Parapets										VOID	Cost included in out of plane numbers
060	GI Policy Extension (6 Month) - Policy Expires April 2015							55,329			Executed	OCO #004
061	RF #53 Stone Wall at 4th Floor Balcony Drop 6, 10, 17						26	15,423			Executed	OCO #005
062	Extended General Conditions Due To Unforeseen Conditions (End Date 09.15.15)										VOID	Cost included in PCO #102R

Concord & Cumberland
Change Order Log
02/25/2016

PCO #	Description	ROOM	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
063	Terrace Intermediate Waterproofing										VOID	VOID
064	Drop 6 Out of Plane							226			Executed	Costs included in PCO #078
065	Terrace E Stucco Behind Stone Removal					3,666					GBA Validated	OCO #005
066	Terrace C Built Up Roofing Removal										VOID	Costs included in PCO #056
067	Terrace G Out of Plane										VOID	VOID
068	1 Door Columns Twisted at Unit 404 Terrace G										VOID	Costs included in PCO #043
069	Drop 16 Excessive Stucco Removal							3,755			Executed	OCO #005
070	Drop 11 Terrace Out of Plane Issues									42,794	VOID	VOID
071	Stucco Time Delay Impact & Remediation										GBA Validated	OCO #008
071R1	Stucco Time Delay Impact & Remediation					9,651					Executed	OCO #005
072	RFI #63 Blocking For Brick Ties Drop 19 and 20							440			Executed	OCO #005
073	Existing Pipe in Wall Drop 9							1,183			Executed	OCO #005
074	RFI #56 Wood Framing/Sheathing Drop 8 and 15 Parapets							2,836			Executed	OCO #004
075	RFI #73 Drop 9 Rework & Bailing Due To Out of Plane Issues							727			Executed	OCO #005
076	RFI #78 Balcony Sbb Wood Supports							7,582			Executed	OCO #005
077	RFI #73 Drop 14 Rework Bailing Due To Out of Plane Issues							727			Executed	OCO #005
078	RFI #59 Drop 5 and 6 Terrace Wall Out of Plane Issues							14,671			Submitted	OCO #005
079	Window Insulator Impact Due To Increased Duration and Existing Conditions			59,442							GBA Validated	Submitted to GBA
080	Excessive Window Opening Prep and Added Wood Blocking					371,697					OCO #006	OCO #006
081	Additional Temporary Protection					142,543					VOID	VOID
082R	Salem's Extended General Conditions (End Date 09.15.15)										VOID	VOID
082R1	Salem's Extended General Conditions (End Date 11.30.15)									557,607	VOID	VOID
082R2	Salem's Extended General Conditions (End Date 11.30.15)									552,119	VOID	VOID
082R3	Salem's Extended General Conditions (End Date 11.30.15) - Labor			54,949							Submitted	Submitted to GBA
083	Salem's Lost Productivity Due To Unforeseens										VOID	VOID
084	RFI #88 4th Floor Terrace Roof Ends					8,927		4,042			GBA Validated	OCO #006
085	RFI #61 4th Floor Steel Column Replacement										Executed	OCO #005
086	Metal Stud/Sheathing/Insulation Allowance Credit							(83,925)			Executed	OCO #005
087	RFI #86 Area 3 and 6 Stucco Wall and Stair					6,745					GBA Validated	OCO #006
088	RFI #77 South Expansion Joint Transition					11,292					GBA Validated	OCO #007
089	RFI #82 Drop 18/19 Cast Stone Support at Corner					857					Executed	OCO #006
090	RFI #69 Stucco Balcony Ceiling Intersection							3,123			Executed	OCO #005
091	RFI #68 Cast Stone Attraction Details							4,157			Executed	OCO #005
092	RFI #89 Existing Stone Band Versus Team Band at Foyer Entries					1,956					GBA Validated	OCO #006
093	ASI #5 Parapet Blocking Due To Out of Plane Corrections					4,412					GBA Validated	OCO #006
094	RFI #92 Break Metal Diverter Top of Expansion Joint Drop 1					209					GBA Validated	OCO #006
095	RFI #3 Terrace B Waterproofing To Stone Supported By Brick					609					GBA Validated	OCO #006
096	RFI #99 Revised Threshold Extensions Due To Out of Plane Adjustments					22,906					GBA Validated	OCO #009
097	RFI #72 Rework Copper Roofs at Alcoves Due To Out of Plane Adjustments (Drop 8 and 15)					6,100					GBA Validated	OCO #007
098	RFI #95 Replacement Drain Collar Assemblies					5,500					GBA Validated	OCO #006
099	RFI #94 Custom Pressure Treating Casing Around Existing Door (Drop 8 and 15)					882					GBA Validated	OCO #006
100	RFI #91 Protruding Slab Edge Drop 10, 13, 17					8,838	5				GBA Validated	OCO #006
101	Densglass Replacement Drop 11 and 12					7,139					GBA Validated	OCO #006
102	TCC Extended General Conditions Due To Slow Down (End Date 11.30.15)				347						Submitted	Cost included in PCO #102R
102R2	TCC Extended General Conditions (7/7/15 thru 11/30/15)			90,372							VOID	Submitted to GBA
103	Salem Extended General Conditions Due To Slow Down (End Date 11.30.15)										VOID	Submitted to GBA
104	Project Specific GI Insurance Extension					(37,663)					GBA Validated	OCO #008
105	Terrace D - Excessive Demolition Impact					2,347				13,440	VOID	VOID
106	RFI #101 - Terrace D and E wall framing					(1,858)					GBA Validated	OCO #006
107	Unit 104 Trim Credit										GBA Validated	OCO #006
108	Credit for Cumberland Stairwell Carpet					(7,451)					VOID	Material already on hand
109	Credit For Not Replacing Tile at 1st Floor Entrances					7,486					GBA Validated	OCO #009
110	RFI #106 Terrace E Knee-wall Out of Plane Issues					411					GBA Validated	OCO #008
111	RFI #111 Copper Roof End Openings					113					GBA Validated	OCO #008
112	RFI #112 Terrace D CMU To Knee-wall					814					GBA Validated	OCO #008
113	RFI #109 Terrace B Soffit									1,500	VOID	VOID
114	RFI #110 Terrace E Knee-wall Return										OCO #008	OCO #008
115	RFI #113 Terrace G, D, and E Existing Soffit and Fascia					1,132					GBA Validated	OCO #008
116	RFI #114 Balcony Ceiling Drop 11 and 12					1,482					OCO #008	OCO #008
117	RFI #115 Brick Relief Angles Drop 11 and 12					38,104	5				GBA Validated	OCO #008
118	Add battens at fiber cement ceilings					4,769					GBA Validated	OCO #008

Concord & Cumberland
Change Order Log
02/25/2016

PCO #	Description	ROOM	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
119	September Weather Impact			43,279	8						Submitted	Submitted to GBA
120	Drop 18 and 19 Brkx Delays			11,198	2						Submitted	Submitted to GBA
121	RFT #116 Terrace G Slant Roof End Existing Condition					694					GBA Validated	OCO #008
122	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)										VOID	VOID
122R	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)			260,149							Submitted	Submitted to GBA
123	October Weather Impact			21,692	4						Submitted	Submitted to GBA
124	Partial Settlement PCO 102R TC's Extended General Conditions					100,000					GBA Validated	OCO #008
125	Partial Settlement PCO 122 Additional Scaffolding					150,000					GBA Validated	OCO #008
126	RFT #123 Drop 11 Ceiling Fur Down at 3rd Floor Balcony			947							Submitted	Submitted to GBA
127	Unit 401 Balcony Drain Repairs										Pending	Pending sub pricing
128	November Weather Impact			5,598	1						Submitted	Submitted to GBA
129	December Weather Impact			5,593	1						Submitted	Submitted to GBA
130	Waterproofing Impact Due To Increased Duration and Existing Conditions					60,762					GBA Validated	OCO #009
131	Window Installer Impact Due to Increased Duration and Existing Conditions					25,097					GBA Validated	OCO #009
132	Salem's Extended General Conditions (End Date 11/30/15) - Labor					64,617					GBA Validated	OCO #009
133	TCC Extended General Conditions (7/7/15 thru 11/30/15)					34,800					GBA Validated	OCO #009
134	Partial Settlement PCO 122 Additional Scaffolding/Equipment (7/7/15 thru 11/30/15)					85,632					GBA Validated	OCO #009
135	Sundblist Garage Wall To Receive Waterproofing			7,038	2						Submitted	Submitted to GBA
136	January Weather Impact			28,777	9						Submitted	Submitted to GBA
137	Tile Repairs 1st Floor Entrances			979							Submitted	Submitted to GBA
	TOTALS	-	-	609,667	176	1,413,829	257	539,316	75	1,225,694		

Original Contract Amount 3,923,939
Executed Changes 539,316

Current Contract Amount 4,463,255

GBA Validated Changes 1,413,829
Changes Submitted to Architect For Review 609,667
Proposed/Forecasted Changes -
Forecasted Contract Amount 6,486,751

Original Contract Completion Date 05/27/2015
Approved Days By Change Orders 40
Revised Contract Completion Date 07/06/2015
Days By Pending/Forecasted Change Orders 222
Forecasted Completion Date Accounting For Pending Change Orders 02/12/2016
Forecasted Completion Date Per Latest Schedule Update 02/12/2016

Row Labels	Count of Status	Sum of Owner Changes
Executed	43	\$ 539,316
GBA Validated	45	\$ 1,413,829
Pending	1	\$ -
Submitted	14	\$ 609,667
VOID	41	\$ -
(blank)		\$ -
Grand Total	144	\$ 2,562,812

001806

Concord & Cumberland
Change Order Log

03/09/2016

PCO #	Description	ROU	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
001	Interior Trim (Not including Unit 104)							(43,654)			Executed	OCO #003
002	Access Controls Side Gate			-	-			6,289	-		Executed	OCO #001
003	RFI #9 Parapet To Garage Intersection										VOID	
004	RFI #14 - Direction on ground floor columns in stucco area					21,223					GBA Validated	OCO #006
005	SI #2 (RFI #15) - Head/Sill Detail Repair Applied Stucco							2,433	5		Executed	OCO #003
006	SI #3 North Elevation Wall Plane Issues							1,3925			Executed	OCO #004
007	SI #4 (RFI #13) - NE Corner Expansion Joint							8,291	4		Executed	OCO #001
008	RFI #16 Precast Parapet Cap Replacement					-					VOID	
009	RFI #19 Existing Sill Conditions at Stucco							4,506	2		Executed	OCO #003
010	RFI #11 Existing Conditions at Existing Wall CMU Intersection NE Corner										Costs included in PCO #006	
011	RFI #21 Rework Window Sill Framing To Accommodate Stucco Detail							34,209	8		Executed	OCO #003
012	RFI #24 Rusted Framing On Balconies Drop 5 & 6							6495			Executed	OCO #004
013	Drop 1 and 2 Delay Due To Unforeseen Conditions (Demo/Out of Plane/Sill Height Issues)							50,572	29		Executed	OCO #003
014	RFI #12 - Stucco to remain clarification (Col Line K thru L)			-	-	-				4,464	VOID	Not a scope change
015	Excessive Window Opening Prep at Stone Tower							1,844			Executed	OCO #004
016	Interior Finishes Additional Scope Items					17,898					GBA Validated	OCO #006
017	Drop C Out of Plane Issues - Unit 102							347			Executed	OCO #004
018	RFI #34 Out of Plane CMU Area 8										VOID	
019	Drop 7 and 9 Stucco Shear Wall Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
019R	Drop 7 and 9 Stucco Shear Wall Repairs (Remove and Replace Stucco)							28,884	15		Executed	OCO #003
020	Drop 14 and 16 Stucco Repairs (Spiral Ties)									17,780	VOID	Rejected due to condition of wall
021	RFI #36 Columns at A4 Drop 18 Terrace							18-34			Executed	OCO #004
022	RFI #25 Loose CMU NW Corner										VOID	Included in PCO #013
023	RFI #97 After Railings Due To Out of Plane Issues					30,074					GBA Validated	OCO #006
024	Additional Demolition Labor Not Shown On Original Drawings					152,190					GBA Validated	OCO #006
025	Waterproofing Impact Due To increased Duration and Existing Conditions			19,813							Submitted	Included in PCO #012
026	RFI #26 Rusted Columns at Column Line K										VOID	
027	RFI #27 Rebar protruding From Slab							7,56			Executed	OCO #005
028	RFI #32/RFI #43 Brick Layout Conflict Existing Relieving Angles							10,073	7		Executed	OCO #005
029	RFI #23 Wall at CMU Intersection Area 8										VOID	Included in PCO #030
030	RFI #27 Loose CMU SW Corner							4,599	5		Executed	OCO #003
031	RFI #38 Relieving Angles Different Elevations										VOID	Cost included in PCO 028
032	RFI #40 Balcony Sheathing Clarification							2,421			Executed	OCO #005
033	RFI #41 NE Expansion Joint							786	-		Executed	OCO #003
034	VOID										VOID	
035	RFI #44 Stucco Drop Balcony Ceilings										VOID	
036	RFI #39 Area 7 Brick and Stucco Intersection										VOID	
037	RFI #46 Copper Roof Drop 2 To Drop 1							1,321			Executed	OCO #005
038	RFI #49 Drop 2 401 Balcony Unforeseen Condition					744	1				GBA Validated	OCO #006
039	VOID										VOID	
040	December Weather Claim										VOID	
041	January Weather Claim										VOID	
042	Balcony Framing Rust Repair (Drop 10, 13, 17)							847			Executed	OCO #005
043	Drop 14 and 16 Stucco Shear Wall Repairs (Remove and Replace Stucco)						27	33,436			Executed	OCO #005
044	Drop 20 4th Floor Out of Plane Issues							3,294			Executed	OCO #004
045	Drop 18 and 19 Out of Plane Issues							6,184			Executed	OCO #004
046	RFI #50 and RFI #55 Cast Stone Revisions					1,439					GBA Validated	OCO #006
047	Drop 7 Out of Plane Issues										VOID	Costs included in PCO #051
048	February Weather Claim										VOID	
049	Cumberland Stair Tower Improvements									18,210	VOID	Owner doesn't want to proceed
050	Terrace B Drops 5 & 6 Out of Plane Issues										Executed	OCO #004
051	Drop 7, 8, 9 Out of Plane Issues							22,700			Executed	OCO #004
052	Terrace C Drop 8 Out of Plane Issues							96,228			VOID	Costs included in PCO #51
053	Drop 10 Out of Plane Issues						69	49,516			Executed	OCO #005
054	Out of Plane and Framing Issues Multiple Drops					65,844					GBA Validated	OCO #008
055	Drop 14, 15, 16 Out of Plane Issues						48	110,060			Executed	OCO #005
056	Drop 17 Out of Plane Issues						76	38,824			Executed	OCO #005
057	Drop 17 Terrace Wall Attachment and Framing Issues										VOID	Cost included in PCO 061
058	Balcony Slab Elevation Conflicts										VOID	
059	Correct Wood Framed Parapets										VOID	Cost included in out of plane numbers
060	GI Balcony Extension (6-Mth) - Policy Expires April 2015							55,329			Executed	OCO #004
061	RFI #53 knee Wall at 4th Floor Balcony Drop 15, 10, 17)						26	1,5423			Executed	OCO #005
062	Extended General Conditions Due To Unforeseen Conditions (End Date 09.15.15)										VOID	Cost included in PCO #02R

Concord & Cumberland
Change Order Log

03/09/2016

PCO #	Description	ROW	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
063	Terrace Intermediate Water proofing										VOID	
064	Drop C Out of Plane										VOID	Costs included in PCO #078
065	Terrace B Stucco Behind Stone Removal					3,666		226			Executed	OCO #005
066	Terrace C Built Up Roofing Removal										GBA Validated	OCO #006
067	Terrace G Out of Plane										VOID	Costs included in PCO #056
068	1 Door Columns Twisted at Unit 404 Terrace G										VOID	VOID
069	Drop 16 Excessive Stucco Removal										VOID	Costs included in PCO #043
070	Drop 11 Terrace Out of Plane Issues							3,755			Executed	OCO #005
071	Stucco Time Delay Impact & Remobilization										VOID	VOID
071R1	Stucco Time Delay Impact & Remobilization					9,651				42,794	GBA Validated	OCO #008
072	RF #63 Blocking For Brick Ties Drop 19 and 20							440			Executed	OCO #005
073	Existing Pipe in Wall Drop 9							1,183			Executed	OCO #005
074	RF #56 Wood Framing/Sheathing Drop 8 and 15 Parapets							2,836			Executed	OCO #005
075	RF #73 Drop 9 Rework Railing Due To Out of Plane Issues							727			Executed	OCO #004
076	RF #78 Balcony Slab Wood Supports							2,582			Executed	OCO #005
077	RF #73 Drop 14 Rework Bailing Due To Out of Plane Issues							727			Executed	OCO #005
078	RF #59 Drop 5 and 6 Terrace Wall Out of Plane Issues							14,671			Executed	OCO #005
079	Window Installer Impact Due To Increased Duration and Existing Conditions			59,442							Submitted	Submitted to GBA
080	Excessive Window Opening Prep and Added Wood Blocking					371,697					OCO #006	OCO #006
081	Additional Temporary Protection					142,543					GBA Validated	OCO #006
082R	Salem's Extended General Conditions (End Date 09.15.15)										VOID	VOID
082R1	Salem's Extended General Conditions (End Date 11.30.15)										VOID	Submitted to GBA
082R2	Salem's Extended General Conditions (End Date 11.30.15)									557,607	VOID	VOID
082R3	Salem's Extended General Conditions (End Date 11.30.15) - Labor			54,949						552,119	VOID	VOID
083	Salem's Lost Productivity Due To Unforeseens										VOID	VOID
084	RF #88 4th Floor Terrace Roof Ends					8,927					GBA Validated	OCO #006
085	RF #61 4th Floor Steel Column Replacement							4,042			Executed	OCO #005
086	Metal Stud/Sheathing/Insulation Allowance Credit					(83,925)					Executed	OCO #005
087	RF #86 Area 3 and 6 Stucco Wall and Stair					6,745					GBA Validated	OCO #006
088	RF #77 South Expansion Joint Transition					11,292					GBA Validated	OCO #007
089	RF #87 Drop 18/15 Cast Stone Support at Corner					857					OCO #006	OCO #006
090	RF #69 Stucco Balcony Ceiling Intersection							3,123			Executed	OCO #005
091	RF #68 Cast Stone Attaching Details							4,157			Executed	OCO #005
092	RF #89 Existing Stone Band Versus Foam Band at Foyer Entries					1,056					GBA Validated	OCO #006
093	ASI #5 Parapet Blocking Due To Out of Plane Corrections					4,412					GBA Validated	OCO #006
094	RF #52 Break Metal Diverter Top of Expansion Joint Drop 1					209					GBA Validated	OCO #006
095	RF #3 Terrace B Waterproofing To Stone Supported By Brick					609					GBA Validated	OCO #006
096	RF #99 Revised Threshold Extensions Due To Out of Plane Adjustments					22,906					OCO #009	
097	RF #72 Rework Copper Roofs at Alcoves Due To Out of Plane Adjustments (Drop 8 and 15)					6,100					GBA Validated	OCO #007
098	RF #95 Replacement Drain Collar Assemblies					5,500					GBA Validated	OCO #006
099	RF #94 Custom Pressure Treating Going Around Existing Door (Drop 8 and 15)					882					GBA Validated	OCO #006
100	RF #91 Protruding Slab Edge Drop 10, 13, 17					8,838	5				GBA Validated	OCO #006
101	Debuglass Replacement Drop 11 and 12					7,139					GBA Validated	OCO #006
102	TCC Extended General Conditions Due To Slow Down (End Date 11.30.15)										VOID	Cost included in PCO #102R
102R2	TCC Extended General Conditions (7/7/15 Thrd 11/30/15)		147	90,372							Submitted	Submitted to GBA
103	Salem Extended General Conditions Due To Slow Down (End Date 11.30.15)										VOID	Submitted to GBA
104	Project Specific GI Insurance Extension					(37,663)					GBA Validated	OCO #008
105	Terrace D - Excessive Demolition Impact										VOID	VOID
106	RF #101 - Terrace D and E wall framing					2,347				13,440	GBA Validated	OCO #008
107	Unit 104 Trim Credit					(1,858)					GBA Validated	OCO #006
108	Credit for Cumberland Stairwell Carpet					(7,451)					VOID	Material already on hand
109	RF #106 Terrace E Kneewall Out of Plane Issues					7,486					GBA Validated	OCO #008
110	RF #111 Copper Roof End Openings					411					GBA Validated	OCO #008
111	RF #112 Terrace D CMU To Kneewall					113					GBA Validated	OCO #008
112	RF #109 Terrace B Soffit					814					GBA Validated	OCO #008
113	RF #110 Terrace E Kneewall Return									1,500	VOID	VOID
114	RF #113 Terrace G.D. and E Existing Soffit and Fascia					1,132					GBA Validated	OCO #008
115	RF #114 Balcony Ceiling Drop 11 and 12					1,482					GBA Validated	OCO #008
116	RF #115 Brick Veneer Angles Drop 11 and 12					15,104	5				GBA Validated	OCO #008
117	Add battens at fiber cement ceilings					4,769					GBA Validated	OCO #008
118												

001808

Concord & Cumberland
Change Order Log

03/09/2016

PCO #	Description	ROW	Time Impact	Submitted	Time Proposed	GBA Validated	Time Approved	Executed	Time Approved	Rejected	Status	Notes
119	September Weather Impact			43,379	8						Submitted	Submitted to GBA
120	Drop 18 and 19 Brick Decks			11,198	2						Submitted	Submitted to GBA
121	RI #116 Terrace G Slant Roof End Existing Condition					694					GBA Validated	OCO #008
122	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)										VOID	VOID
122R	Additional Scaffolding/Equipment (7/7/15 thru 11/15/15)			260,149							Submitted	Submitted to GBA
123	October Weather Impact			21,692	4						Submitted	Submitted to GBA
124	Partial Settlement PCO 102R TCC's Extended General Conditions					100,000					GBA Validated	OCO #008
125	Partial Settlement PCO 122 Additional Scaffolding					150,000					GBA Validated	OCO #008
126	RF #123 Drop 11 Ceiling Fur Down at 3rd Floor Balcony			947							Submitted	Submitted to GBA
127	Unit 401 Balcony Drain Reworks										Pending sub pricing	Pending sub pricing
128	November Weather Impact			5,528	1						Submitted	Submitted to GBA
129	December Weather Impact			5,293	1						Submitted	Submitted to GBA
130	Waterproofing Impact Due To Increased Duration and Existing Conditions					60,762					GBA Validated	OCO #009
131	Window Installer Impact Due To Increased Duration and Existing Conditions					25,097					GBA Validated	OCO #009
132	Salem's Extended General Conditions (End Date 11/30/15) - Labor					64,617					GBA Validated	OCO #009
133	TCC Extended General Conditions (7/7/15 thru 11/30/15)					34,800					GBA Validated	OCO #009
134	Partial Settlement PCO 122 Additional Scaffolding/Equipment (7/7/15 thru 11/30/15)					85,632					GBA Validated	OCO #009
135	Sandblast Garage Wall To Receive Waterproofing			7,038	2						Submitted	Submitted to GBA
136	January Weather Impact			28,777	9						Submitted	Submitted to GBA
137	Tile Repairs 1st Floor Entrances			979							Submitted	Submitted to GBA
138	February Weather Claim			9,594	3						Submitted	Submitted to GBA
	TOTALS	-	-	619,261	177	1,413,829	257	539,316	75	1,225,694		

Original Contract Amount
Executed Changes

3,925,939
539,316

Current Contract Amount

4,463,255

GBA Validated Changes

1,413,829

Changes Submitted to Architect For Review

619,261

Proposed/Forecasted Changes

6,496,345

Forecasted Contract Amount

6,496,345

Original Contract Completion Date

05/27/2015

Approved Days By Change Orders

40

Revised Contract Completion Date

07/06/2015

Days By Pending/Forecasted Change Orders

222

Forecasted Completion Date Accounting For Pending Change Orders

03/12/2016

Forecasted Completion Date Per Latest Schedule Update

02/12/2016

Row Labels	Count of Status	Sum of Owner Changes
Executed	43	\$ 539,316
GBA Validated	45	\$ 1,413,829
Pending	1	\$ -
Submitted	14	\$ 609,667
VOID	41	\$ -
(blank)		\$ 9,594
Grand Total	144	\$ 2,572,406

EXHIBIT “D”

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF FIVE PAGE(S)

TO OWNER: CONCORD & CUMBERLAND HPR
C/O MCALISTER MANAGEMENT COMPANY
106 PITT STREET
MT. PLEASANT, SC 29464
TCC OF CHARLESTON, INC.
P.O. BOX 60939
NORTH CHARLESTON, SC 29419

PROJECT: CONCORD & CUMBERLAND
EXTERIOR REPAIRS
175 CONCORD STREET
CHARLESTON, SC 29401

FROM CONTRACTOR: VIA ARCHITECT:
GLICK-BOEHM & ASSOCIATES, INC.
493 KING STREET - SUITE #100
CHARLESTON, SC 29403

APPLICATION NO: 18

Distribution to:

PERIOD TO: 03/24/2016

☒ OWNER
☒ ARCHITECT
☒ CONTRACTOR

PROJECT NOS: T1401

CONTRACT DATE: 02/27/2014

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all payments have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown hereon is now due.

1. ORIGINAL CONTRACT SUM \$ 3,923,939.00
2. Net change by Change Orders \$ 3,590,982.99
3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 7,514,921.99
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 7,514,921.99

5. RETAINAGE: (Original Contract Only)
a. 0% of Completed Work (Column D + E on G703) \$ -
b. 5% of Stored Material (Column F on G703) \$ -
Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ -

6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 7,514,921.99
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 5,571,518.24
8. CURRENT PAYMENT DUE \$ 1,943,403.75
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ -

CONTRACTOR: TCC OF CHARLESTON, INC.

By:  Date: 3.24.16

State of South Carolina County of Charleston
Subscribed and sworn to before me this 24 day of March 2016
Notary Public: Natalie A. Boehm
My Commission expires: MAY 30, 2016

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,943,403.75

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$1,953,145.00	\$0.00
Total approved this Month	\$1,637,837.99	\$0.00
TOTALS	\$3,590,982.99	
NET CHANGES by Change Order	\$3,590,982.99	\$0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified ARCHITECT: Shawn Mellin - Glick-Boehm & Associates, Inc.

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 18
APPLICATION DATE: 03/24/2016
PERIOD TO: 03/24/2016
PROJECT NO: T1401

A	B	C	C1	C2	D		E	F	G	H	I
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL CONTRACT VALUE	BUDGET SHIFTS	REVISED VALUE (C + C1)	WORK COMPLETED		THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G + C)	BALANCE TO FINISH (C2 - G)
					FROM PREVIOUS APPLICATION (D + E)						
0010	GENERAL CONDITIONS	\$ 157,833.00	\$ 33,279.00	\$ 191,112.00	\$ 191,112.00	\$ -	\$ -	\$ -	\$ 191,112.00	100.00%	\$ -
0020	PERMITS	\$ 24,263.00	\$ 10,500.00	\$ 34,763.00	\$ 34,763.00	\$ -	\$ -	\$ -	\$ 34,763.00	100.00%	\$ -
0030	PROJECT INSURANCE	\$ 200,000.00		\$ 200,000.00	\$ 200,000.00	\$ -	\$ -	\$ -	\$ 200,000.00	100.00%	\$ -
0040	TRAFFIC CONTROL	\$ 99,910.00		\$ 99,910.00	\$ 99,910.00	\$ -	\$ -	\$ -	\$ 99,910.00	100.00%	\$ -
0043	SCAFFOLDING	\$ 162,000.00	\$ 76,032.00	\$ 238,032.00	\$ 238,032.00	\$ -	\$ -	\$ -	\$ 238,032.00	100.00%	\$ -
0048	MOCK-UP PANEL	\$ 16,000.00		\$ 16,000.00	\$ 16,000.00	\$ -	\$ -	\$ -	\$ 16,000.00	100.00%	\$ -
0050	A1 - DEMOLITION	\$ 42,586.00		\$ 42,586.00	\$ 42,586.00	\$ -	\$ -	\$ -	\$ 42,586.00	100.00%	\$ -
0060	A1 - MASONRY	\$ 25,435.00		\$ 25,435.00	\$ 25,435.00	\$ -	\$ -	\$ -	\$ 25,435.00	100.00%	\$ -
0070	A1 - MISC METALS	\$ 4,122.00		\$ 4,122.00	\$ 4,122.00	\$ -	\$ -	\$ -	\$ 4,122.00	100.00%	\$ -
0080	A1 - WINDOW/PARAPET BLOCKING	\$ 11,761.00		\$ 11,761.00	\$ 11,761.00	\$ -	\$ -	\$ -	\$ 11,761.00	100.00%	\$ -
0090	A1 - TRIM AT WINDOWS	\$ 18,771.00		\$ 18,771.00	\$ 18,771.00	\$ -	\$ -	\$ -	\$ 18,771.00	100.00%	\$ -
0100	A1 - AIR/WATER BARRIER	\$ 9,110.00		\$ 9,110.00	\$ 9,110.00	\$ -	\$ -	\$ -	\$ 9,110.00	100.00%	\$ -
0110	A1 - BALCONY WATERPROOFING	\$ 11,788.00		\$ 11,788.00	\$ 11,788.00	\$ -	\$ -	\$ -	\$ 11,788.00	100.00%	\$ -
0130	A1 - GLASS & GLAZING LBR	\$ 35,076.00		\$ 35,076.00	\$ 35,076.00	\$ -	\$ -	\$ -	\$ 35,076.00	100.00%	\$ -
0140	A1 - DRYWALL AT WINDOWS	\$ 10,858.00		\$ 10,858.00	\$ 10,858.00	\$ -	\$ -	\$ -	\$ 10,858.00	100.00%	\$ -
0150	A1 - STUCCO	\$ 23,752.00		\$ 23,752.00	\$ 23,752.00	\$ -	\$ -	\$ -	\$ 23,752.00	100.00%	\$ -
0160	A1 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -
0170	A1 - PAINTING	\$ 5,621.00		\$ 5,621.00	\$ 5,621.00	\$ -	\$ -	\$ -	\$ 5,621.00	100.00%	\$ -
0180	A1 - ELECTRICAL	\$ 2,205.00		\$ 2,205.00	\$ 2,205.00	\$ -	\$ -	\$ -	\$ 2,205.00	100.00%	\$ -
0190	A2 - DEMOLITION	\$ 30,918.00		\$ 30,918.00	\$ 30,918.00	\$ -	\$ -	\$ -	\$ 30,918.00	100.00%	\$ -
0200	A2 - MASONRY	\$ 25,430.00		\$ 25,430.00	\$ 25,430.00	\$ -	\$ -	\$ -	\$ 25,430.00	100.00%	\$ -
0210	A2 - MISC METALS	\$ 2,993.00		\$ 2,993.00	\$ 2,993.00	\$ -	\$ -	\$ -	\$ 2,993.00	100.00%	\$ -
0220	A2 - WINDOW/PARAPET BLOCKING	\$ 8,539.00		\$ 8,539.00	\$ 8,539.00	\$ -	\$ -	\$ -	\$ 8,539.00	100.00%	\$ -
0230	A2 - TRIM AT WINDOWS	\$ 13,628.00		\$ 13,628.00	\$ 13,628.00	\$ -	\$ -	\$ -	\$ 13,628.00	100.00%	\$ -
0250	A2 - AIR/WATER BARRIER	\$ 6,614.00		\$ 6,614.00	\$ 6,614.00	\$ -	\$ -	\$ -	\$ 6,614.00	100.00%	\$ -
0260	A2 - BALCONY WATERPROOFING	\$ 8,558.00		\$ 8,558.00	\$ 8,558.00	\$ -	\$ -	\$ -	\$ 8,558.00	100.00%	\$ -
0280	A2 - GLASS & GLAZING LBR	\$ 25,466.00		\$ 25,466.00	\$ 25,466.00	\$ -	\$ -	\$ -	\$ 25,466.00	100.00%	\$ -
0290	A2 - DRYWALL AT WINDOWS	\$ 7,883.00		\$ 7,883.00	\$ 7,883.00	\$ -	\$ -	\$ -	\$ 7,883.00	100.00%	\$ -
0300	A2 - STUCCO	\$ 37,170.00		\$ 37,170.00	\$ 37,170.00	\$ -	\$ -	\$ -	\$ 37,170.00	100.00%	\$ -
0310	A2 - FIBER CEMENT @ BALCONY	\$ 5,418.00	\$ (5,418.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -
0320	A2 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -
0330	A2 - PAINTING	\$ 4,081.00		\$ 4,081.00	\$ 4,081.00	\$ -	\$ -	\$ -	\$ 4,081.00	100.00%	\$ -
0340	A2 - ELECTRICAL	\$ 1,601.00		\$ 1,601.00	\$ 1,601.00	\$ -	\$ -	\$ -	\$ 1,601.00	100.00%	\$ -
0350	A3 - DEMOLITION	\$ 39,669.00		\$ 39,669.00	\$ 39,669.00	\$ -	\$ -	\$ -	\$ 39,669.00	100.00%	\$ -
0360	A3 - MISC METALS	\$ 3,840.00		\$ 3,840.00	\$ 3,840.00	\$ -	\$ -	\$ -	\$ 3,840.00	100.00%	\$ -
0370	A3 - WINDOW/PARAPET BLOCKING	\$ 10,956.00		\$ 10,956.00	\$ 10,956.00	\$ -	\$ -	\$ -	\$ 10,956.00	100.00%	\$ -
0380	A3 - TRIM AT WINDOWS	\$ 17,485.00		\$ 17,485.00	\$ 17,485.00	\$ -	\$ -	\$ -	\$ 17,485.00	100.00%	\$ -
0390	A3 - AIR/WATER BARRIER	\$ 8,486.00		\$ 8,486.00	\$ 8,486.00	\$ -	\$ -	\$ -	\$ 8,486.00	100.00%	\$ -
0400	A3 - BALCONY WATERPROOFING	\$ 10,981.00		\$ 10,981.00	\$ 10,981.00	\$ -	\$ -	\$ -	\$ 10,981.00	100.00%	\$ -
0420	A3 - GLASS & GLAZING LBR	\$ 32,674.00		\$ 32,674.00	\$ 32,674.00	\$ -	\$ -	\$ -	\$ 32,674.00	100.00%	\$ -
0430	A3 - DRYWALL AT WINDOWS	\$ 10,114.00		\$ 10,114.00	\$ 10,114.00	\$ -	\$ -	\$ -	\$ 10,114.00	100.00%	\$ -
0440	A3 - STUCCO	\$ 63,134.00		\$ 63,134.00	\$ 63,134.00	\$ -	\$ -	\$ -	\$ 63,134.00	100.00%	\$ -
0450	A3 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -
0460	A3 - PAINTING	\$ 5,236.00		\$ 5,236.00	\$ 5,236.00	\$ -	\$ -	\$ -	\$ 5,236.00	100.00%	\$ -
0470	A3 - ELECTRICAL	\$ 2,054.00	\$ (393.00)	\$ 1,661.00	\$ 1,661.00	\$ -	\$ -	\$ -	\$ 1,661.00	100.00%	\$ -
0480	A4 - DEMOLITION	\$ 35,294.00		\$ 35,294.00	\$ 35,294.00	\$ -	\$ -	\$ -	\$ 35,294.00	100.00%	\$ -
0490	A4 - MASONRY	\$ 23,687.00		\$ 23,687.00	\$ 23,687.00	\$ -	\$ -	\$ -	\$ 23,687.00	100.00%	\$ -
0500	A4 - MISC METALS	\$ 3,416.00		\$ 3,416.00	\$ 3,416.00	\$ -	\$ -	\$ -	\$ 3,416.00	100.00%	\$ -
0510	A4 - WINDOW/PARAPET BLOCKING	\$ 9,747.00		\$ 9,747.00	\$ 9,747.00	\$ -	\$ -	\$ -	\$ 9,747.00	100.00%	\$ -
0520	A4 - TRIM AT WINDOWS	\$ 15,557.00		\$ 15,557.00	\$ 15,557.00	\$ -	\$ -	\$ -	\$ 15,557.00	100.00%	\$ -
0530	A4 - AIR/WATER BARRIER	\$ 7,550.00		\$ 7,550.00	\$ 7,550.00	\$ -	\$ -	\$ -	\$ 7,550.00	100.00%	\$ -
0540	A4 - BALCONY WATERPROOFING	\$ 9,769.00		\$ 9,769.00	\$ 9,769.00	\$ -	\$ -	\$ -	\$ 9,769.00	100.00%	\$ -
0560	A4 - GLASS & GLAZING LBR	\$ 24,070.00		\$ 24,070.00	\$ 24,070.00	\$ -	\$ -	\$ -	\$ 24,070.00	100.00%	\$ -

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CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 18
APPLICATION DATE: 03/24/2016
PERIOD TO: 03/24/2016
PROJECT NO: T1401

A	B	C	C1	C2	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL CONTRACT VALUE	BUDGET SHIFTS	REVISED VALUE (C + C1)	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G + C)	BALANCE TO FINISH (G - H)	RETAINAGE 10%
					FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
0570	A4 - DRYWALL AT WINDOWS	\$ 8,998.00		\$ 8,998.00	\$ 8,998.00	\$ -	\$ -	\$ 8,998.00	100.00%	\$ -	\$ -
0580	A4 - STUCCO	\$ 32,813.00		\$ 32,813.00	\$ 32,813.00	\$ -	\$ -	\$ 32,813.00	100.00%	\$ -	\$ -
0590	A4 - FIBER CEMENT AT BALCONY	\$ 5,418.00	\$ (5,418.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0600	A4 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0610	A4 - PAINTING	\$ 4,658.00		\$ 4,658.00	\$ 4,658.00	\$ -	\$ -	\$ 4,658.00	100.00%	\$ -	\$ -
0620	A4 - ELECTRICAL	\$ 1,827.00	\$ (913.50)	\$ 913.50	\$ 913.50	\$ -	\$ -	\$ 913.50	100.00%	\$ -	\$ -
0630	A5 - DEMOLITION	\$ 35,585.00		\$ 35,585.00	\$ 35,585.00	\$ -	\$ -	\$ 35,585.00	100.00%	\$ -	\$ -
0640	A5 - MASONRY	\$ 23,687.00		\$ 23,687.00	\$ 23,687.00	\$ -	\$ -	\$ 23,687.00	100.00%	\$ -	\$ -
0650	A5 - MISC METALS	\$ 3,444.00		\$ 3,444.00	\$ 3,444.00	\$ -	\$ -	\$ 3,444.00	100.00%	\$ -	\$ -
0660	A5 - WINDOW/PARAPET BLOCKING	\$ 9,828.00		\$ 9,828.00	\$ 9,828.00	\$ -	\$ -	\$ 9,828.00	100.00%	\$ -	\$ -
0670	A5 - TRIM AT WINDOWS	\$ 7,613.00		\$ 7,613.00	\$ 7,613.00	\$ -	\$ -	\$ 7,613.00	100.00%	\$ -	\$ -
0680	A5 - AIR/WATER BARRIER	\$ 15,685.00		\$ 15,685.00	\$ 15,685.00	\$ -	\$ -	\$ 15,685.00	100.00%	\$ -	\$ -
0690	A5 - BALCONY WATERPROOFING	\$ 9,850.00		\$ 9,850.00	\$ 9,850.00	\$ -	\$ -	\$ 9,850.00	100.00%	\$ -	\$ -
0710	A5 - GLASS & GLAZING LBR	\$ 24,310.00		\$ 24,310.00	\$ 24,310.00	\$ -	\$ -	\$ 24,310.00	100.00%	\$ -	\$ -
0720	A5 - DRYWALL AT WINDOWS	\$ 9,073.00		\$ 9,073.00	\$ 9,073.00	\$ -	\$ -	\$ 9,073.00	100.00%	\$ -	\$ -
0730	A5 - STUCCO	\$ 32,813.00		\$ 32,813.00	\$ 32,813.00	\$ -	\$ -	\$ 32,813.00	100.00%	\$ -	\$ -
0740	A5 - FIBER CEMENT AT BALCONY	\$ 5,418.00	\$ (5,418.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0750	A5 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0760	A5 - PAINTING	\$ 4,697.00		\$ 4,697.00	\$ 4,697.00	\$ -	\$ -	\$ 4,697.00	100.00%	\$ -	\$ -
0770	A5 - ELECTRICAL	\$ 1,842.00	\$ (1,842.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0780	A6 - DEMOLITION	\$ 39,669.00		\$ 39,669.00	\$ 39,669.00	\$ -	\$ -	\$ 39,669.00	100.00%	\$ -	\$ -
0790	A6 - MISC METALS	\$ 3,840.00		\$ 3,840.00	\$ 3,840.00	\$ -	\$ -	\$ 3,840.00	100.00%	\$ -	\$ -
0800	A6 - WINDOW/PARAPET BLOCKING	\$ 10,956.00		\$ 10,956.00	\$ 10,956.00	\$ -	\$ -	\$ 10,956.00	100.00%	\$ -	\$ -
0810	A6 - TRIM AT WINDOWS	\$ 17,485.00		\$ 17,485.00	\$ 17,485.00	\$ -	\$ -	\$ 17,485.00	100.00%	\$ -	\$ -
0820	A6 - AIR/WATER BARRIER	\$ 8,486.00		\$ 8,486.00	\$ 8,486.00	\$ -	\$ -	\$ 8,486.00	100.00%	\$ -	\$ -
0830	A6 - BALCONY WATERPROOFING	\$ 10,981.00		\$ 10,981.00	\$ 10,981.00	\$ -	\$ -	\$ 10,981.00	100.00%	\$ -	\$ -
0850	A6 - GLASS & GLAZING LBR	\$ 27,674.00		\$ 27,674.00	\$ 27,674.00	\$ -	\$ -	\$ 27,674.00	100.00%	\$ -	\$ -
0860	A6 - DRYWALL AT WINDOWS	\$ 10,114.00		\$ 10,114.00	\$ 10,114.00	\$ -	\$ -	\$ 10,114.00	100.00%	\$ -	\$ -
0870	A6 - STUCCO	\$ 63,134.00		\$ 63,134.00	\$ 63,134.00	\$ -	\$ -	\$ 63,134.00	100.00%	\$ -	\$ -
0880	A6 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
0890	A6 - PAINTING	\$ 5,236.00		\$ 5,236.00	\$ 5,236.00	\$ -	\$ -	\$ 5,236.00	100.00%	\$ -	\$ -
0900	A6 - ELECTRICAL	\$ 2,054.00	\$ (1,027.00)	\$ 1,027.00	\$ 1,027.00	\$ -	\$ -	\$ 1,027.00	100.00%	\$ -	\$ -
0910	A7 - DEMOLITION	\$ 42,002.00		\$ 42,002.00	\$ 42,002.00	\$ -	\$ -	\$ 42,002.00	100.00%	\$ -	\$ -
0920	A7 - MASONRY	\$ 25,320.00		\$ 25,320.00	\$ 25,320.00	\$ -	\$ -	\$ 25,320.00	100.00%	\$ -	\$ -
0930	A7 - MISC METALS	\$ 4,066.00		\$ 4,066.00	\$ 4,066.00	\$ -	\$ -	\$ 4,066.00	100.00%	\$ -	\$ -
0940	A7 - WINDOW/PARAPET BLOCKING	\$ 11,600.00		\$ 11,600.00	\$ 11,600.00	\$ -	\$ -	\$ 11,600.00	100.00%	\$ -	\$ -
0950	A7 - TRIM AT WINDOWS	\$ 18,514.00		\$ 18,514.00	\$ 18,514.00	\$ -	\$ -	\$ 18,514.00	100.00%	\$ -	\$ -
0960	A7 - AIR/WATER BARRIER	\$ 8,985.00		\$ 8,985.00	\$ 8,985.00	\$ -	\$ -	\$ 8,985.00	100.00%	\$ -	\$ -
0970	A7 - BALCONY WATERPROOFING	\$ 11,626.00		\$ 11,626.00	\$ 11,626.00	\$ -	\$ -	\$ 11,626.00	100.00%	\$ -	\$ -
0990	A7 - GLASS & GLAZING LBR	\$ 29,596.00		\$ 29,596.00	\$ 29,596.00	\$ -	\$ -	\$ 29,596.00	100.00%	\$ -	\$ -
1000	A7 - DRYWALL AT WINDOWS	\$ 10,709.00		\$ 10,709.00	\$ 10,709.00	\$ -	\$ -	\$ 10,709.00	100.00%	\$ -	\$ -
1010	A7 - STUCCO	\$ 32,813.00		\$ 32,813.00	\$ 32,813.00	\$ -	\$ -	\$ 32,813.00	100.00%	\$ -	\$ -
1020	A7 - FIBER CEMENT AT BALCONY	\$ 5,418.00	\$ (5,418.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
1030	A7 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -	\$ -	\$ -	100.00%	\$ -	\$ -
1040	A7 - PAINTING	\$ 5,544.00		\$ 5,544.00	\$ 5,544.00	\$ -	\$ -	\$ 5,544.00	100.00%	\$ -	\$ -
1050	A7 - ELECTRICAL	\$ 2,175.00	\$ (1,087.50)	\$ 1,087.50	\$ 1,087.50	\$ -	\$ -	\$ 1,087.50	100.00%	\$ -	\$ -
1060	A8 - DEMOLITION	\$ 33,835.00		\$ 33,835.00	\$ 33,835.00	\$ -	\$ -	\$ 33,835.00	100.00%	\$ -	\$ -
1070	A8 - MASONRY	\$ 46,728.00		\$ 46,728.00	\$ 46,728.00	\$ -	\$ -	\$ 46,728.00	100.00%	\$ -	\$ -
1080	A8 - MISC METALS	\$ 3,275.00		\$ 3,275.00	\$ 3,275.00	\$ -	\$ -	\$ 3,275.00	100.00%	\$ -	\$ -
1090	A8 - WINDOW/PARAPET BLOCKING	\$ 9,345.00		\$ 9,345.00	\$ 9,345.00	\$ -	\$ -	\$ 9,345.00	100.00%	\$ -	\$ -
1100	A8 - TRIM AT WINDOWS	\$ 14,914.00		\$ 14,914.00	\$ 14,914.00	\$ -	\$ -	\$ 14,914.00	100.00%	\$ -	\$ -
1110	A8 - AIR/WATER BARRIER	\$ 7,238.00		\$ 7,238.00	\$ 7,238.00	\$ -	\$ -	\$ 7,238.00	100.00%	\$ -	\$ -
1120	A8 - BALCONY WATERPROOFING	\$ 9,366.00		\$ 9,366.00	\$ 9,366.00	\$ -	\$ -	\$ 9,366.00	100.00%	\$ -	\$ -

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CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 18
APPLICATION DATE: 03/24/2016
PERIOD TO: 03/24/2016
PROJECT NO: T1401

ITEM NO.	DESCRIPTION OF WORK	C	C1	C2	D		E	F	G		H	I
					FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD			TOTAL COMPLETED AND STORED TO DATE (D + E)	% (G + C)		
1140	A8 - GLASS & GLAZING LBR	\$ 27,869.00		\$ 27,869.00	\$ 27,869.00	\$ -		\$ -	\$ 27,869.00	100.00%	\$ -	\$ -
1150	A8 - DRYWALL AT WINDOWS	\$ 8,627.00		\$ 8,627.00	\$ 8,627.00	\$ -		\$ -	\$ 8,627.00	100.00%	\$ -	\$ -
1160	A8 - STUCCO	\$ 3,126.00		\$ 3,126.00	\$ 3,126.00	\$ -		\$ -	\$ 3,126.00	100.00%	\$ -	\$ -
1170	A8 - HARD TILE	\$ 11,500.00	\$ (11,500.00)	\$ -	\$ -	\$ -		\$ -	\$ -	100.00%	\$ -	\$ -
1180	A8 - PAINTING	\$ 4,466.00		\$ 4,466.00	\$ 4,466.00	\$ -		\$ -	\$ 4,466.00	100.00%	\$ -	\$ -
1190	A8 - ELECTRICAL	\$ 1,752.00		\$ 1,752.00	\$ 1,752.00	\$ -		\$ -	\$ 1,752.00	100.00%	\$ -	\$ -
1195	ALL - GLASS & GLAZING MATERIALS	\$ 916,062.00	\$ (876.00)	\$ 916,062.00	\$ 916,062.00	\$ -		\$ -	\$ 916,062.00	100.00%	\$ -	\$ -
1200	INTERIOR TRIM AT LOBBY	\$ 38,204.00		\$ 38,204.00	\$ 38,204.00	\$ -		\$ -	\$ 38,204.00	100.00%	\$ -	\$ -
1210	INTERIOR DRYWALL AT MAILBOX	\$ 2,017.00		\$ 2,017.00	\$ 2,017.00	\$ -		\$ -	\$ 2,017.00	100.00%	\$ -	\$ -
1220	INTERIOR STAIR TREADS	\$ 4,100.00		\$ 4,100.00	\$ 4,100.00	\$ -		\$ -	\$ 4,100.00	100.00%	\$ -	\$ -
1230	INTERIOR LOBBY FLOORING	\$ 97,060.00		\$ 97,060.00	\$ 97,060.00	\$ -		\$ -	\$ 97,060.00	100.00%	\$ -	\$ -
1240	INTERIOR PAINT	\$ 4,500.00		\$ 4,500.00	\$ 4,500.00	\$ -		\$ -	\$ 4,500.00	100.00%	\$ -	\$ -
1250	INTERIOR MAILBOXES	\$ 3,292.00		\$ 3,292.00	\$ 3,292.00	\$ -		\$ -	\$ 3,292.00	100.00%	\$ -	\$ -
1255	FRAMING/SHEDDING/INSUL ALLOW.	\$ 75,000.00		\$ 75,000.00	\$ 75,000.00	\$ -		\$ -	\$ 75,000.00	100.00%	\$ -	\$ -
1260	CONTINGENCY	\$ 237,360.00		\$ 237,360.00	\$ 237,360.00	\$ -		\$ -	\$ 237,360.00	100.00%	\$ -	\$ -
1270	OVERHEAD & PROFIT	\$ 265,138.00		\$ 265,138.00	\$ 265,138.00	\$ 874.96		\$ -	\$ 265,138.00	100.00%	\$ -	\$ -
1301	CHANGE ORDER #001											
1302	PCO #002 Access Controls Side Gate	\$ 6,289.00		\$ 6,289.00	\$ 6,289.00	\$ -		\$ -	\$ 6,289.00	100.00%	\$ -	\$ -
1303	PCO #007 SI #4 (RFI #13) - NE Corner Expansion Joint	\$ 8,291.00		\$ 8,291.00	\$ 8,291.00	\$ -		\$ -	\$ 8,291.00	100.00%	\$ -	\$ -
1304	CHANGE ORDER #002											
1305	CHANGE ORDER #003											
1306	PCO #001 Interior Trim (Not Including Unit 104)	\$ (43,654.00)		\$ (43,654.00)	\$ (43,654.00)	\$ -		\$ -	\$ (43,654.00)	100.00%	\$ -	\$ -
1307	PCO #005 SI #2 (RFI #15) - Head/Sill Detail Repair Applied Stucco	\$ 2,433.00		\$ 2,433.00	\$ 2,433.00	\$ -		\$ -	\$ 2,433.00	100.00%	\$ -	\$ -
1308	PCO #009 RFI #19 Existing Sill Conditions at Stucco	\$ 4,506.00		\$ 4,506.00	\$ 4,506.00	\$ -		\$ -	\$ 4,506.00	100.00%	\$ -	\$ -
1309	PCO #011 RFI #21 Rework Window Sill Framing To Accommodate Stucco Detail	\$ 34,209.00		\$ 34,209.00	\$ 34,209.00	\$ -		\$ -	\$ 34,209.00	100.00%	\$ -	\$ -
1310	PCO #013 Drop 1 and 2 Delay Due To Unforeseen Conditions (Demo/Out of Plane/Sill Height Issues)	\$ 50,572.00		\$ 50,572.00	\$ 50,572.00	\$ -		\$ -	\$ 50,572.00	100.00%	\$ -	\$ -
1311	PCO #019H Drop 7 and 9 Stucco Shear Wall Repairs (Remove and Replace Stucco)	\$ 28,884.00		\$ 28,884.00	\$ 28,884.00	\$ -		\$ -	\$ 28,884.00	100.00%	\$ -	\$ -
1312	PCO #030 RFI #37 Loose CMU SW Corner	\$ 4,599.00		\$ 4,599.00	\$ 4,599.00	\$ -		\$ -	\$ 4,599.00	100.00%	\$ -	\$ -
1313	PCO #033 RFI #41 NE Expansion Joint	\$ 786.00		\$ 786.00	\$ 786.00	\$ -		\$ -	\$ 786.00	100.00%	\$ -	\$ -
1314	CHANGE ORDER #004											
1315	PCO #006 SI #3 North Elevation Wall Plane Issues	\$ 13,925.00		\$ 13,925.00	\$ 13,925.00	\$ -		\$ -	\$ 13,925.00	100.00%	\$ -	\$ -
1316	PCO #012 RFI #24 Rusted Framing On Balconies Drop 5 & 6	\$ 6,495.00		\$ 6,495.00	\$ 6,495.00	\$ -		\$ -	\$ 6,495.00	100.00%	\$ -	\$ -
1317	PCO #015 Excessive Window Opening Prep at Stone Tower	\$ 13,844.00		\$ 13,844.00	\$ 13,844.00	\$ -		\$ -	\$ 13,844.00	100.00%	\$ -	\$ -
1318	PCO #017 Drop 6 Out of Plane Issues - Unit 102	\$ 347.00		\$ 347.00	\$ 347.00	\$ -		\$ -	\$ 347.00	100.00%	\$ -	\$ -
1319	PCO #021 RFI #36 Columns at A4 Drop 18 Terrace	\$ 1,834.00		\$ 1,834.00	\$ 1,834.00	\$ -		\$ -	\$ 1,834.00	100.00%	\$ -	\$ -
1320	PCO #044 Drop 20 4th Floor Out of Plane Issues	\$ 3,294.00		\$ 3,294.00	\$ 3,294.00	\$ -		\$ -	\$ 3,294.00	100.00%	\$ -	\$ -
1321	PCO #045 Drop 18 and 19 Out of Plane Issues	\$ 6,184.00		\$ 6,184.00	\$ 6,184.00	\$ -		\$ -	\$ 6,184.00	100.00%	\$ -	\$ -
1322	PCO #050 Terrace B Drops 5 & 6 Out of Plane Issues	\$ 22,700.00		\$ 22,700.00	\$ 22,700.00	\$ -		\$ -	\$ 22,700.00	100.00%	\$ -	\$ -
1323	PCO #051 Drop 7, 8, 9 Out of Plane Issues	\$ 96,228.00		\$ 96,228.00	\$ 96,228.00	\$ -		\$ -	\$ 96,228.00	100.00%	\$ -	\$ -
1324	PCO #060 GL Policy Extension (6-Mths) - Policy Expires April 2015	\$ 55,329.00		\$ 55,329.00	\$ 55,329.00	\$ -		\$ -	\$ 55,329.00	100.00%	\$ -	\$ -
1325	PCO #075 RFI #73 Drop 9 Rework Railing Due To Out of Plane Issues	\$ 727.00		\$ 727.00	\$ 727.00	\$ -		\$ -	\$ 727.00	100.00%	\$ -	\$ -
1326	CHANGE ORDER #005											
1327	PCO #027 RFI #27 Rebar Protruding From Slab	\$ 756.00		\$ 756.00	\$ 756.00	\$ -		\$ -	\$ 756.00	100.00%	\$ -	\$ -
1328	PCO #028 RFI #52/HFI #43 Brick Layout Conflict Existing Relieving Angles	\$ 10,073.00		\$ 10,073.00	\$ 10,073.00	\$ -		\$ -	\$ 10,073.00	100.00%	\$ -	\$ -
1329	PCO #032 RFI #40 Balcony Sheathing Clarification	\$ 2,421.00		\$ 2,421.00	\$ 2,421.00	\$ -		\$ -	\$ 2,421.00	100.00%	\$ -	\$ -
1330	PCO #037 RFI #46 Copper Roof Drop 2 To Drop 1	\$ 1,321.00		\$ 1,321.00	\$ 1,321.00	\$ -		\$ -	\$ 1,321.00	100.00%	\$ -	\$ -
1331	PCO #042 Balcony Framing Rust Repair (Drop 10, 13, 17)	\$ 847.00		\$ 847.00	\$ 847.00	\$ -		\$ -	\$ 847.00	100.00%	\$ -	\$ -
1332	PCO #043 Drop 14 and 16 Stucco Shear Wall Repairs (Remove and Replace Stucco)	\$ 33,436.00		\$ 33,436.00	\$ 33,436.00	\$ -		\$ -	\$ 33,436.00	100.00%	\$ -	\$ -
1333	PCO #053 Drop 10 Out of Plane Issues	\$ 49,516.00		\$ 49,516.00	\$ 49,516.00	\$ -		\$ -	\$ 49,516.00	100.00%	\$ -	\$ -

001814

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 18
APPLICATION DATE: 03/24/2016
PERIOD TO: 03/24/2016
PROJECT NO: T1401

A	B	C	C1	C2	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL CONTRACT VALUE	BUDGET SHIFTS	REVISED VALUE (C + C1)	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% FINISH (G + C)	BALANCE TO FINISH - (G)	
					FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
1306	PCO #055 Drop 14, 15, 16 Out of Plane Issues	\$ 110,060.00		\$ 110,060.00	\$ 110,060.00	\$ -	\$ -	\$ 110,060.00	100.00%	\$ -	
	PCO #056 Drop 17 Out of Plane Issues	\$ 38,824.00		\$ 38,824.00	\$ 38,824.00	\$ -	\$ -	\$ 38,824.00	100.00%	\$ -	
	PCO #061 RFI #53 Knee Wall at 4th Floor Balcony (Drop 6, 10, 17)	\$ 15,423.00		\$ 15,423.00	\$ 15,423.00	\$ -	\$ -	\$ 15,423.00	100.00%	\$ -	
	PCO #065 Terrace B Stucco Behind Stone Removal	\$ 226.00		\$ 226.00	\$ 226.00	\$ -	\$ -	\$ 226.00	100.00%	\$ -	
	PCO #070 Drop 11 Terrace Out of Plane Issues	\$ 3,755.00		\$ 3,755.00	\$ 3,755.00	\$ -	\$ -	\$ 3,755.00	100.00%	\$ -	
	PCO #072 RFI #63 Blocking For Brick Ties Drop 19 and 20	\$ 440.00		\$ 440.00	\$ 440.00	\$ -	\$ -	\$ 440.00	100.00%	\$ -	
	PCO #073 Existing Pipe in Wall Drop 9	\$ 1,183.00		\$ 1,183.00	\$ 1,183.00	\$ -	\$ -	\$ 1,183.00	100.00%	\$ -	
	PCO #074 RFI #56 Wood Framing/Sheathing Drop 8 and 15 Parapets	\$ 2,836.00		\$ 2,836.00	\$ 2,836.00	\$ -	\$ -	\$ 2,836.00	100.00%	\$ -	
	PCO #076 RFI #78 Balcony Slab Wood Supports	\$ 7,582.00		\$ 7,582.00	\$ 7,582.00	\$ -	\$ -	\$ 7,582.00	100.00%	\$ -	
	PCO #077 RFI #73 Drop 14 Rework Railing Due To Out of Plane Issues	\$ 727.00		\$ 727.00	\$ 727.00	\$ -	\$ -	\$ 727.00	100.00%	\$ -	
	PCO #078 RFI #59 Drop 5 and 6 Terrace Wall Out of Plane Issues	\$ 14,671.00		\$ 14,671.00	\$ 14,671.00	\$ -	\$ -	\$ 14,671.00	100.00%	\$ -	
	PCO #095 RFI #61 4th Floor Steel Column Replacement	\$ 4,042.00		\$ 4,042.00	\$ 4,042.00	\$ -	\$ -	\$ 4,042.00	100.00%	\$ -	
	PCO #086 Metal Stud/Sheathing/Insulation Allowance Credit	\$ (83,925.00)		\$ (83,925.00)	\$ (83,925.00)	\$ -	\$ -	\$ (83,925.00)	100.00%	\$ -	
	PCO #090 RFI #69 Stucco Balcony Ceiling Intersection	\$ 3,123.00		\$ 3,123.00	\$ 3,123.00	\$ -	\$ -	\$ 3,123.00	100.00%	\$ -	
	PCO #091 RFI #68 Cast Stone Attachment Details	\$ 4,157.00		\$ 4,157.00	\$ 4,157.00	\$ -	\$ -	\$ 4,157.00	100.00%	\$ -	
	CHANGE ORDER #006										
	PCO #004 RFI #14 - Direction on ground floor columns in stucco area	\$ 21,223.00		\$ 21,223.00	\$ 21,223.00	\$ -	\$ -	\$ -	\$ 21,223.00	100.00%	\$ -
	PCO #016 Interior Finishes Additional Scope Items	\$ 17,898.00		\$ 17,898.00	\$ 17,898.00	\$ -	\$ -	\$ -	\$ 17,898.00	100.00%	\$ -
	PCO #023 RFI #97 Alter Railings Due To Out of Plane Issues	\$ 30,074.00		\$ 30,074.00	\$ 30,074.00	\$ -	\$ -	\$ -	\$ 30,074.00	100.00%	\$ -
	PCO #024 Additional Demolition Labor Not Shown On Original Drawings	\$ 152,190.00		\$ 152,190.00	\$ 152,190.00	\$ -	\$ -	\$ -	\$ 152,190.00	100.00%	\$ -
	PCO #038 RFI #49 Drop 2 401 Balcony Unforeseen Condition	\$ 744.00		\$ 744.00	\$ 744.00	\$ -	\$ -	\$ -	\$ 744.00	100.00%	\$ -
PCO #046 RFI #50 and RFI #55 Cast Stone Revisions	\$ 1,439.00		\$ 1,439.00	\$ 1,439.00	\$ -	\$ -	\$ -	\$ 1,439.00	100.00%	\$ -	
PCO #066 Terrace C Built Up Roofing Removal	\$ 3,666.00		\$ 3,666.00	\$ 3,666.00	\$ -	\$ -	\$ -	\$ 3,666.00	100.00%	\$ -	
PCO #080 Excessive Window Opening Prep and Added Wood Blocking	\$ 371,697.00		\$ 371,697.00	\$ 371,697.00	\$ -	\$ -	\$ -	\$ 371,697.00	100.00%	\$ -	
PCO #081 Additional Temporary Protection	\$ 142,543.00		\$ 142,543.00	\$ 142,543.00	\$ -	\$ -	\$ -	\$ 142,543.00	100.00%	\$ -	
PCO #084 RFI #88 4th Floor Terrace Roof Ends	\$ 8,927.00		\$ 8,927.00	\$ 8,927.00	\$ -	\$ -	\$ -	\$ 8,927.00	100.00%	\$ -	
PCO #087 RFI #86 Area 3 and 6 Stucco Wall and Stair	\$ 6,745.00		\$ 6,745.00	\$ 6,745.00	\$ -	\$ -	\$ -	\$ 6,745.00	100.00%	\$ -	
PCO #089 RFI #87 Drop 18/19 Cast Stone Support at Corner	\$ 857.00		\$ 857.00	\$ 857.00	\$ -	\$ -	\$ -	\$ 857.00	100.00%	\$ -	
PCO #092 RFI #89 Existing Stone Band Versus Foam Band at Foyer Entries	\$ 1,056.00		\$ 1,056.00	\$ 1,056.00	\$ -	\$ -	\$ -	\$ 1,056.00	100.00%	\$ -	
PCO #093 ASI #5 Parapet Blocking Due To Out of Plane Corrections	\$ 4,412.00		\$ 4,412.00	\$ 4,412.00	\$ -	\$ -	\$ -	\$ 4,412.00	100.00%	\$ -	
PCO #094 RFI #92 Break Metal Diverter Top of Expansion Joint Drop 1	\$ 209.00		\$ 209.00	\$ 209.00	\$ -	\$ -	\$ -	\$ 209.00	100.00%	\$ -	
PCO #095 RFI #93 Terrace B Waterproofing To Stone Supported By Brick	\$ 609.00		\$ 609.00	\$ 609.00	\$ -	\$ -	\$ -	\$ 609.00	100.00%	\$ -	
PCO #098 RFI #95 Replacement Drain Collar Assemblies	\$ 5,500.00		\$ 5,500.00	\$ 5,500.00	\$ -	\$ -	\$ -	\$ 5,500.00	100.00%	\$ -	
PCO #099 RFI #94 Custom Pressure Treating Casing Around Existing Door (Drop 8 and 15)	\$ 982.00		\$ 982.00	\$ 982.00	\$ -	\$ -	\$ -	\$ 982.00	100.00%	\$ -	
PCO #100 RFI #91 Protruding Slab Edge Drop 10, 13, 17	\$ 8,838.00		\$ 8,838.00	\$ 8,838.00	\$ -	\$ -	\$ -	\$ 8,838.00	100.00%	\$ -	
PCO #101 Dennglass Replacement Drop 11 and 12	\$ 7,139.00		\$ 7,139.00	\$ 7,139.00	\$ -	\$ -	\$ -	\$ 7,139.00	100.00%	\$ -	
PCO #107 Unit 104 Trim Credit	\$ (1,858.00)		\$ (1,858.00)	\$ (1,858.00)	\$ -	\$ -	\$ -	\$ (1,858.00)	100.00%	\$ -	
CHANGE ORDER #007											
PCO #088 RFI #77 South Expansion Joint Transition	\$ 11,292.00		\$ 11,292.00	\$ 11,292.00	\$ -	\$ -	\$ -	\$ 11,292.00	100.00%	\$ -	
PCO #097 RFI #72 Rework Copper Koots at Alcoves Due To Out of Plane Adjustments (Drop 8 and 15)	\$ 6,100.00		\$ 6,100.00	\$ 6,100.00	\$ -	\$ -	\$ -	\$ 6,100.00	100.00%	\$ -	
CHANGE ORDER #008											
PCO#054 Out of Plane and Framing Issues Multiple Drops	\$ 65,844.00		\$ 65,844.00	\$ 65,844.00	\$ -	\$ -	\$ -	\$ 65,844.00	100.00%	\$ -	
PCO#071R1 Stucco Time Delay Impact & Remedialization	\$ 9,651.00		\$ 9,651.00	\$ 9,651.00	\$ -	\$ -	\$ -	\$ 9,651.00	100.00%	\$ -	
PCO#104 Project Specific GL Insurance Extension	\$ (37,663.00)		\$ (37,663.00)	\$ (37,663.00)	\$ -	\$ -	\$ -	\$ (37,663.00)	100.00%	\$ -	
PCO#106 RFI #101 - Terrace D and E wall framing	\$ 2,347.00		\$ 2,347.00	\$ 2,347.00	\$ -	\$ -	\$ -	\$ 2,347.00	100.00%	\$ -	
PCO#109 Credit For Not Replacing Tile at 1st Floor Entrances	\$ (7,451.00)		\$ (7,451.00)	\$ (7,451.00)	\$ -	\$ -	\$ -	\$ (7,451.00)	100.00%	\$ -	

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
In tabulations below, amounts are stated to the nearest dollar.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 18
APPLICATION DATE: 03/24/2016
PERIOD TO: 03/24/2016
PROJECT NO: T1401

A	B	C	C1	C2	D		E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	ORIGINAL CONTRACT VALUE	BUDGET SHIFTS	REVISED VALUE (C + C1)	WORK COMPLETED		THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G + C)	BALANCE TO FINISH - (G)	
					FROM PREVIOUS APPLICATION (D + E)							
001816	PCO#111 RFI #111 Copper Roof End Openings	\$ 411.00		\$ 411.00	\$ 411.00	\$ -	\$ -	\$ -	\$ 411.00	100.00%	\$ -	
	PCO#112 RFI #112 Terrace D CMU To Kneewall	\$ 113.00		\$ 113.00	\$ 113.00	\$ -	\$ -	\$ -	\$ 113.00	100.00%	\$ -	
	PCO#113 RFI #109 Terrace B Soffit	\$ 814.00		\$ 814.00	\$ 814.00	\$ -	\$ -	\$ -	\$ 814.00	100.00%	\$ -	
	PCO#115 RFI #113 Terrace G, D, and E Existing Soffit and Fascia	\$ 1,132.00		\$ 1,132.00	\$ 1,132.00	\$ -	\$ -	\$ -	\$ 1,132.00	100.00%	\$ -	
	PCO#116 RFI #114 Balcony Ceilings Drop 11 and 12	\$ 1,482.00		\$ 1,482.00	\$ 1,482.00	\$ -	\$ -	\$ -	\$ 1,482.00	100.00%	\$ -	
	PCO#117 RFI #115 Brick Relief Angles Drop 11 and 12	\$ 18,104.00		\$ 18,104.00	\$ 18,104.00	\$ -	\$ -	\$ -	\$ 18,104.00	100.00%	\$ -	
	PCO#118 Add battens at fiber cement ceilings	\$ 4,769.00		\$ 4,769.00	\$ 4,769.00	\$ -	\$ -	\$ -	\$ 4,769.00	100.00%	\$ -	
	PCO#121 RFI #116 Terrace G Slant Roof End Existing Condition	\$ 694.00		\$ 694.00	\$ 694.00	\$ -	\$ -	\$ -	\$ 694.00	100.00%	\$ -	
	PCO#124 Partial Settlement PCO 102R 1CC's Extended General Conditions	\$ 100,000.00		\$ 100,000.00	\$ 100,000.00	\$ -	\$ -	\$ -	\$ 100,000.00	100.00%	\$ -	
	PCO#125 Partial Settlement PCO 122 Additional Scaffolding	\$ 150,000.00		\$ 150,000.00	\$ 150,000.00	\$ -	\$ -	\$ -	\$ 150,000.00	100.00%	\$ -	
	1309	CHANGE ORDER #009 PCO #096 RH #59 Revised Threshold Extensions Due 1o Out of Plane Adjustments	\$22,906.00		\$ 22,906.00	\$ 11,453.00	\$ 11,453.00	\$ -	\$ -	\$ 22,906.00	100.00%	\$ -
		PCO #110 Terrace E Kneewall Out of Plane Issues	\$7,486.00		\$ 7,486.00	\$ 7,486.00	\$ -	\$ -	\$ -	\$ 7,486.00	100.00%	\$ -
		PCO #130 Waterproofing Impact Due 1o Increased Duration and Existing Conditions	\$60,762.00		\$ 60,762.00	\$ 60,762.00	\$ -	\$ -	\$ -	\$ 60,762.00	100.00%	\$ -
	PCO #131 Window Installer Impact Due 1o Increased Duration and Existing Conditions	\$25,097.00		\$ 25,097.00	\$ 25,097.00	\$ -	\$ -	\$ -	\$ 25,097.00	100.00%	\$ -	
	PCO #132 Salem's Extended General Conditions (End Date 11.30.15) - Labor	\$64,617.00		\$ 64,617.00	\$ 64,617.00	\$ -	\$ -	\$ -	\$ 64,617.00	100.00%	\$ -	
	PCO #133 TCC Extended General Conditions (7/7/15 thru 11/30/15)	\$34,800.00		\$ 34,800.00	\$ 34,800.00	\$ -	\$ -	\$ -	\$ 34,800.00	100.00%	\$ -	
	PCO #134 Partial Settlement PCO 122 Additional Scaffolding/Equipment (7/7/15 thru 11/30/15)	\$85,632.00		\$ 85,632.00	\$ 85,632.00	\$ -	\$ -	\$ -	\$ 85,632.00	100.00%	\$ -	
	CHANGE ORDER #010	\$1,637,837.99		\$ 1,637,837.99	\$ -	\$ 1,637,837.99	\$ -	\$ -	\$ 1,637,837.99	100.00%	\$ -	
	Final Change Order				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	GRAND TOTALS	\$ 7,514,921.99	\$ -	\$ 7,514,921.99	\$ 5,864,756.04	\$ 1,650,165.95	\$ -	\$ -	\$ 7,514,921.99	100.00%	\$ -	

AIA DOCUMENT G703 - CONTINUATION SHEET FOR G702 - 1992 EDITION - AIA - © 1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W. WASHINGTON, D.C. 20006-5292

G703-1992

STATE OF SOUTH CAROLINA)

**CONDITIONAL RELEASE AND
WAIVER OF LIEN**

COUNTY OF CHARLESTON)

The undersigned TCC of Charleston, Inc., in consideration of receipt of payment in the amount of \$1,943,403.75, for materials, labor and services rendered and supplied as of March 24, 2016, and does hereby release and waive all claims and liens existing as of March 24, 2016, against Concord & Cumberland HPR C/O McAlister Preferred Properties on account of, or in anyway resulting from, or in connection with construction located at 175 Concord St, Charleston, SC in the County of Charleston, State of South Carolina.

The undersigned further agrees to hold harmless, reimburse and fully indemnify Owner and its successors and assigns any losses and/or expenses should any claim or right to a lien be asserted on account of labor, services, materials, fixtures or apparatus heretofore furnished by or at the request of or under contract with the undersigned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Charleston, South Carolina, this 24th day of March, 2016.

Co. Name: Trident Construction, LLC

By:  (L.S.)

Chris Burrell

Title: Project Manager

SWORN to and subscribed before me this 24th day of March, 2016.



Notary Public of South Carolina

My Commission expires: _____

MY COMMISSION EXPIRES
MAY 30, 2016



**CHANGE
ORDER**
AIA DOCUMENT G701

Distribution to:

OWNER ☒
ARCHITECT ☒
CONTRACTOR ☒
FIELD ☐
OTHER ☐

PROJECT: Concord & Cumberland Exterior Repairs
175 Concord Street
Charleston, SC

TO (Contractor): TCC of Charleston, Inc.
PO Box 61976
N. Charleston, SC 29419

CHANGE ORDER NUMBER: 010

INITIATION DATE: March 21, 2016

ARCHITECT'S PROJECT NO: N/A

CONTRACT FOR: Construction Services

CONTRACT DATE: February 27, 2014

The Contract is changed as follows:

PCO #139 – Final Change Order:

This change reconciles full and final job cost to date which accounts for all additional cost for the added scope, interruptions to sequencing of installation of work due to the changes, and the impact as endured for the work slowdown while the Owner secured additional funding.

Not valid until signed by both the Owner and Contractor.

Signature of the Contractor indicates his agreement herewith, including any adjustment in the Contract Sum or Contract Time.

The original contract amount was	:		\$3,923,939.00
Net change by previously authorized Change Orders:			\$1,953,145.00
The contract amount prior to this Change Order was:			\$5,877,084.00
The contract amount will be increased by this Change Order in the amount of:			\$1,637,837.99
The new contract amount, including this Change Order will be:			\$7,514,921.99
The Contract Time will be increased by:			127
The Date of Substantial Completion as of the date of the Change Order therefore is determined:			3/8/16

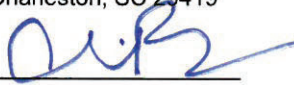
Authorized:

ARCHITECT
Glick/Boehm & Associates
493 King Street, STE 100
Charleston, SC 29401

CONTRACTOR
TCC of Charleston, Inc.
PO Box 61976
N. Charleston, SC 29419

OWNER
Concord & Cumberland HPR
106 Pitt Street
Mt. Pleasant, SC 29464

BY: _____

BY: 

BY: _____

DATE: _____

DATE: **3.24.16**

DATE: _____

FINAL ACCOUNTING & CHANGE ORDER REQUEST

Date: March 22, 2016

Customer: Concord & Cumberland HPR
106 Pitt St.
Mt. Pleasant, SC 29464

Project Number: T1401

Project Name: Concord & Cumberland

DESCRIPTION OF WORK:

Job Cost (See attachment #1)	\$ 6,268,920.85
Labor Costs (See Attachment #2)	\$ 592,287.98
Estimated Cost to Complete (See Attachment #3)	<u>\$ 79,700.00</u>
Subtotal	\$ 6,940,908.83
Data Fee- .25%	<u>\$ 17,352.27</u>
Subtotal	\$ 6,958,261.10
Overhead & Profit- 8%	<u>\$ 556,660.89</u>
Total Cost of Work	\$ 7,514,921.99

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
TCC OF CHARLESTON, INC.,	)	CASE NO. 2016-CP-10-2955
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
CONCORD AND CUMERLAND, LLC.,	)	
CONCORD & CUMBERLAND HPR,	)	
LEO HALL, DIANE HALL, BEA H.	)	
SMITH, MARGARET C. POPE,	)	
WILLIAM D. FOSTER, JR., GENE G.	)	
FOSTER, MATTISO J.MACGILLNRAY,	)	
TERESA MACGILLIVRAY, PAMELA	)	
L.VAUGHN, NELIA A. PATRICIO,	)	
Trustee of the Nelia A. Patricio Revocable	)	
Trust Agreement, STUART D. REEVES,	)	
EDWARD T. STROM, BARBARA	)	
K.HENDERSON, JAMES R. CLARICE,	)	DEFENDANT BETTY L. BEATTY'S
PAUL A. BRIM, ROBERT K. SEIDL,	)	MOTION FOR PARTIAL SUMMARY
JENNIFER M. SEIDL, ROBERT	)	JUDGMENT
KENNETH SEIDL,II, M. BERT	)	
STOREY, THOMAS R. MATHER,	)	
EDWARD T. STROM, 304 CONCORD	)	
& CUMBERLAND, LLC, MARION M.	)	
SIMPSON F/KA MARION MOORE	)	
MCDONALD SIMPSON, KATHY	)	
GARDNER, GREGORY J. GARDNER,	)	
FREEMAN WATERFRONT	)	
PROPERTIES, LLC, JO-ANN COOPER,	)	
BETTY Y. SEGAL, ROBERT M. LEVIN	)	
AND BONITA K. LEVIN, DONALD D.	)	
LEONARD, BETTY L. BEATTY,	)	
MATTELLEN, LLC, AND THOMAS R.	)	
DEBNAM, Trustee of the Trust	)	
Agreement of Thomas R. Debnam,	)	
	)	
DEFENDANTS.	)	
	)	

TO: JAAN G. RANNIK, ESQUIRE AND ALL COUNSEL OF RECORD:

Betty L. Beatty (hereinafter “Beatty”), by and through her undersigned counsel, hereby moves for summary judgment upon the Plaintiff’s FIRST CAUSE OF ACTION for foreclosure of mechanic’s lien. The Plaintiff failed to file and serve the statutory notice of its lien within ninety (90) days of the date it last furnished labor and materials on the property upon which the Plaintiff seeks to enforce its lien. Therefore, pursuant to Section 29-5-90, S.C. Code, the lien is dissolved, and the Lis Pendens should be vacated and removed from the public record as it constitutes a cloud upon Beatty’s title.

FACTUAL BACKGROUND

The Plaintiff, a licensed general contractor, entered into a contract with Concord & Cumberland, HPR, under which it performed extensive repair work on the structures which contain condominium units located at the intersection of Concord and Cumberland Streets in the City of Charleston. A payment dispute arose between the Plaintiff and Concord & Cumberland, HPR, the governing body for the horizontal property regime. The Plaintiff initially sued only two (2) defendants, Concord & Cumberland, LLC and Concord & Cumberland, HPR. It amended its Complaint to add as defendants all condominium owners within the horizontal property regime, mailing the amended pleadings to Beatty by letter dated June 21, 2016.

The Plaintiff last furnished materials and services on March 17, 2016. (See Complaint ¶ 9; Statement of Account dated May 19, 2016, attached as Exhibit “A” to Complaint; Amended Complaint ¶ 10; Statement of Account dated June 10, 2016, attached as Exhibit “A” to Amended Complaint). The Plaintiff originally filed suit against only Concord & Cumberland, LLC and Concord & Cumberland, HPR, on June 6, 2016 and thereafter served upon those two (2) defendants a Summons, Complaint, Notice and Certificate of Mechanic’s Lien, Statement of Account, Motion to Stay and Compel Arbitration, and a Lis Pendens filed on June 10, 2016. The

Plaintiff apparently recognized that under § 27-31-230, S.C. Code, it could not enforce a mechanic's lien against the horizontal property regime.

On June 10, 2016, Plaintiff filed an Amended Summons and Complaint, Amended Notice and Certificate of Mechanic's Lien, and Amended Statement of Account adding each unit owner as a defendant. The Plaintiff's counsel "served" the Amended Summons, Amended Complaint, Motion to Stay and Compel Arbitration, Amended Lis Pendens (filed June 16, 2016), Amended Notice and Certificate of Mechanic's Lien, and Amended Statement of Account by mailing a copy of each to Beatty on June 21, 2016. (See letter dated June 21, 2016, from Andrew K. Epting, Jr. to Betty Beatty, attached and incorporated herein as Exhibit "A".) The letter was sent by first class United States Mail. If the letter was mailed on June 21, 2016, that was the ninety-sixth (96th) day after the date the Plaintiff last provided materials or services for the property.

ARGUMENT

Mechanic's Liens are creatures of statute, and can only be acquired and enforced in accordance with the conditions of the statute. Multiplex building Corp., Inc. v. Lyles, 235 S.E. 2d 133 (S.C. 1977). The statutory provisions pertaining to Mechanic's Liens are set forth in Sections 29-5-10, et. seq. S.C. Code. The lien which originates when a person performs labor or furnishes materials in the alteration or repair of a building or structure under Section 29-5-10, S.C. Code, dissolves if the lien holder fails to file and serve upon the property owner a sworn statement of account within ninety (90) days after he ceases to furnish labor or materials for the building or structure. Section 29-5-90, S.C. Code.

Because the mechanic's lien is purely statutory, the requirements of the statute must be strictly followed. Although the lien arises inchoate when the labor is performed or the materials furnished, the right to the lien exists, but the lien has not been perfected. If the person claiming

the lien fails to take any one of the steps mandated by statute, the lien against the property is dissolved pursuant to Section 29-5-90, S.C. Code. Butler Contracting v. Court Street, 631 S.E. 2d 252 (S.C. 2006).

Here, the Plaintiff timely filed its Notice of lien and sworn statement of account on June 10, 2016, some eighty-six (86) days after March 17, 2016, the last day it performed work on the project. However, in order to perfect its lien, it was required to serve the notice or certificate of lien upon Beatty on or before June 15, 2016. The Plaintiff attempted to serve Beatty by placing a copy of the Amended Summons, Amended Complaint, Amended Notice and Certificate of Mechanic's Lien and Amended Statement of Account in the mail to her by letter dated June 21, 2016. Service by certified or registered mail is authorized pursuant to Rule 4(d)(8) SCRCF. Service by regular, first class mail is not. Regardless, Plaintiff's lien had dissolved by operation of law as of June 16, 2016. The letter purporting to deliver it by mail dated June 21, 2016, is conclusive proof that the Plaintiff failed to both file and serve its lien notice or certificate within ninety (90) days of March 17, 2016.

The Plaintiff's lien having dissolved pursuant to Section 29-5-90, S.C. Code, Beatty is entitled to entry of judgment in her favor upon the Plaintiff's FIRST CAUSE OF ACTION for mechanic's lien foreclosure. In addition, Beatty is entitled to an order directing the Plaintiff to remove the Lis Pendens referencing her property. Finally, Beatty is entitled to an award of her attorney's fees incurred in defending and defeating the Plaintiff's attempt to foreclose its dissolved lien. The case of Utilities Construction Co., Inc. v. Wilson, 468 S.E. 2d 1 (S.C. Ct. App. 1996), is directly on point. The fact that the Plaintiff asserts additional non-statutory causes of action, which are not the subject of this motion, is unimportant. In Utilities Construction, our

Court of Appeals held that the prevailing party in a statutory mechanic's lien foreclosure action is entitled to fees without regard to the outcome or resolution of the non-statutory claims.

Utilities Construction had sued Wilson for foreclosure of a mechanic's lien, unjust enrichment and breach of contract. The trial court directed a verdict in favor of Wilson on the mechanic's lien claim, because Utilities failed to timely serve the notice of its lien. The case proceeded to verdict on Utilities' common law claims, and the jury awarded Utilities \$8,754.29 actual damages (the full amount of its invoices) plus interest. Acknowledging that Utilities ultimately prevailed against Wilson on its common law claims, the Court of Appeals nevertheless held that, while the amount of attorney's fees to be awarded under Section 29-5-10(a) is discretionary, the question of entitlement is not. Id. at 3 (citing T.W. Morton Builders v. Von Buedingen, 450 S.E. 2d, 87, 94 (S.C. Ct.of App. 1994)). The court recognized that the Legislature's clear intent was to award attorney's fees in lien foreclosure cases, both to encourage owners to pay bona fide debts and to deter the wrongful filing of liens. Cedar Creek Properties v. Cantelou Assoc., 465 S.E. 2d 775 (S.C. Ct. App. 1995). Here, Beatty is entitled to an award of fees, regardless of the outcome of the Plaintiff's non-statutory claims.

THEREFORE, the court should enter judgment as follows:

- 1) Judgment in favor of Beatty on Plaintiff's FIRST CAUSE OF ACTION;
- 2) Judgment ordering the removal of the Lis Pendens filed upon Beatty's unit;
- 3) Judgment directing that the Plaintiff shall pay Beatty's attorney's fees as the prevailing party in successfully defeating the Plaintiff's mechanic's lien foreclosure action, such fees to be determined at a later date upon

submission of a petition for attorney's fees within thirty (30) days of the court's order upon this motion.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: s/ Edward D. Buckley, Jr.

Edward D. Buckley, Jr. SC Bar No. 994

Jason A. Daigle, SC Bar No. 73308

W. Siau Barr, Jr. SC Bar No. 76353

P.O. Box 993, Charleston, SC 29402

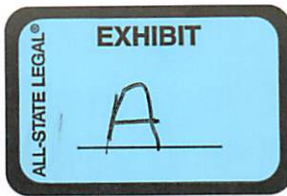
(843) 720-5436; ebuckley@ycrlaw.com;

jdaigle@ycrlaw.com; sbarr@ycrlaw.com

Attorneys for Defendant Betty L. Beatty

Charleston, South Carolina

Dated: May 8, 2020



ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

June 21, 2016

Betty Beatty
175 Concord Street
Charleston, SC 29401

RE: TCC of Charleston, LLC v. Concord and Cumberland, LLC, et al.
Case No.: 2016-CP-10-2955
Charleston County Court of Common Pleas

Dear Sir or Madam:

Enclosed for service upon you please find the Amended Summons, Amended Complaint, Motion to Stay and Compel Arbitration, Amended *Lis Pendens*, and Amended Notice and Certificate of Mechanic's Lien in the above-referenced matter.

With kindest regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.

AKE, Jr./agg

Enclosures

Andrew K. Epting, Jr. · ake@epting-law.com
Michelle N. Endemann · mne@epting-law.com
46A State Street · Charleston · South Carolina · 29401
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001826

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-10-2955

TCC OF CHARLESTON, INC.)

Plaintiff,)

vs.)

CONCORD AND CUMERLAND, LLC.,)
CONCORD & CUMBERLAND HPR, LEO)
HALL, DIANE HALL, BEA H. SMITH,)
MARGARET C. POPE, WILLIAM D.)
FOSTER, JR., GENE G. FOSTER,)
MATTISON J. MACGILLIVRAY,)
TERESA MACGILLIVRAY, PAMELA L.)
VAUGHN, NELIA A. PATRICIO, Trustee)
of the Nelia A. Patricio Revocable Trust)
Agreement, STUART D. REEVES,)
EDWARD T. STROM, BARBARA K.)
HENDERSON, JAMES R. CLARKE,)
PAUL A. BRIM, ROBERT K. SEIDL,)
JENNIFER M. SEIDL, ROBERT)
KENNETH SEIDL, II, M. BERT STOREY,)
THOMAS R. MATHER, EDWARD T.)
STROM, 304 CONCORD &)
CUMBERLAND, LLC, MARION M.)
SIMPSON F/K/A MARION MOORE)
MCDONALD SIMPSON, KATHY)
GARDNER, GREGORY J. GARDNER,)
FREEMAN WATERFRONT)
PROPERTIES, LLC, JO-ANN COOPER,)
BETTY Y. SEGAL, ROBERT M. LEVIN)
AND BONITA K. LEVIN, DONALD D.)
LEONARD, BETTY L. BEATTY,)
MATTELLEN, LLC, AND THOMAS R.)
DEBNAM, Trustee of the Trust Agreement)
of Thomas R. Debnam,)

Defendants.)

**CONCORD & CUMBERLAND HPR'S
MOTION TO DEPOSIT FUNDS**

TO: TCC OF CHARLESTON, INC. AND ITS ATTORNEYS:

Defendant Concord & Cumberland HPR (“HPR”) hereby moves this Court, pursuant to Rule 67 of the South Carolina Rules of Civil Procedure, for an Order (1) granting leave to the HPR to deposit monies sought by Plaintiff TCC of Charleston, Inc. (“TCC”) in the amount of the arbitration award, and (2) stopping the accrual of interest on said amount. As of May 1, Judge Jefferson has issued Orders denying the HPR’s motions to vacate or correct the arbitration award and to reconsider, alter or amend her initial Order. Should the HPR choose to appeal these Orders, a Notice of Appeal is due June 1, 2020.

Rule 67, SCRCF provides that “[i]n an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing.”

Here, the amount of a judgment on the underlying arbitration award remains in dispute, but the HPR desires to deposit the award amount in order to stop interest from accruing.

In Duval v. Heritage Life Ins. Co., 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000), the Court of Appeals stated:

In Russo, v. Sutton, [317 S.C. 441, 454 S.E. 2d 895 (1995)], the supreme court held a judgment debtor’s deposit of funds into court pursuant to Rule 67, SCRCF, pending the debtor’s own appeal stops the accrual of interest on the judgment. The rationale was that “such a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available.” [*Id.* at 442, 454 S.E. 2d at 896]. This court has followed that rule. [See, e.g.; Small v. Pioneer Machinery, Inc., 330 S.C. 62, 65, 496 S.E. 2d 884, 885 (Ct. App. 1998) (“A judgment debtor’s deposit of funds into the court pending his own appeal prevents further accrual of interest on the judgment.”)].

(footnotes inserted in brackets in quotation).

Given that the deposit of the award amount would serve the underlying principle stated in Russo, supra, the HPR requests that this Court grant the HPR's motion.

This motion is supported by the pleadings filed, and may be supplemented by such affidavits and memoranda of law as are appropriate.

Counsel for the HPR affirms that he has, prior to filing this motion, communicated orally and in writing with TCC's counsel and has attempted in good faith to resolve the matter contained in this motion, but TCC's counsel does not consent to the relief requested.

WOMBLE BOND DICKINSON (US) LLP

/s/ R. Andrew Walden

F. Cordes Ford IV (S.C. Bar No. 71644)
R. Andrew Walden (S.C. Bar No. 101004)
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Charleston, SC 29402
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*Attorneys for Defendant
Concord & Cumberland HPR*

May 11, 2020

Charleston, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

TCC OF CHARLESTON, INC.)
)
Plaintiff,)

Case No.: 2016-CP-10-2955

v.)
)

LEO HALL, DIANE HALL, BEA H.)
SMITH, MARGARET C. POPE,)
WILLIAM D. FOSTER, JR., GENE G.)
FOSTER, MATTISON J.)
MACGILLIVRAY, TERESA)
MACGILLIVRAY, PAMELA L.)
VAUGHN, NELIA A. PATRICIO, Trustee)
of the Nelia A. Patricio Revocable Trust)
Agreement, STUART D. REEVES,)
EDWARD T. STROM, BARBARA K.)
HENDERSON, JAMES R. CLARKE,)
PAUL A. BRIM, ROBERT K. SEIDL,)
JENNIFER M. SEIDL, ROBERT)
KENNETH SEIDL, II, M. BERT)
STOREY, THOMAS R. MATHER,)
EDWARD T. STROM, 304 CONCORD &)
CUMBERLAND, LLC, MARION M.)
SIMPSON F/K/A MARION MOORE)
MCDONALD SIMPSON, KATHY)
GARDNER, GREGORY J. GARDNER,)
FREEMAN WATERFRONT)
PROPERTIES, LLC, JOHN FREEMAN,)
JO-ANN COOPER, BETTY Y. SEGAL,)
by and through her Assignee, DONALD D.)
LEONARD, ROBERT M. LEVIN AND)
BONITA K. LEVIN, DONALD D.)
LEONARD, BETTY L. BEATTY,)
MATTELLEN, LLC, AND THOMAS R.)
DEBNAM, Trustee of the Trust Agreement)
of Thomas R. Debnam,)
)
Defendants.)

**PLAINTIFF'S MOTION TO
AMEND**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Plaintiff, hereby move this honorable Court, pursuant to Rule 15(a), SCRCF for an order allowing Plaintiff to amend its pleading. The proposed amendment is attached as **Exhibit 1**.

Rule 15(a), SCRCF provides that leave to amend “shall be freely given” when justice so requires and does not prejudice any other party. *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 286 (Ct. App. 2005). Motions to amend are to be liberally granted absent a showing by the party opposing the amendment that it would be prejudiced by that amendment. *Id.* The prejudice Rule 15 envisions is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174 (2004).

Here, no prejudice to Defendants will result from the proposed amendments as all issues being raised are known to the parties and, now that the three-year stay in this matter has been lifted, Defendants will have ample opportunity to conduct discovery and attempt to refute the issues included.

Accordingly, Plaintiff respectfully request leave to amend its pleading. Prior to filing this motion, Plaintiff sought, but was unable to secure, consent of all Defendants to this amendment.

Respectfully submitted:

EPTING & RANNIK, LLC

This 15th day of May, 2019
Charleston, SC

s/Jaan G. Rannik
Jaan G. Rannik
46A State Street
Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
jgr@epting-law.com

ATTORNEYS FOR PLAINTIFF

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

TCC OF CHARLESTON, INC.)

Plaintiff,)

V.

Case No.: 2016-CP-10-2955

LEO HALL, DIANE HALL, BEA H.

SMITH, MARGARET C. POPE,

WILLIAM D. FOSTER, JR., GENE G.

FOSTER, MATTISON J.

MACGILLIVRAY, TERESA)

MACGILLIVRAY, PAMELA L.

VAUGHN, NELIA A. PATRICIO, Trustee)

of the Nelja A. Patricio Revocable Trust)

Agreement, STUART D. REEVES,

EDWARD T. STROM, BARBARA K.

HENDERSON, JAMES R. CLARKE,

PAUL A. BRIM, ROBERT K. SEIDL,

JENNIFER M. SEIDL, ROBERT

KENNETH SEIDL, II, M. BERT

STOREY, THOMAS R. MATHER,

EDWARD T. STROM, 304 CONCORD &)

CUMBERLAND, LLC, MARION M.

SIMPSON F/K/A MARION MOORE)

MCDONALD SIMPSON, KATHY

GARDNER, GREGORY J. GARDNER,)

FREEMAN WATERFRONT

PROPERTIES, LLC, JOHN FREEMAN,)

JO-ANN COOPER, BETTY Y. SEGAL,)

by and through her Assignee, DONALD D.)

LEONARD, ROBERT M. LEVIN AND)

BONITA K. LEVIN, DONALD D.)

LEONARD, BETTY L. BEATTY,)

MATTELLEN, LLC, AND THOMAS R.)

DEBNAM, Trustee of the Trust Agreement)

of Thomas R. Debnam,

Defendants.)

SECOND AMENDED COMPLAINT

The Plaintiff, TCC of Charleston, Inc. (“TCC”), complaining of the Defendants above named, would allege and show this Honorable Court:

1. That the Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and does business in the County of Charleston, State of South Carolina.
2. That the Defendant, Concord & Cumberland, HPR (“the HPR”), is a corporation organized and existing under the laws of the State of South Carolina, with its principal place of business located in Charleston, Charleston County, South Carolina, existing by virtue of a Master Deed, and governed by Bylaws. **Exh. A** (Master Deed and Bylaws).
3. LEO HALL, DIANE HALL, BEA H. SMITH, MARGARET C. POPE, WILLIAM D. FOSTER, JR., GENE G. FOSTER, MATTISON J. MACGILLIVRAY, TERESA MACGILLIVRAY, PAMELA L. VAUGHN, NELIA A. PATRICIO, Trustee of the Nelia A. Patricio Revocable Trust Agreement, STUART D. REEVES, EDWARD T. STROM, BARBARA K. HENDERSON, JAMES R. CLARKE, PAUL A. BRIM, ROBERT K. SEIDL, JENNIFER M. SEIDL, ROBERT KENNETH SEIDL, II, M. BERT STOREY, THOMAS R. MATHER, EDWARD T. STROM, 304 CONCORD & CUMBERLAND, LLC, MARION M. SIMPSON F/K/A MARION MOORE MCDONALD SIMPSON, KATHY GARDNER, GREGORY J. GARDNER, FREEMAN WATERFRONT PROPERTIES, LLC, JO-ANN COOPER, DONALD D. LEONARD, individually and as a result of the assumption of liabilities of Betty Y. Segal, ROBERT M. LEVIN AND BONITA K. LEVIN,

DONALD D. LEONARD, BETTY L. BEATTY, MATTELLEN, LLC, AND THOMAS R. DEBNAM, Trustee of the Trust Agreement of Thomas R. Debnam are unit owners of the property which is the subject of this action.

4. That the property which is the subject of this action is real, personal, and intangible property ("The Property") situated in Charleston County, South Carolina. The real property is described in Exhibit A. The Defendants own and control some or all of The Property upon which this suit is filed and the HPR through the Master Deed has ownership interest in tangible and intangible property.
5. That this matter was subject to arbitration which arbitration was concluded, and Judge Jefferson lifted the stay on January 30, 2020 and refused to vacate the Panel's August 12, 2019 award on May 1, 2020, allowing this action to proceed.
6. That Plaintiff is entitled to continue to pursue its remedies and conduct discovery as to all Defendants and asks this Court to allow this litigation to proceed following Judge Jefferson's ruling regarding the HPR's motion to vacate the arbitration award.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

7. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.
8. That the Defendant, Concord & Cumberland HPR, on behalf and with the approval and consent of the Defendant property owners, contracted with the Plaintiff for labor and materials furnished and actually used by the Plaintiff on the structures situated on the subject property.

9. That this contract was amended to provide that certain work would be performed on a cost-plus basis.
10. That in accordance with their agreements the Plaintiff furnished the agreed-upon material and services to the Defendants which were used in the work, and such materials and services benefited and improved The Property the subject of this action.
11. That at all times during the performance of the contract by the Plaintiff, the property was owned and/or controlled by the Defendants, and the work of the Plaintiff was approved as the improvements were made.
12. That the Plaintiff timely gave the Defendants notice of the statement of account for Mechanic's Lien and timely served and filed its lien relative to the date of last work as determined by the Panel of arbitrators.
13. That the Plaintiff has filed in the Office of the Register of Deeds for Charleston County its Mechanic's Lien.
14. That the remedy of foreclosure and this suit was stayed pending the outcome of the arbitration. The Panel of arbitrators rendered its decision which has been confirmed by the Circuit Court on May 1, 2020.
15. That Plaintiff now seeks its remedies pursuant to the laws of foreclosure and the allegations of this complaint.
16. That Plaintiff asks that this Court assess attorneys' fees pursuant to statute.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

17. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.

18. That the Panel of arbitrators held that the HPR breached its agreement with Plaintiff by failing to pay sums due.
19. That the individual Defendants are estopped to deny they are obligated to Plaintiff as a result of the panel's order as at all times the HPR acted on their individual behalf.
20. That Plaintiff requests judgment against each individual Defendant in the amount of their percentage ownership.
21. That the Plaintiff requests that it be allowed to levy and execute on the Panel Award against any property, tangible or intangible of the HPR.

FOR A THIRD CAUSE OF ACTION
(Equity)

22. The Plaintiff repeats the allegations of the preceding paragraphs as if fully restated herein.
23. That the disputes between Plaintiff and the HPR were referred to arbitration by order of this Court.
24. That counsel for Plaintiff and for the HPR agreed that the Panel of arbitrators would determine who is the prevailing party.
25. That the Panel of arbitrators determined that Plaintiff was the prevailing party.
26. That the HPR subsequently argued that the Panel of arbitrators lacked jurisdiction to award attorneys' fees and that argument was for the Court.
27. That Plaintiff seeks to recover its fees as the prevailing party.
28. That the HPR's bylaws obligate the HPR Board of Directors to pay the debts of the association.

29. That Plaintiff seeks to have the existing debt paid to it and the remaining debt determined and then paid.
30. That the HPR holds tangible and intangible assets that should be paid over to Plaintiff.

WHEREFORE, Plaintiff demands judgment as follows:

- A. On its First Cause of Action, Plaintiff demands that its Mechanic's Lien be foreclosed upon, fees assessed, that the property(s) be seized and sold, and that the proceeds from the sales, after deducting all lawful charges and expenses, be used to satisfy the amounts due to Plaintiff.
- B. On its Second Cause of Action, Plaintiff demands judgment against all Defendants, in the amount of their respective percentage ownership and that the Court marshal all funds in payment of the debt and such further sums as are found to be due.
- C. On its Third Cause of Action, Plaintiff requests it be allowed to pursue the remainder of its claim and receive a full measure of damage.
- D. For such other relief as this Court deems just and proper.

[signature on following page]

Respectfully submitted:

EPTING & RANNIK, LLC

This ____ day of May, 2020
Charleston, S.C.

Jaan G. Rannik, Esq.
46A State Street
Charleston, South Carolina 29401
Phone: 843-377-1871
Fax: 843-377-1310
jgr@epting-law.com

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

VERIFICATION

I, John David Griffith, being first duly sworn, declare that I am an officer of the Plaintiff TCC OF CHARLESTON, INC., and have been duly authorized by said Corporation to make this Verification. I have read the foregoing Complaint and know the contents thereof and that based upon my own personal knowledge, the facts as alleged therein are true and correct.

TCC OF CHARLESTON, INC.

Sworn to before me this _____
day of _____, 2020

Notary Public for South Carolina
My Commission Expires: _____

EXHIBIT A

BK U641PG739

THIS MASTER DEED IS SUBJECT TO BINDING ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

STATE OF SOUTH CAROLINA	)	MASTER DEED
	)	CONCORD AND CUMBERLAND
COUNTY OF CHARLESTON	)	HORIZONTAL PROPERTY REGIME

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, Concord & Cumberland, LLC (the "Developer") is a South Carolina limited liability company having its principal place of business located at 1401 Main Street, Suite 650, Columbia, South Carolina 29201; and

WHEREAS, the Developer is the owner of that certain real property (the "Land") more fully described in Exhibit "A" attached hereto located within the community known as Concord and Cumberland, which community includes certain improvements constructed by the Developer in the City of Charleston, Charleston County, South Carolina; and

WHEREAS, the Developer now deems it appropriate to organize a horizontal property regime by duly executing and recording this Master Deed in the Office of the Register of Mesne Conveyances ("RMC") for Charleston County, South Carolina; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon, together with all easements, rights and appurtenances thereunto belonging, to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976) and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, subject to the following:

ARTICLE I

Definitions

Section 1.1 Definitions. Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20, South Carolina Code of Laws (1976), when used in this Master Deed or any amendment hereto, will have the meaning therein provided. The following words, as well as other defined terms set forth herein, when used in this Master Deed or any amendment or supplement hereto, unless the context requires otherwise, will be deemed to include the singular and plural forms as the context requires and have the following meanings:

"Annual Assessment Period" means the fiscal year of the Association established by the Association's Board of Directors.

"Assessment" means the amount assessed against an Owner and his Unit from time to time by the Association in the manner provided herein.

8X U641PG740

"Assigned Value" means the value assigned to each Unit in accordance with Exhibit "C" attached hereto and utilized for purposes of computing the Percentage Interest appurtenant to such Unit, which Assigned Value will not constitute the sales price of the Unit or be relied upon as a representation of the actual value of the Unit.

"Association" means Concord and Cumberland Horizontal Property Regime, being an association of and limited to Owners of the Units located in the Regime in the form of a nonprofit, non-stock membership association which will be incorporated in accordance with the Articles of Incorporation attached hereto as Exhibit "D". In exercising any right or easement granted or reserved to it or to its Board of Directors hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

"Board of Directors" or "Board" means the Board of Directors of the Association, and "director" or "directors" means a member or members of the Board.

"Building" means a structure containing Units.

"Bylaws" means the Bylaws of the Association attached hereto as Exhibit "E," as amended from time to time in accordance with the terms of the Bylaws and this Master Deed.

"Common Elements" means all of the Regime property after excluding the Units, including the following:

1. Easements through the Units for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to Units and the Common Elements; provided, however, such easements through a Unit will be only according to the Plans for the Building, or as the Building is constructed unless otherwise approved by the Unit Owner.
2. An easement of support in every portion of a Unit which contributes to the support of a Building.
3. Easements through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements.
4. Installation for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the one containing the installation, which installation will include ducts, plumbing, wiring, and other facilities for the rendering of such services.
5. The tangible personal property required for the maintenance and operation of the Units, even though owned by the Association.

When used herein, "Common Elements" will be deemed to include any service provided by the Association in furtherance of the uses and purposes to which any of the aforesaid facilities are put.

BK U641PG741

"Common Expense(s)" means (a) all expenses incident to the administration of the Association and maintenance, repair and replacement of the Common Elements and the Limited Common Elements, after excluding there from such expenses which are the responsibility of an Owner; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Condominium Act or the Regime Documents; and (d) reasonable reserves established for the payment of any of the foregoing.

"Condominium Act" means the Horizontal Property Act of South Carolina, South Carolina Code of Laws (1976), Section 27-31-10 to Section 27-31-300, as may be amended from time to time.

"Developer" means Concord & Cumberland, LLC, a South Carolina limited liability company, its successors and assigns.

"Eligible Mortgagee" shall mean the holder of an Institutional Mortgage on a Unit that has requested notice as provided in this Master Deed.

"Institutional Mortgage" will mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term will also mean and refer to the holder of any Mortgage securing a loan made by the Developer, its affiliates, successors, or assigns.

"Land" means the Land which is described in Exhibit "A" attached hereto, as said exhibit may be amended from time to time in accordance with the provisions of this Master Deed.

"Limited Common Element" means that portion of the Common Elements set aside and allocated for the exclusive use of the Owner of the Unit to which attached or assigned, and will include that portion of any Common Elements that is pierced by the Unit's interior stairs, if any; the Unit's chimney structure and flue, if any; exterior stairs exclusively serving the Unit, if any; air conditioner units and condensers and hot water heaters located outside of the Unit, and the spaces occupied by same; and any balcony, deck or patio adjacent to, and exclusively serving, the Unit. The term shall specifically include the items discussed in Section 3.4.

"Master Deed" means this document, as amended from time to time.

"Member" means each Owner who is a member of the Association.

"Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Unit which is held by a bank, trust company, insurance company or the Developer.

"Mortgagee" will mean and refer to the holder of a Mortgage.

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"Nonprofit Corporation Act" means and refers to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code Sections 33-31-101, et. seq., as amended.

"Owner" means the record owner, whether one or more persons, of fee simple title in and to any Unit; excluding, however, those persons having such interest merely as security for the performance of an obligation.

"Percentage Interest" means the undivided percentage interest owned by each Owner as a tenant-in-common in the Common Elements. "Total Percentage Interest" means the aggregate of all the Percentage Interests.

"Plans" mean and include the site plan and the floor plans of the Project which are filed as an attachment to this Master Deed showing the boundaries of the Land, the horizontal and vertical location of the improvements and Common Elements of the Project thereon and certified by a licensed engineer or architect in accordance with the provisions of the Condominium Act.

"Project" means, collectively, the Land, the Building and all other improvements and structures located thereon, and all easements, rights and appurtenances belonging thereto, submitted to the Condominium Act by this Master Deed, as amended from time to time in accordance with the provisions hereof.

"Regime" means the horizontal property regime established by this Master Deed, including all appurtenances and incidents of ownership attendant therewith.

"Regime Documents" means and includes this Master Deed, all Exhibits hereto, the Articles of Incorporation of the Association, the Bylaws and the Rules and Regulations, all as amended from time to time in accordance with the provisions thereof or in accordance with the laws of the State of South Carolina.

"Rules and Regulations" means the rules and regulations from time to time promulgated by the Board of Directors governing the use of the Common Elements and Units.

"Transition Period" means the time period commencing on the date of recording of this Master Deed and ending on the earlier of:

1. Four (4) months after the conveyance in the ordinary course of business of seventy-five percent (75%) of the maximum number of Units to be contained in the Project to persons other than the Developer; or
2. Three (3) months following the date the Developer surrenders its authority to appoint and remove the entire Board of Directors and officers of the Association under Section 13.1 below, by an express amendment to this Master Deed executed and filed of record by Developer; or
3. Three (3) years after the first Unit is conveyed.

"Trustee" means the Board of Directors acting as a fiduciary for the benefit of the Association and the Owners in holding certain funds and providing services as provided herein,

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or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use and constituting an "apartment" as defined in the Condominium Act, and situate within the Unit boundaries described in Exhibit "B" attached hereto and in the architect's plans incorporated in and made a part of Exhibit "B", as amended from time to time in accordance with the provisions of this Master Deed. Each Unit will be identified in the architect's plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Elements. **The Units are unfinished shells to be upfitted and finished by the Owners in accordance with this master Deed and the Rules and Regulations.**

ARTICLE II

Administration

Section 2.1 The Association. The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Regime Documents, as the same may be amended from time to time, will govern the Association and the Owners.

Section 2.2 Membership. Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

Section 2.3 Agreements. The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

(a) Any Regime management agreement entered into during the Transition Period will provide that such contractual arrangement is subject to termination without cause at any time after the expiration of the Transition Period without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement following the expiration of such '90-day period.

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Each Owner by acquiring or holding an interest in any Unit thereby ratifies and agrees to be bound by the terms and conditions of all such contractual arrangements entered into by the Board of Directors on behalf of the Association prior to the conveyance of the Unit to the Owner.

Section 2.4 Books and Records. The Association will keep full and accurate books of account and financial records showing all receipts and disbursements. In particular, the books will be maintained with a detailed account, in chronological order, of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Elements as well as other expenditures incurred. Vouchers accrediting the entries made thereupon will also be maintained in chronological order.

Section 2.5 Financial Statements. No later than 120 days after the close of any fiscal year of the Association, the Association will cause financial statements for such fiscal year to be prepared (but not necessarily certified) by a licensed accountant. Copies of the financial statements will be available to any Owner upon written request to the Association. The Association may charge a reasonable fee for copying such statements.

Section 2.6 Access to Information. The Association will make available to Owners of any Unit and to any Mortgagee current copies of the Regime Documents and the books, records, vouchers, contractual arrangements and financial statements of the Association. "Available" means available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association may charge reasonable copying costs for any requested copies or extracts. Any party entitled to the benefits of this Section will be permitted to designate one or more agents who will be permitted to represent said party in connection with any and all reviews of the Regime Documents and books, records, contractual arrangements and financial statements of the Association.

Section 2.7 Rules and Regulations. The Board of Directors will be entitled to promulgate reasonable Rules and Regulations from time to time, which will be binding on the Association and all Owners and lessees of Owners, their families, invitees and guests, regarding the use and enjoyment of Units and Common Elements. Copies of the current Rules and Regulations will be furnished to Owners and lessees of Owners upon request.

Section 2.8 Professional Property Manager. The Board of Directors may retain a professional property management company to manage the day-to-day affairs of the Association.

Section 2.9 Collections and Remission of Optional Cable Television, Telephone and Other Charges; Master Utility Charges. In the event the Association at any time secures any optional cable, telephone or other service, including broadband communications access, the Association will be entitled to collect fees charged to those Unit Owners who elect to receive such optional service made available to the Unit Owners through the Regime and remit the same to the provider thereof on behalf of such Unit Owners. Such elective costs and expenses will not be deemed a Common Expense hereunder, but will be charged to the Units Owners separately from their Assessment. Furthermore, the Board of Directors will pay any master utility meter charge, base cable to all Units, or other blanket utility fee for services to all Units not otherwise separately metered or charged to individual Units, including, but not limited to water service. Such master cost and expense will be a Common Expense hereunder; provided, however, in the

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event actual costs exceed the budgeted costs therefor, such unbudgeted excess may be prorated and charged to the Units Owners separately from their Assessment, and will not require payment thereof from any other budget line item surplus or a Special Assessment or other extraordinary measure of collection.

Section 2.10 Maintenance of City of Charleston Storm Drainage Easement. The Association shall perform, and does hereby assume, all obligations to be performed by way of maintenance, repair and replacement of the "Easement Area" as is necessary to keep it in good and sufficient condition to handle the natural flow of water over, under and across the Easement Area, as the same is further identified and provided in that certain Drainage Easement and Maintenance Agreement by and between the Developer and the City of Charleston, South Carolina dated July 24, 2007 and recorded in the RMC in Book 5-634, Page 411, which instrument is hereby incorporated herein by reference. All costs and expenses in discharge of such obligations shall constitute a Common Expense hereunder.

ARTICLE III

Property Rights

Section 3.1 Units. Each Unit will for all purposes constitute a separate parcel of real property which, subject to the provisions of this Master Deed, may be owned in fee simple and which may be conveyed, transferred, leased and encumbered in the same manner as any other real property. Each Owner, subject to the provisions of the Condominium Act and this Master Deed, will be entitled to the exclusive ownership and possession of his Unit.

Section 3.2 Description of Units. The dimensions, area and location of the Units are as set forth on Exhibit "B" attached hereto and are generally intended to include the following:

(a) Each Unit contains all space within the area bounded by the unfinished interior surface of the perimeter walls, windows, window frames, doors and door frames, and the lowest concrete floor and the uppermost ceiling of such Unit.

(b) Each Unit is an unfinished shell and has a conditional Certificate of Occupancy from the applicable governmental authority (conditioned upon the Unit Owner upfitting and finishing the Unit and obtaining a final Certificate of Occupancy). The Developer has provided stub outs for electrical, telephone, plumbing, and other utilities to the floors the Units are located on. Each Unit includes the mechanical and plumbing stubs, electrical panel box, exposed HVAC ducts and exposed fire sprinkler systems of the Unit as herein described.

(c) Notwithstanding the description of the boundaries set forth above, the Units shall be deemed to include the following: all portions of the plumbing, heating, electrical, and air conditioning systems (including compressors, components, pipes, wires, conduits, ducts, and the like) serving only that Unit even if partially outside the boundaries of the Unit; all windows, glass surfaces, and doors (including window and door frames and the hardware thereof) serving the Unit; all window screens and screens on any screened balcony; and any fireplace or stove hearth, facing brick, tile or firebox; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines within the Unit but serving more than one Unit. In interpreting deeds and plans, the existing physical boundaries

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of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the Building, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.

(d) The ownership of each Unit shall include, and there shall pass with each Unit as an appurtenance thereto whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

Section 3.3 Unit Construction, Upfitting and Finishing. All finishes, including interior walls, doors, electrical, cable, appliances, lighting, cabinets, flooring, plumbing fixtures, counters, vanities, outlet covers, door hardware, sound and impact isolation materials, moldings and all other finishes not specifically described herein as being a part of the Unit are the sole obligation of the Owners to construct, upfit and complete.

(a) An Owner shall not perform any Unit construction or upfitting until all of the following have occurred (and remain in place throughout the entire construction and upfitting process):

- (1) The Owner has taken title to the Unit;
- (2) The Owner has submitted the plans to the Association for upfitting and finishing the Unit for review and the Association has given its written approval;
- (3) The Owner's plans for upfitting and finishing the Unit are in compliance with all federal, state, county and city of Charleston laws, ordinances, rules, and regulations;
- (4) The Owner has secured proper liability and builder's risk insurance covering the Unit's upfitting and finishing work as specified and required by the Association (as evidenced by certificates of insurance showing said insurance coverage and naming the Association as Additional Insured, which must be on file with the Association); and
- (5) The Owner is not in violation of any of the Regime Documents and has followed and met all requirements contained in the Rules and Regulations concerning the Unit's upfitting and finishing work.

(b) Unless otherwise stated in the Rules and Regulations or approved in writing by the Association or Developer, Unit upfitting and finishing work shall be performed only during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and said work shall not interrupt the utility services to other Units or the Common Elements. The Rules and Regulations may include, but shall not be limited to, restrictions on the use of elevators and the type of equipment and materials used in the upfitting and finishing work.

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(c) Owners shall be jointly and severally liable for any damage to, or adverse affects upon, other Units or the Common Elements caused by their construction or upfitting work.

(d) Unless otherwise stated in the Rules and Regulations or approved in writing by the Association or Developer, upfitting and finishing work must be completed within twelve (12) months after the Unit Owner took title to the Unit, as evidenced by a final Certificate of Occupancy from the appropriate governmental authority. The Owner is solely responsible for obtaining the Unit's final Certificate of Occupancy.

(e) If an Owner fails to comply with any of the Regime Documents regarding the Unit's upfitting and finishing work, the Association may: halt all upfitting and finishing work in the Unit until such time as the Owner comes back into compliance; impose fines or Specific Assessments against the Owner (said assessments would be both the personal obligation of the Owner and a lien on the Unit); deny Owner access to and enjoyment of all Common Element facilities and amenities; and any and all additional remedies for breach of this Master Deed available to the Association. The aforementioned remedies available to the Association are cumulative and not mutually exclusive.

(f) Developer reserves the right to conduct any and all construction, upfitting, and finishing work on Units it still owns without having to obtain approval of the Association and without being subject to the restrictions set out herein, in the Rules and Regulations, and in any other Regime Document.

(b) Each Unit will include the heating, hot water and air conditioning apparatus exclusively serving the Unit whether or not located within the boundaries of the Unit.

Section 3.3 Modification of Units. The Developer, on behalf of itself, its successors and assigns, hereby reserves the right to modify or reconstitute, at any time and from time to time and irrespective of whether the Transition Period has expired, one or more Units owned by Developer or its affiliates without the consent of the Association or any Owner other than those who may be directly affected; provided, however, that the total Assigned Values assigned to the Units so affected will not change even though the same may be reallocated among such changed Units. If Developer makes any changes in Units pursuant to this Section, such changes will be reflected by an amendment of this Master Deed which will be duly recorded in the Charleston County RMC. Such amendment will not require the consent of Owners other than the Developer.

Section 3.4 Common Elements and Limited Common Elements.

(a) **Percentage Interest.** The Owners will own the Common Elements as tenants-in-common, with each Unit having, appurtenant thereto, the Percentage Interest in the Common Elements set forth in Exhibit "C" attached hereto; provided, however, that the use of the Limited Common Elements will be restricted as set forth in Section 3.4(e). The Percentage Interest appurtenant to each Unit has been determined by dividing the Assigned Value of the respective Unit as shown on Exhibit "C" by the aggregate Assigned Value of all Units as shown on Exhibit "C". The value assigned to any Unit in Exhibit "C" does not represent the sales price

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or market value of the Unit and will only be utilized for purposes of computing the Percentage Interest appurtenant to the respective Unit.

(b) Inseparability of Percentage Interests. The Percentage Interest in the Common Elements cannot be separated from the Unit to which it appertains and will be automatically conveyed or encumbered with the Unit even though such Percentage Interest is not expressly mentioned or described in the deed or other instruments.

(c) No Partition. The Common Elements will remain undivided and no right to partition the same or any part thereof will exist except as provided in the Condominium Act, the Bylaws and this Master Deed.

(d) Use of Common Elements. The Common Elements will be used in accordance with the intended purposes without hindering the exercise of or encroaching upon the rights of other Owners. The Board of Directors will, if any question arises, determine the purpose for which a part of the Common Elements is intended to be used. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Common Elements.

(e) Use of Limited Common Elements. Anything to the contrary contained herein notwithstanding, ownership of each Unit will entitle the Owner or Owners thereof to the exclusive use of the Limited Common Elements adjacent and appurtenant to such Unit, which exclusive use may be delegated by such Owner to persons who reside in the Unit. All Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations from time to time in effect governing the use of the Limited Common Elements. An Owner will be responsible for general maintenance and repair of the Limited Common Elements appurtenant to his Unit as set forth in Article VIII, Section 8.3 below.

(f) Reservation of Easements. The Common Elements will be subject to all easements and use reserved by the Developer hereunder.

Section 3.5 Status of Title of Project. The Developer represents to the Association and all the Owners that, as of the effective date hereof, the Developer has marketable, fee simple title to the Project. The rights and interests of all Owners in and to the Regime will be subject only to (i) liens for real estate taxes for the current year and subsequent years; (ii) existing and/or recorded easements, conditions, covenants, declarations, reservations and restrictions including, without limitation, those set forth in this Master Deed; (iii) easements and use rights, if any, reserved by the Developer hereunder; and (iv) applicable governmental regulations, including zoning laws, which may be imposed upon the Project from time to time.

Section 3.6 Limited Warranty From Developer. FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF COMPLETION OF CONSTRUCTION (BEING THE LATER OF SUBSTANTIAL COMPLETION UNDER THE CONSTRUCTION CONTRACT, OR THE DATE A CERTIFICATE OF OCCUPANCY IS ISSUED THEREFOR), THE DEVELOPER SHALL AT NO COST TO THE ASSOCIATION REPAIR OR REPLACE (IN THE DEVELOPER'S DISCRETION) ANY PORTIONS OF THE COMMON ELEMENTS (EXCEPT FIXTURES, ACCESSORIES AND APPLIANCES COVERED BY SEPARATE

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WARRANTIES OF THEIR RESPECTIVE MANUFACTURERS) WHICH ARE DEFECTIVE AS TO MATERIALS OR WORKMANSHIP. THIS LIMITED WARRANTY IS IN PLACE OF ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND THE DEVELOPER DISCLAIMS ALL OTHER CONTRACTUAL OBLIGATIONS OR WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE LIABILITY OF THE DEVELOPER SHALL BE LIMITED TO SUCH REPAIR OR REPLACEMENT AND THE DEVELOPER SHALL NOT BE LIABLE FOR DAMAGES OF ANY NATURE, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, REGARDLESS OF WHETHER SUCH DAMAGES ARE CLAIMED TO ARISE OUT OF THE LAW OF CONTRACT, TORT OR OTHERWISE, OR PURSUANT TO STATUTE OR ADMINISTRATIVE REGULATION. Each Owner, in accepting a deed from the Developer or any other party to a Unit, expressly acknowledges and agrees that this Section establishes the sole liability of the Developer to the Association and the Owners related to defects in the Common Elements and the remedies available with regard thereto. At the end of the one (1) year warranty period referred to hereinabove in this Section 3.6, the Developer will assign to the Association in writing all of its rights, claims, causes of action and demands which it has or which may thereafter accrue against all other people who may be responsible for the design and/or construction of the Common Elements.

(a) Association's Obligation. The Association will perform necessary and regular maintenance and take care of the Common Elements so as to prolong the life of the Common Elements' materials and construction.

ARTICLE IV

Assessments

Section 4.1 Creation of Lien and Personal Obligation for Assessments. Each Unit is and will be subject to a lien and permanent charge in favor of the Association for the Assessments set forth herein. Each Assessment, together with interest thereon and cost of collection thereof as hereinafter provided, will be a permanent charge and continuing lien upon the Unit against which it relates, and will also be the joint and several personal obligation of each Owner of such Unit at the time the Assessment comes due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Unit, and each and every Owner by acquiring or holding an interest in any Unit thereby covenants to pay such amounts to the Association when the same will become due; provided, however, that no Owner acquiring title to any Unit at a foreclosure sale of any Institutional Mortgage, his successors and assigns, will have any personal obligation with respect to the portion of any Assessments (together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the Institutional Mortgage being foreclosed as provided in Section 4.7. A Unit may be assessed as herein provided for Annual Assessments, Special Assessments and Specific Assessments.

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Section 4.2 Annual Assessments. At least thirty (30) days prior to the Association's next succeeding Annual Assessment Period the Board will adopt a budget for the next succeeding Annual Assessment Period by estimating the Common Expenses to be incurred during such Annual Assessment Period, including a reasonable allowance for contingencies and operating and replacement reserves, such budget to take into account the projected anticipated income which is to be applied in reduction of the amount to be collected as an assessment. The Common Expenses for property and liability insurance premiums may be separately assessed (an "Insurance Assessment"). The Insurance Assessment may, in the exercise of the Board's reasonable business judgment, be based upon a prepaid amount, estimated to cover the anticipated property and liability insurance premium at the next anniversary date of the policy or policies, or the Board may specially assess an Insurance Special Assessment pursuant to Section 4.3(a) below to cover any third-party financed premium as it becomes due. Upon adoption of the budget, a copy thereof will be delivered to each Owner. The Annual Assessment and any separately stated Insurance Assessment fixed against each Unit will be based upon the budget and in proportion to the respective Percentage Interests of each Unit subject to assessment, and the Board will give written notice to each Owner of the Annual Assessment fixed against his Unit for such next succeeding Annual Assessment Period; provided, however, the delivery of a copy of said budget will not be a condition precedent to an Owner's liability for payment of such Annual Assessment. In fixing the annual budget, the Board of Directors shall reflect in the budget the recommendations of a maintenance audit conducted by a professional inspector at such frequency as the Board shall determine, but not less frequently than every three (3) years. The Board shall provide the Developer with a copy of each such inspection report or maintenance audit findings within fifteen (15) days following receipt thereof by the Board. The Board shall not be relieved of its duty to contract for a maintenance audit, as aforesaid, by virtue of the Developer's inspections pursuant to Section 10.5 below.

The Annual Assessment will not be used to pay for the following:

- (a) Casualty insurance of individual Owners on their possessions within the Units and liability insurance of such Owners insuring themselves and their families individually, which will be the sole responsibility of such Owners;
- (b) Long distance telephone or electrical utility charges for each Unit, which will also be the sole responsibility of the Owners of such Units;
- (c) Ad valorem taxes assessed against Units;
- (d) Other charges or expenses related solely to individual use or occupancy of any Unit; or
- (e) Assessments charged directly to Owners pursuant to any master or umbrella declaration to which the Regime is subject.

It is anticipated that ad valorem taxes and other governmental assessments, if any, upon the Project will be assessed by the taxing authority upon the Unit, and that each assessment will include the assessed value of the Unit and of the undivided interest of the Owner in the Common Elements; provided, however, that for the current calendar year, the ad valorem taxes will be

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based upon the condition of the Land as of January 1, and the Developer will be liable for that portion of the taxes applicable to the period prior to the recordation of this Master Deed. When current ad valorem taxes are due and payable, the remainder of the ad valorem taxes for the current calendar year will be prorated between the Developer and each Owner based upon the Owner's Percentage Interest and based upon the number of days each owned the Unit as evidenced by the date of the Unit Deed. Any such taxes and governmental assessments upon the Project which are not so assessed will be included in the Association's budget as a recurring expense and will be paid by the Association as a Common Expense. Except as otherwise provided herein, each Owner is responsible for making his own return of taxes and such return will include such Owner's undivided interest in the Common Elements as such undivided interest is determined by law for purposes of returning taxes.

Annual Assessments charged by the Association will be rounded off to the nearest dollar.

EACH OWNER, IN ACCEPTING A DEED TO A UNIT FROM THE DEVELOPER OR ANY OTHER PERSON, HEREBY ACKNOWLEDGES THAT THE REGIME BUDGET AND ANNUAL ASSESSMENT THEREUNDER INITIALLY ESTABLISHED BY THE DEVELOPER, AND AS MAY BE MODIFIED OR AMENDED BY THE BOARD OF DIRECTORS OF THE ASSOCIATION, MAY BE INADEQUATE TO FUND, AS MAY BE NEEDED, THE COSTS AND EXPENSES OF PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS. IN THE EVENT THE REGIME IS REQUIRED TO INCUR COSTS AND EXPENSES PREPARING THE PROJECT FOR AN IMPENDING HURRICANE OR STORM IN EXCESS OF THE UNEXPENDED AMOUNT BUDGETED FOR A PARTICULAR YEAR, THE REGIME MAY BE REQUIRED TO VOTE A SPECIAL ASSESSMENT UNDER SECTION 4.3 BELOW AGAINST THE OWNERS TO RAISE THE REQUIRED FUNDS TO PAY SUCH EXCESS COSTS AND EXPENSES. FURTHERMORE, IN THE EVENT THE REGIME DOES NOT, FOR ANY REASON, APPROVE ANY SUCH SPECIAL ASSESSMENT, THE VALUE OF A UNIT MAY BE SUBSTANTIALLY AND MATERIALLY AFFECTED.

NOTHING HEREIN PROVIDED IS INTENDED, NOR SHALL IT BE DEEMED TO PROVIDE, THAT THE ASSOCIATION IS OBLIGATED TO INSTALL AND REMOVE ANY STORM SHUTTERS OR PLYWOOD WINDOW COVERING IN PREPARATION FOR ANY HURRICANE OR STORM. IN THE ABSENCE OF A SPECIFIC BUDGET ITEM THEREFOR OR THE ADOPTION OF A SPECIFIC RESOLUTION BY THE BOARD OF DIRECTORS TO SO PROVIDE SUCH SERVICE, EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR PREPARING THE UNIT FOR AN IMPENDING HURRICANE OR STORM, INCLUDING, BUT NOT LIMITED TO, INSTALLING AND REMOVING STORM SHUTTERS OR PLYWOOD

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WINDOW COVERINGS. OWNERS SHALL NOT INSTALL PLYWOOD WINDOW COVERINGS OR CLOSE ANY INSTALLED STORM SHUTTERS UNLESS AND UNTIL THE NATIONAL WEATHER SERVICE ISSUES A HURRICANE WATCH OR TROPICAL STORM WATCH, WITH ANTICIPATED DAMAGING WINDS, COVERING CHARLESTON COUNTY, SOUTH CAROLINA.

Section 4.3 Special Assessments. In addition to the Annual Assessments, the Board of Directors may levy in any calendar year "Special Assessments" for the purpose (i) of supplementing the Annual Assessments if the same are inadequate to pay the Common Expenses and (ii) of defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of the Common Elements; provided, however, that any such Special Assessment which in the aggregate exceeds twenty percent (20%) of the total budgeted Common Expenses, exclusive of insurance, for such year will be approved by a majority of the votes cast by Members in a written ballot, or in person or by proxy at a meeting at which a quorum is present, duly called for the express purpose of approving such Special Assessment.

(a) Insurance Special Assessment without Vote of Members. Notwithstanding the foregoing, the Board may, without a vote of the members, levy an Insurance Special Assessment to pay any premium charged to the Association in excess of the amount budgeted for insurance, or levy an Insurance Special Assessment to pay, when due, any third-party financed premium. If applicable, an Insurance Special Assessment shall only be assessed against Owners of Units for which the Board separately assesses an Insurance Assessment based upon the type of Building in which a Unit is located, as further described in Section 4.2 above.

Section 4.4 Date of Commencement of Annual Assessments; Due Dates. Although the Annual Assessment is calculated on a yearly basis for the Annual Assessment Period, each Owner of a Unit will be obligated to pay to the Association or its designated agent such Assessment in equal monthly installments on or before the first day of each month during such Annual Assessment Period.

The obligations of Owners regarding the payment of monthly portions of the Annual Assessment provided for in this Article IV will, as to each Unit, commence upon the recording of this Master Deed. The first monthly payment of the Annual Assessment for each such Unit will be an amount equal to the monthly payment for the Annual Assessment Period in progress on such commencement date, divided by the number of days in the month of conveyance, and multiplied by the number of days then remaining in such month.

The Association will, upon demand at any time, furnish any Owner liable for any such Assessment a certificate in writing signed by an Officer of the Association or the property manager of the Association, setting forth whether the same has been paid. A reasonable charge, as determined by the Board, may be made for the issuance of such certificate. Such certificate will be conclusive evidence of payment of any Assessment stated to have been paid as to any person or entity that has relied on the certificate to his or its detriment.

Section 4.5 Individual Specific Assessments. Any expenses incurred by the Association because of the actions of one or more Owners or occupants of an Owner's Unit, or

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because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Master Deed or rules and regulations adopted hereunder, and any fines as may be imposed against an Owner in accordance with this Master Deed will be specially assessed as a Specific Assessment against each such Owner and the Owner's Unit. In addition, in the event that a specific Assessment is made for a judgment against the Association, such specific Assessment shall only be assessed against those who were Owners at the time the judgment was entered against the Association.

Section 4.6 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If an Assessment is not paid on the date when due, as hereinabove provided in Section 4.4, then such Assessment together with such late charges and interest thereon and any costs of collection thereof as hereafter provided, will be a charge and continuing lien on the Unit to which it relates, and will bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, will remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner will nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities will be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment which is not received within ten (10) days of the due date thereof, or within any established grace period, will incur a late charge of twenty-five (\$25.00) dollars or such greater amount as may be set by the Board of Directors. If so directed by the Board of Directors with respect to all late payments, Assessments and late charges will commence to accrue simple interest at the rate of eighteen percent (18%) per annum. In addition, in the event any Assessment is not received within thirty (30) days of the due date thereof, the Association will have the right to declare the balance of the Assessment for the Annual Assessment Period then in effect immediately due and payable upon written notice to the defaulting Owner.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Unit to which it relates or pursue both such courses at the same time or successively. In any event, the Association will be entitled also to recover reasonable attorney's fees actually incurred and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Unit, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law

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exempting any Unit or portion thereof from sale. If the Association commences to foreclose its lien, the Owner may be required to pay a reasonable rental for the Unit after the commencement of the action and at its option the Association will be entitled to the appointment of a receiver to collect such rents. The Association will have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may be relieved from liability from the Assessment provided for herein by abandonment of his Unit or otherwise.

(d) During any period in which an Owner will be in default in the payment of any Annual or Special Assessment levied by the Association, the voting rights of the Owner and the rights of the Owner and lessees of the Owner, their families, invitees and guests, to use and enjoy the recreational areas of the Common Elements may be suspended by the Board of Directors until such time as the Assessment has been paid.

Section 4.7 Developer's Unsold Units. The Developer shall pay the same Assessment amount for its unsold Units as any other Owner.

Section 4.8 Subordination of the Charges and Liens to Mortgages.

(a) The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Unit is hereby made subordinate to the lien of any holder of an Institutional Mortgage or his assigns placed on such Unit, and all Assessments with respect to such Unit having a due date on or prior to the date such Institutional Mortgage is filed for record have been paid. The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Unit is also hereby made subordinate to a lien for taxes or other governmental assessments owed for such Unit ("Governmental Assessments"). The lien and permanent charge hereby subordinated is only such lien and charge as relates to Assessments authorized hereunder having a due date subsequent to the date such Institutional Mortgage or Governmental Assessment is filed for record and prior to the satisfaction, cancellation or foreclosure of such Institutional Mortgage or the satisfaction or cancellation of such Governmental Assessment.

(b) Such subordination is merely a subordination and will not relieve the Owner of the mortgaged Unit of his personal obligation to pay all Assessments coming due at a time when he is the Owner; will not relieve such Unit from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure); and no sale or transfer of such Unit to the Mortgagee or to any other person pursuant to a foreclosure sale will relieve any previous Owner from liability for any Assessment coming due before such sale or transfer.

(c) To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

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Section 4.9 Reserves. The Board of Directors will establish and maintain an adequate reserve fund for the periodic repair and replacement of the Common Elements. The Board of Directors will include amounts needed to maintain an adequate reserve fund in its estimation of the Common Expenses for each fiscal year and will cause deposits to the reserve fund to be made in connection with the collection of the Annual Assessment.

Section 4.10 Working Capital Assessment. Notwithstanding anything to the contrary in this Master Deed, a working capital fund will be established for the Association by collecting from each Owner acquiring title to a Unit, whether from the Developer or from a previous Owner, a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable at the time of transfer of the Unit. Each such Owner's share of working capital, as aforesaid, will be transferred to the Association at the time of closing the conveyance to the Owner. Such sum is and will remain separate and distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Master Deed and the Bylaws.

Section 4.11 Surplus Funds. All funds paid into the Association by the Owners which remain after payment for Common Expenses, prepayment of reserves or any other expense, cost or fee defined herein shall be paid to the Owners in proportion to their Percentage Interests or credited to them to reduce future assessments.

ARTICLE V

Insurance and Casualty Losses

Section 5.1 Hazard Insurance.

(a) The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a "master" or "blanket" type policy or policies of property insurance covering the entire Project, except (x) land, foundation, excavation, or other items normally excluded from coverage; and (y) the items set forth in Section 5.1(a)(i) below. Such coverage will also insure supplies, equipment and other personal property of the Association. All policies of property insurance will be single entity condominium insurance coverage. The master insurance policy will afford, at a minimum, protection against loss or damage by fire and other perils normally covered by standard extended coverage endorsements; and all other perils which are customarily covered with respect to condominium projects similar in construction, location and use, including all perils normally covered by a standard "special coverage" endorsement, where such is available. The policy will be in an amount equal to one hundred (100%) percent of the current replacement cost of the Project, exclusive of land, foundations, excavation, and other items normally excluded from coverage. A "deductible amount" may be included at the discretion of the Board of Directors if available and if a material savings, as determined by the Board in its sole discretion, in premium cost results therefrom, but the deductible amount will be considered a Common Expense and borne by the Owners affected by the insured casualty. A reserve may be established therefor. Endorsements for wind, flood and earthquake will be purchased and maintained as deemed necessary by the board and governmental regulations.

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(i) In addition to the items identified in clause (x) of Section 5.1(a) above to be excluded, there shall be **excluded from the Association's hazard insurance policy** (A) all improvements and betterment made to Units by Owners at their expense, **including, but not limited to, an Owner's upfitting and finishing work to a Unit pursuant to Section 3.3 above**; (B) personal property of Owners and lessees of Owners, their families, invitees and guests; (C) the finished wood, vinyl, tile, carpet or other finish surface lying above the subfloor constituting the lower horizontal boundary of a Unit; (D) all paint, wallpaper, vinyl paper, tile, and other finish surface covering the unexposed surface of the wallboard or other surface comprising the perimeter walls enclosing a Unit; (E) all appliances; (F) all lighting and plumbing fixtures and all cabinetry and built-in improvements within a Unit. Insurance covering the items listed in clauses (A) through and including (F) of this Section 5.1(a)(i) shall be maintained by the Owner and proof of such insurance shall be provided to the Association by the Owner upon the Association's written request.

(b) The name of the insured under the master policy will be substantially as follows: "Concord and Cumberland Horizontal Property Regime for the use and benefit of the Individual Owners of Units in Concord and Cumberland Horizontal Property Regime." Loss payable provisions will be in favor of the Association and the Trustee, as a trustee for each Owner, and each such Owner's Mortgagee as the interests of such parties may appear. Each Owner and his respective Mortgagee, if any, will be beneficiaries of the policy in a percentage equal to the Percentage Interest attributable to the Unit owned by such Owner. All policies will contain a standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by Institutional Mortgage investors in the area in which the Project is located, and which appropriately names all Mortgagees or their servicer in such form as requested by such Mortgagees or their servicer.

(c) All policies will be written with a company holding a general policyholder rating of "A" or better by Best's Insurance Reports and in a financial category of Class VI or better in Best's Key Rating Guide. Policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, Owners, Mortgagees or the designees of Mortgagees; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or (iii) the policy includes any limiting clause (other than insurance provisions) which could prevent Mortgagees or Owners from collecting insurance proceeds. Policies may not be cancelable, deemed nonrenewable or substantially modified by any party without at least thirty (30) days prior written notice to the Association and each Mortgagee which is listed as a scheduled holder of a first Mortgage in the insurance policy. Policies should also contain a "special condominium endorsement" or its equivalent which provides for the following: recognition of any insurance trust agreement; a waiver of the rights of subrogation against Owners individually; the insurance is not prejudiced by any act or negligence of individual Owners which is not under the control of the Association or such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(d) The Association will provide to Owners and/or Institutional Mortgagees requesting the same in writing a certificate of insurance, or a copy of the certificate of insurance, for the Regime, for which the Association may charge reasonable copying costs.

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(e) Each Owner shall obtain at his sole cost and expense hazard insurance coverage on the items set forth in Section 5.1(a)(i) above, and may obtain additional insurance at his own expense; provided, however, that no Owner will be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Association may have in force on the Project at any particular time. Any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of any Owner's policy will be chargeable to the Owner who acquired such other insurance. Any Owner who obtains an individual insurance policy covering any portion of the Project, other than the personal property belonging to such Owner, will file a copy of such policy with the Association within thirty (30) days after purchasing such insurance. Each Owner, at his own expense, may obtain on his Unit or the contents thereof, title insurance, homeowner's liability insurance, theft and other insurance covering improvements, betterment and personal property damaged and lost. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner under an "improvements insurance" policy or rider; provided, however, if an Association's policy provides such "improvements insurance," any diminution in the Association's insurance proceeds resulting from the existence of an Owner's "improvements insurance" will be chargeable to such Owner. Each Owner will be required to notify the Association of all improvements made by such Owner to his Unit, the value of which exceeds \$10,000.00.

(f) If any part of the Project's improvements are in a special flood hazard area designated as A, AE, AH, AO, AR, A1-A30, A-99,V,VE,V1-30, or VO on the Flood Insurance Rate Map, the Association shall maintain a master or blanket policy of flood insurance and provide for the premiums to be paid as a Common Expense.

Section 5.2 Liability Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a policy of comprehensive general liability insurance coverage covering at a minimum all of the Common Elements. Coverage limits will be in amounts generally required by private Institutional Mortgage holders for projects similar in construction, location and use to the Project; provided, however, that such coverage will be for at least \$1,000,000 for bodily injury, including death of persons, and property damage arising out of a single occurrence. Coverage under this policy will include, without limitation, legal liability to the insured for property damage, bodily injury and death of persons in connection with the operation, maintenance and use of the Common Elements and legal liability arising out of law suits related to employment contracts in which the Association is a party. If the policy does not include "severability of interest" in its terms, an endorsement will be included which precludes the insurer's denial of the claims of an Owner because of the negligent acts of the Association or another Owner. Such policy must provide that it cannot be canceled or substantially modified, by any party, without at least thirty (30) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the insurance policy.

Section 5.3 Fidelity Bonds and Other Insurance. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees, employees and manager of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Regime. The total

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amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors and will not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or a professional management company, as the case may be, at any given time during the term of each bond; provided, however, that in no event will the aggregate amount of such bonds be less than a sum equal to three (3) months of assessments on all Units unless at any time the State of South Carolina's statutory fidelity requirements differ in which case the South Carolina statutory requirements shall govern. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

The Association will obtain, maintain and pay the premiums, as a Common Expense, on a policy of directors and officers liability insurance in such amounts as determined by the Board of Directors.

The Board of Directors will be authorized on behalf of the Association to obtain and maintain such other and further insurance as the Board of Directors may determine from time to time.

Section 5.4 Authority to Adjust Loss. The exclusive authority to negotiate, settle and otherwise deal in all respects with insurers and adjust all losses under policies provided for herein will be vested in the Board of Directors or its duly authorized agent for the benefit of all Owners and Mortgagees; provided, however, that all Owners and Mortgagees having an interest in such loss will be advised in advance of all actions anticipated to be taken of a material nature related to the adjustment of the loss. Each Owner, in accepting a deed to a Unit, expressly appoints the directors, and each of them, his due and lawful attorneys-in-fact, with full power of substitution, to act on behalf of the Owner as fully as the Owner could act in person on all matters related to the authority granted in this Section, including executing all documents required in connection therewith on behalf of the Owner.

Section 5.5 Trustee.

(a) The Board of Directors may, from time to time, designate a third party Trustee hereunder. The Trustee, whether the Board of Directors acting in said capacity, or a third-party designated by the Board, will serve the Association and the Owners and their Mortgagees (as their interests may appear) as provided herein. Any third-party Trustee, but not the Board of Directors acting in such capacity, will be entitled to receive reasonable compensation for services rendered which will be a Common Expense of the Association.

(b) All insurance policies obtained by the Association will name the Association and the Trustee as loss payees. Immediately upon the receipt by the Association of any insurance proceeds, the Association will endorse the instrument by means of which such proceeds are paid and deliver the instrument to the Trustee. The Trustee will not be liable for payment of premiums, for the renewal or the sufficiency of the policies or for the failure to

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collect any insurance proceeds. Nor will the Trustee have any obligation to inspect the Project to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person.

(c) Among other things, the duties of the Trustee will be to receive proceeds delivered to it, hold such proceeds in trust for the benefit of the Owners and their Mortgagees, and disburse the proceeds as hereinafter provided.

(d) Proceeds of insurance policies received by the Trustee will be disbursed as follows:

(i) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purposes, will be disbursed in payment for such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs will be paid to the Association for the benefit of all Owners and their Mortgagees, if any;

(ii) If it is determined, as provided in Section , that the damage or destruction for which the proceeds are paid will not be repaired or reconstructed, such proceeds will be disbursed to such persons as therein provided;

(iii) Any and all disbursements of funds by the Trustee for any purpose whatsoever will be made pursuant to and in accordance with a certificate of the Association signed by the President and attested by the Secretary directing the Trustee to make the disbursements;

(iv) If the damage or destruction is to the Common Elements and is to be repaired or reconstructed, two days prior written notice of each disbursement will be given to the Mortgagee known by the Trustee from the records of the Association to have the largest interest in or lien upon such Common Elements; and if the damage or destruction is to one or more Units and is to be repaired or reconstructed, said notice will also be given to the Mortgagee or Mortgagees known to the Trustee from the records of the Association to have an interest in or lien upon such Unit or Units.

(e) The Trustee will not incur liability to any Owner, Mortgagee or other person for any disbursements made by it in good faith pursuant to and in accordance with the foregoing requirements.

Section 5.6 Damage and Destruction.

(a) Immediately after all or any part of the Project covered by insurance is damaged or destroyed by fire or other casualty, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section 5.6, means repairing or restoring the damaged property to substantially the same conditions in which it existed prior to the fire or other casualty, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

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(b) Any such damage or destruction to the Project will be repaired unless repair or replacement would be illegal under any State or local health or safety statute or ordinance; provided, however, that any such damage which requires reconstruction will not be undertaken if repair or reconstruction is disapproved by Owners holding eighty percent (80%) of the Percentage Interests, including 100% of the Owners whose units will not be rebuilt, vote to disapprove repair or reconstruction, by Referendum or at a duly held meeting of Members called for the purpose of disapproving the repair or reconstruction, which percentage will also constitute the quorum required for any such meeting. If the Project is not reconstructed, the insurance proceeds will be delivered in accordance with the provisions of Section 5.6(c) below. Except as otherwise provided, any such damage or destruction which renders any Unit untenable or uninhabitable, or any such damage or destruction to the Common Elements, will be repaired and reconstructed as promptly as practicable. No Mortgagee will have any right to restrict the use of insurance proceeds otherwise available for repair, reconstruction or rebuilding.

(c) In the event that it is determined by the Association in the manner prescribed above that the entire damage or destruction will not be repaired, reconstructed or rebuilt, then and in that event:

(i) the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project;

(ii) the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and to the Owners of those Units to which said Limited Common Elements were allocated, or to their lienholders, as their interests may appear; and

(iii) the insurance proceeds remaining must be distributed to all of the Owners and their lienholders, as their interests may appear, in proportion to the Owner's Percentage Interests.

If the Unit Owners vote not to rebuild any Unit, that Unit's allocated Percentage Interest is automatically reallocated upon the vote not to rebuild or reconstruct as if the Unit had been condemned, as provided in Article VI below, and the Association shall promptly prepare, execute, and record an amendment to this Master Deed reflecting the reallocations.

Section 5.7 Insufficient Proceeds to Repair.

(a) If the damage or destruction for which the insurance proceeds are paid to the Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, or if no insurance proceeds exist with respect to such damage or destruction, the Board of Directors will levy an Assessment against the Owners of damaged or affected Units in sufficient amounts to provide funds to pay costs in excess of insurance proceeds for repair or reconstruction. Additional Assessments may be made at any time during or following the completion of any repair or reconstruction. That portion of such Assessments levied against each Owner will be equal to that percentage computed by dividing the Percentage Interest

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appurtenant to such Owner's Unit by the aggregate Percentage Interests appurtenant to all Units damaged or affected.

(b) Any and all sums paid to the Association under and by virtue of those Assessments provided for in subsection (a) of this Section 5.7 will be deposited by the Association with the Trustee. Such proceeds from insurance and Assessments, if any, received by the Trustee will be disbursed as provided in Section 5.5.

ARTICLE VI

Condemnation

Section 6.1 Unit Condemnation With No Practical or Lawful Use Remaining. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Unit Owner for his Unit and its interest in the Common Elements, whether or not any Common Element is acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Assigned Value shall automatically be reallocated to the remaining Units in proportion to the respective Percentage Interests of those Units before the taking exclusive of the Unit taken, and the Association shall promptly prepare, execute, and record an amendment to this Master Deed reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection is thereafter a Common Element.

Section 6.2 Condemnation of Part of Unit with Some Practical or Lawful Use Remaining. Except as provided in Section 6.1 above, if part of a Unit is acquired by eminent domain, the award must compensate the Unit Owner for the reduction in value of the Unit and of its Percentage Interest in the Common Elements, whether or not any Common Element is acquired. Upon acquisition, unless the decree otherwise provides, (1) that Unit's Assigned Value shall be reduced in proportion to the reduction in the size of the Unit, and (2) the portion of the Assigned Value divested from the partially acquired Unit shall automatically be reallocated to that Unit and the remaining Units in proportion to the respective Assigned Values of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Assigned Value.

Section 6.3 Condemnation of Common Elements. If part of the Common Elements is acquired by eminent domain, the portion of the award not payable to Unit Owners under Section 6.1 above shall be paid to the Association and distributed in accordance with the provisions of Section 5.6 as if such condemnation were damage or destruction which will not be repaired or reconstructed. Any portion of the award attributable to the acquisition of a Limited Common Element must be apportioned among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

Section 6.4 Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the Owners all claims arising from condemnation of any portion or all of the Units or Common Elements and the Owners hereby appoint the Board of Directors as their attorney in fact for this purpose.

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ARTICLE VII

Architectural Control

Section 7.1 Approval Required for Changes and Interior Features. To preserve the original architectural appearance of the Project, the structural integrity thereof and the Unit designs, including architectural and engineering aspects therein, after the purchase of a Unit from the Developer, no construction, reconstruction or Unit modification of any nature whatsoever, except as specified in Section 3.3 or hereunder, will be commenced or maintained upon or within, the Building, including without limitation within a Unit and a Limited Common Element, nor will there be any change, modification or alteration of any nature whatsoever of the design and appearance of any surfaces or facades, nor will any Owner paint any gate, fence or roof, nor will any Owner change the design or color of the exterior lights, nor will any Owner install, erect or attach to any part of the exterior any addition or change until after the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same will have been submitted to and approved in writing as to harmony of design, color and location in relation to the surrounding features by the Board of Directors and pursuant to the original plans and specifications approved pursuant to Section 3.3. Furthermore, such required approval by the Board of Directors shall extend to any interior features or aesthetic elements that are proposed to be changed. The failure of an Owner to secure the required approval of the Board of Directors as aforesaid, or to take such action, remedial or otherwise, as the Board of Directors shall at any time determine to be required hereunder shall be subject to the authority and enforcement powers of the Board of Directors as set forth Section 16.5(a) below. The Board of Directors may delegate the architectural review functions to a committee, but enforcement of all violations shall remain with the Board of Directors.

ARTICLE VIII

Maintenance

Section 8.1 Responsibility of Association. Except as specifically provided to the contrary herein, the Association will maintain, and repair and replace as necessary, the Common Elements in first class condition in accordance with proper maintenance procedures applicable thereto and will enforce all warranties with respect to the Common Elements. In addition, the Association will repair or replace all parts of the Common Elements as necessary. Except as otherwise provided herein, the cost of such will be charged to the Owners as a Common Expense. A Limited Common Element with respect to which an Owner has exclusive access and use shall be maintained pursuant to Section 8.3 below by such Owner.

(a) **Twice-yearly Inspections.** The Association is responsible for insuring that the Regime's management company conduct, or have conducted at the Association's expense, a visual inspection of the exterior Common Elements of the Building a minimum of twice a year or as necessary for the purpose of determining needed repairs and maintenance and to insure that the Building does not deteriorate and compromise the water tightness of the exterior. Said visual inspection shall include, but not be limited to, the following: (1) exterior surfaces; (2) sealant around doors, windows and all dissimilar materials; (3) water proof membrane on the balcony concrete slabs and breezeways; (4) roofing materials and related flashing; (5) roof penetrations at

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mechanical units, supports, etc.; (6) handrail sleeves and anchorage; (7) expansion joint assemblies; (8) ventilation equipment and louvers; and (9) elevator equipment and related items, if applicable.

Section 8.2 Access to Units. The Association will have the irrevocable right, to be exercised by the Board of Directors or its agent, which term includes the Association manager, to have reasonable access to each Unit from time to time as may be necessary for the periodic inspection and application of termite and other bug control treatment for which the Association may contract, from time to time; to undertake such action as it may determine to prepare and secure the Building and the Unit in anticipation of storm or hurricane, provided the Association shall be under no obligation to an Owner to do so; and for the inspection, maintenance, repair or replacement of any of the Common Elements accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to other Units.

Section 8.3 Responsibility of Owner. In the event that the Board of Directors should determine that the need for maintenance or repairs by the Association as provided for in this Article VIII is caused through the willful or negligent act of an Owner or the lessee of an Owner, their families, invitees or guests, or the Owner's allowed pets under Section 9.2, the cost of which is not covered or paid for by insurance, then the cost, both direct and indirect, of such maintenance or repairs will be added to and become a part of the Assessment to which such Owner and his Unit are subject. Each Owner will maintain, repair or replace at his own expense all portions of his Unit which may become in need thereof, including the heating and air-conditioning system components within such Unit, all bathroom and kitchen fixtures and appliances, light fixtures, interior non-loadbearing walls, carpeting, drapes, doors, windows, screens, window and door hardware and other items within the Unit. Further, each Owner will, at his own expense, maintain, repair and replace, when necessary, that portion of the heating and air-conditioning system exclusively servicing his Unit which is located outside his Unit. Each Owner will maintain his unit at a temperature of no higher of 78° Fahrenheit in the summer in attempt to maintain a relative humidity level of less than 60%. Homes should be maintained a temperature of no less than 62° in the winter. Owners will not apply any vapor blocking materials or vinyl wall coverings to the exterior walls of their unit. Each Owner will, at his own expense, keep the Limited Common Elements to which his Unit has exclusive access and to which he has exclusive use clean and neat, and will conduct maintenance and repair thereto as necessary. If the Owner does not make those repairs required to be made by him within thirty (30) days from the date of receipt of written demand from the Association, the same may be repaired by the Association and the cost thereof will be assessed against the Owner and Unit owned by such Owner.

(a) **Unit Damage Resulting from Another Unit Owner's Failure to Maintain.** If a Unit or any portion thereof is damaged as a result of a condition existing at another Owner's Unit, whether due to the other Owner's failure to maintain their Unit or not, the Association shall be responsible for repairing the damage and fixing the cause of the problem. If the damage was caused by the other Owner's failure to properly maintain his Unit in accordance with the provisions of this Master Deed, the Association shall have the authority to assess the costs and expenses of repair as a Specific Assessment against the Owner so failing to maintain, as determined by the Board in the exercise of its reasonable business judgment, which Specific Assessment, with all accrued interest, costs, and attorney's fees related to collection, shall be a

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lien on said Owner's Unit until paid in full. If the Unit damage was caused by a problem with the Common Elements, the Association shall be responsible for the cost of repair.

ARTICLE IX

Unit Restrictions

Section 9.1 Unit Restrictions.

(a) Units. All Units will be, and the same are hereby restricted exclusively, for residential use, provided, however, a Unit may be used as a combined residence and executive or professional office by the Owner thereof so long as such use does not interfere with the quiet enjoyment by other Owners and does not include visitation by clients, or unreasonable levels of mail, shipping, storage or trash requirements. No immoral, improper, offensive or unlawful use will be made of any Unit and no use or condition will be permitted which is a source of unreasonable noise or interference with the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners or lessees of Owners, their families, invitees and guests, or which would constitute a violation of zoning requirements. All Units will be kept in a clean and sanitary condition and no rubbish, refuse or garbage will be allowed to accumulate. No fire hazard will be allowed to exist and no use or condition will be permitted which will increase any rate of insurance related to the Project. In addition, all Owners and lessees of Owners, their families, invitees and guests will abide by all Rules and Regulations in effect from time to time governing the use of Units.

Section 9.2 Animals and Pets. Animals and Pets.

No animals of any kind will be raised, bred or kept on any part of the Project, except that dogs, cats or other normal household pets may be kept by the Owners inside their respective Units. In connection with the foregoing, the Board of Directors shall have the following authorities and powers:

(a) The Board of Directors may prohibit the keeping of any dog with a prior history of causing bodily injury established through insurance claims records, or through the records of local public safety, law enforcement or other similar regulatory agency.

(b) The Board of Directors may, in its sole discretion, establish by rule that dogs of a certain breed are potential hazards to the Project and its occupants, and may not be kept upon the Property.

(c) The Board of Directors may establish reasonable rules and regulations to insure that all permitted pets are properly licensed and inoculated for rabies and such other disease for which inoculation is customary for that breed of pet.

(d) The Board of Directors may require that an Owner execute a written indemnification and hold harmless agreement in favor of the Regime and the Project's management company, in form and content satisfactory to counsel for the Board, prior to bringing the Owner's pet upon the Property;

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(e) The Board of Directors may, in the exercise of its reasonable business judgment, prohibit the keeping of any pet it believes creates a health hazard, is a nuisance or otherwise unreasonably disturbs the peaceful possession and quiet enjoyment of any other portion of the Project by other Owners and lessees of Owners, their families, invitees and guests.

(f) The Board may establish reasonable rules to limit the number of allowed pets. Pets shall be kept on a leash and under personal control at all times when outside of a Unit, on the Common Elements, patios, balconies, etc; and the Owner shall clean up after his or her pet.

(g) The Board shall have the right at any time and in its sole and absolute discretion to require the Owner of a particular pet to remove such pet from the Project if such pet is determined by the Board to be in violation of these restrictions.

(h) The Board shall have the power to levy fines for violation of these pet restrictions or of any additional rule or regulation adopted by the Board therefor, and any such fine or the cost of the Association to repair any damages to Common Elements caused by a pet shall be assessed against the Owner and Unit as a Specific Assessment..

If, for any reason whatsoever, the Association needs to detain, incarcerate, capture, or tranquilize any animal or animals which may roam free, and it is found that said animals are the property of an Owner, then all fees necessary to cover such detainment, incarceration, capture, or tranquilization shall be levied against the Owner of said animal.

Notwithstanding the use of the word, "Owner" hereunder, the terms and provisions hereof shall extend to an Owner's family members, guests, tenants, lessees, and the Owner shall be fully responsible hereunder for the pets thereof on the same basis as the Owner would be for its owned pets.

Section 9.3 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Regime by an Owner, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Developer and the Association, and their successors and assigns, will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Regime.

Section 9.4 Leasing of Units. An Owner of a Unit will have the right to lease or rent his Unit; provided, however, that all leases and rental contracts will be for an initial term of six (6) months or more and will be in writing and will require the lessee to abide by all conditions and restrictions placed on the use and occupancy of the Unit and the Common Elements by the Regime Documents. The Board of Directors will have the right to approve the form of all such leases and rental contracts at any time if it elects to do so. Permitted occupancy by a tenant or renter under any such approved form of lease or rental contract is subject to continuing approval of the Board thereunder, which may be removed at any time by the Board for any violation by any such tenant or renter of the Rules and Regulations of the Association. Every Owner who

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leases a Unit does hereby name, constitute and appoint the Board of Directors, by and through its duly acting President or Association property management company, its agent to prosecute in the name of the Owner and in the Owner's behalf any all actions for violations of this Master Deed and the Rule and Regulations of the Association, including, but not limited to, an action for eviction.

Section 9.5 Signs. Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window, or within a Unit and viewable through any window, or on the exterior of any improvements or on any unimproved portion of property located within the Project, except pursuant to written design standards and applicable rules of placement adopted therefor by the Developer during the Transition Period, and as the same may be amended, from time to time thereafter by the Board of Directors. Notwithstanding the foregoing, the restrictions of this Section 9.5 shall not apply to the Developer or to any person having the prior written approval of the Developer. In addition, the Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Elements in accordance with architectural design standards adopted therefor and approved by governmental authority with jurisdiction thereof.

Section 9.6 Grills. With regard to the Buildings, the use of individual grills (charcoal, gas or electric) will be allowed if such activity is permitted by local ordinance, is permitted under the Association's insurance coverage, and if so permitted, does not result in a material increase in insurance premium, as determined by the Board in its sole discretion.

ARTICLE X

Easements

Section 10.1 Encroachments. If any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of settling or shifting of a Building or variances from the Plans, an easement will exist for the encroachment and for the maintenance of the same so long as the Building stands. If any Building, any Unit, and/or any adjoining part of the Common Elements will be partially or totally destroyed as a result of fire or other casualty or a result of eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements due to such rebuilding, will be permitted, and valid easements for such encroachments and the maintenance thereof will exist so long as the subject Building will stand.

Section 10.2 Easement for Air Space. The Owner of each Unit will have an exclusive easement for the use of the air space occupied by said Unit as it exists at any particular time and as said Unit may be altered or reconstructed from time to time pursuant to this Master Deed.

Section 10.3 Utilities, etc. During the Transition Period, the Developer, and thereafter the Association, shall have an appurtenant, transferable easement upon, across, over and under all the Project for ingress, egress, installation, replacing, repairing and maintaining a master

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television antenna or CATV system and all utilities, including, but not limited to water, sewer, telephone and electricity, and other forms of telecommunication and technology cabling, now existing or developed in the future. Such easements shall be for the purpose of granting to appropriate utility companies the right to erect and maintain the necessary poles and other necessary equipment on the Project and to affix and maintain utility wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Units. In addition, the Board of Directors will be entitled to grant additional permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project.

Section 10.4 Easement for Construction. During the Transition Period, the Developer, and thereafter the Association, shall have an appurtenant, transferable easement to enter upon and cross over the Common Elements for purposes of ingress and egress to all portions of the Project; to use portions of the Common Elements and in the case of the Developer, any Units owned by the Developer for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project; and to maintain and correct drainage of surface, roof or storm water.

Section 10.5 Easement for Inspection by Developer. Notwithstanding anything herein to the contrary, Developer and persons designated by the Developer will have an easement to enter upon and cross over the Common Elements for purposes of ingress and egress to all portions of the Project; as well as an easement for reasonable access to each Unit as the Developer may find desirable, for the inspection of the whole or any portion of the Project, its Units and Common Elements, the components and structural parts thereof, as well as the their maintenance requirements and the maintenance performed thereon to the date of any such inspection. Nothing herein shall require the Developer to perform any such inspection, but if the Developer does undertake any such inspection, Developer shall provide to the Board of Directors a copy of its findings or the inspection report produced therefrom. Nothing herein shall relieve the Board from engaging a professional inspector to perform a maintenance audit as part of the Board's budgeting process under Section 4.2 above.

Section 10.6 Easement for Sales Purposes. Developer and persons designated by the Developer will have an easement to maintain one or more sales offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Elements while the Developer is selling Units in the Project. Developer reserves the right to place models, management offices and sales offices in any Units owned by Developer and on any portion of the Common Elements in such number, of such size and in such locations as Developer deems appropriate. So long as Developer will be selling Units in the Project, Developer will have the right to restrict the use of a reasonable number of parking spaces, for purposes including, but not limited to, the providing of spaces for use by prospective Unit purchasers, Developer's employees and others engaged in sales, maintenance, construction or management activities.

Section 10.7 No View Easements. No view easements, express or implied, will be granted to any Owner in connection with the conveyance of a Unit to such Owner.

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Section 10.8 Other. There is hereby granted to the Association, its directors, officers, agents and employees and to any manager employed by the Association and to all policemen, firemen, ambulance personnel, and all similar emergency personnel, an easement to enter upon the Project or any part thereof in the proper and lawful performance of their respective duties. Except in the event of emergencies, the rights under this Section 10.8 will be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner or Owners affected thereby.

Section 10.9 Unit Access. Each Unit Owner shall have the unrestricted right of ingress and egress to and from the Unit Owner's Unit. This right shall be perpetual and shall pass with the Unit as transfers of ownership of the Unit occur. In addition, the conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any individual Percentage Interest in the Common Elements will be void unless the Unit to which that Percentage Interest is allocated is also transferred.

ARTICLE XI

Assigned Values, Percentage Interests and Voting Rights

Section 11.1 Units, Assigned Values, and Percentage Interests. The Schedule of Percentage Interests contained in Exhibit "C" attached hereto shows the Assigned Value of each Unit as of the date of this Master Deed and the Percentage Interest appurtenant to such Unit for all purposes, and the aggregate Assigned Values of all Units.

Section 11.2 Voting Rights. Members and the Developer will be entitled to a vote in the Association and for all other purposes herein in accordance with the provisions of the Association's Articles of Incorporation attached hereto as Exhibit "D" and the By-Laws of the Association attached as Exhibit "E." and as the same may be hereafter amended. Each Owner may cast as that Owner's vote hereunder that number of votes to which the Owner is entitled, as shown on Exhibit "C."

(a) Voting by Multiple Owners. When any Unit is owned in the name of two or more persons, other than husband and wife, or entities, whether fiduciaries, or in any manner of joint or common ownership, the vote for such Unit will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners recorded in the RMC Office for Charleston County, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

(b) Prorata Voting. Notwithstanding the assignment of votes based upon the Owner's Percentage Interest and as reflected in Exhibit "C" hereto, and as further allowed pursuant to Section 3.6(a) of the Bylaws, at the option of the Board of Directors and as a convenience to the Association, any vote of the Association may be taken on an alternative basis under which each Owner shall be entitled to one vote for each Unit owned. Any vote by the Association which is conducted pursuant to this Section 11.2(b) shall be re-counted pursuant to

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the assigned votes set forth on Exhibit "C" upon the prompt petition to the Board of Directors by any Owner and if the outcome falls within the statistical margin of error for being altered by virtue of the use of this alternate means of counting votes.

ARTICLE XII

The Development Plan For The Project

Section 12.1 Overall Plan. The overall development plan for the Regime is a single condominium regime of one (1) Building having a total of twenty-seven (27) Units and the Common Elements of such Building, as more fully described in Exhibit "B," attached hereto.

Section 12.2 Developer's Reservation of Right to Modify Owned Units. As provided in Section 3.3 above, the Developer shall have the right, so long as its owns any Unit, to modify each such Unit, provided, however, the aggregate Percentage Interest assigned to the Units so affected will not change. The Developer shall effect such modification by an amendment executed solely by the Developer for itself and as attorney in-fact for all Owners. An amendment will be effective upon recording such Amendment in the Charleston County RMC.

Section 12.3 Assignability of Rights. The Developer will be entitled to assign the rights reserved in this Article XII to any person or entity by an instrument recorded in the RMC Office for Charleston County.

Section 12.4 Multiple Ownership. No Unit in the Regime will be used for or subject to any type of Vacation Time Sharing Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et. seq., or any subsequent laws of this State dealing with that or similar type of ownership by a Unit Owner without the prior written consent of the Developer and, after the Transition Period, the Board of Directors.

ARTICLE XIII

Transition Provisions

Section 13.1 Appointment of Directors and Officers. At all times during the Transition Period, the Developer will have the sole and exclusive right to appoint the entire Board of Directors and officers of the Association, fill any vacancy of the Board or officers caused by the withdrawal of any director or officer appointed by the Developer and veto the removal of any director or officer appointed by the Developer. Upon the expiration of the Transition Period, the Developer will retain the right to appoint one (1) director. The right to appoint one (1) director following the Transition period will continue for as long as the Developer holds for sale in the ordinary course of business more than five percent (5%) of the total number of Units included in the Regime.

Section 13.2 Special Meeting to Elect Board. Within sixty (60) days after the date on which Owners other than the Developer become entitled pursuant to Section 13.1 above to elect members of the Board of Directors of the Association, the Association will call, and give not less than thirty (30) days' and not more than forty (40) days' notice of, a special meeting of the Members to elect the Board of Directors.

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Section 13.3 Cooperation. The Association will cooperate with the Developer to the extent reasonably requested by the Developer during and after the Transition Period to promote the orderly development and marketing of the Units planned for the Project.

Section 13.4 Controlling Provisions. In the event of any inconsistency between this Article XIII and the other provisions of the Regime Documents, this Article XIII will be controlling and binding on all parties having an interest in the Regime.

ARTICLE XIV

Alternative Dispute Resolution

Section 14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Developer, Association, and Owners (collectively, the "Parties" and singularly, a "Party"), agree that any dispute, controversy or claim among them, including counterclaims and crossclaims, whether based upon contract, tort, statute, common law or otherwise (collectively, a "Dispute"), arising from or relating directly or indirectly to the Regime Documents or the Project (but not matters applicable solely to the Master Association or the Master Covenants), including, without limitation, Disputes relating to the design and construction of the Project, or any portion thereof, or interpretation, application or enforcement of the Regime Documents, except for "Exempt Claims" under Section 14.2, are subject to arbitration, as defined by the South Carolina Arbitration Act and the Federal Arbitration Act, in lieu of civil proceedings and governed by the procedures set forth in Section 14.3.

Section 14.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section :

- (a) any suit by the Association against a Party to enforce any Assessments or other charges hereunder; and
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association until the matter may be resolved on the merits pursuant to Section 14.3 below; and
- (c) any suit between Owners which does not include the Developer or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Regime and the Project; and
- (d) any suit in which an indispensable party is not a Party, provided that any suit involving a Dispute between or among the Developer, the Association, one or more Owners, the Project architect, engineer or other design professional, and the Project construction contractor shall be resolved by non-jury trial, the Parties expressly hereby waiving all resort to trial-by-jury of any and all issues otherwise so triable
- (e) any suit which otherwise would be barred by any applicable statute of limitation; and

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(f) any suit involving a matter which is not an Exempt Claim under (a) or (b) above, but as to which matter the Party against whom the Claim is made waives the mandatory provisions of Section 14.3 below.

Any Party having an Exempt Claim may submit it to the alternative Dispute resolution procedures set forth in Section 14.3, but there is no obligation to do so.

Section 14.3 Mandatory Procedures for Non-Exempt Claims.

(a) Parties to be Joined. The Parties agree to arbitrate all Disputes with each other and with the Project architect, engineer or other design professional, and the Project construction contractor to the extent those entities have agreed to participate in and be subject to arbitration of all Disputes.

(b) Mediation. Prior to arbitration, if the Dispute cannot be settled through direct discussions, the Parties shall endeavor to resolve the Dispute between themselves, as well as between the Parties and the Project architect, engineer or other design professional, or the Project construction contractor, by participating in a mediation before a mediator mutually agreed upon by the Parties.

(c) Arbitration. Any Dispute that cannot be settled by negotiation or mediation shall be settled by binding arbitration before a single arbitrator, mutually agreed upon by the Parties, who is an attorney with substantial experience in the subject matter of the Dispute. Arbitration will be governed by the commercial or construction arbitration rules of the American Arbitration Association (AAA), whichever is applicable, but will not be administered by the AAA unless the Parties so agree.

(d) The Arbitrator. If the Parties cannot agree on a single arbitrator, each Party will pick an arbitrator who is an attorney with substantial experience in the subject matter of the Dispute. Those two arbitrators will then pick a third arbitrator who is an attorney with substantial experience in the subject matter of the Dispute, and the panel of three (3) arbitrators will decide the arbitration. If there is an impasse in the selection of arbitrators, any Party may make a motion to compel arbitration with the circuit court for Charleston County, South Carolina and ask the court to resolve the selection of arbitrators.

(e) Arbitrability. The issue of whether or not a Dispute is within the scope of this arbitration requirement (or "arbitrability") will be decided by an arbitrator or arbitrators selected pursuant to the terms of this Article XIV.

(f) Situs of Mediation and Arbitration. All mediation and arbitration proceedings will be conducted in Charleston County, South Carolina. The participating Parties shall share the costs and expenses of mediation and arbitration, other than the Parties' respective legal fees, equally.

(g) Judgment on the Award. Judgment on the award rendered by the arbitrator(s) shall be final and binding, shall not be appealable, and may be entered in any court having jurisdiction, as provided in the applicable state and federal statutes.

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Section 14.6 Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by seventy-five percent 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to i) actions brought by the Association to enforce the collection of assessments, including the foreclosure of liens, as well as the enforcement of other provisions of the Regime Documents, except where it is asserted that the Developer is in violation of any provision of the Regime Documents other than a violation of its requirement to pay Assessments; ii) proceedings involving challenges to ad valorem taxation; iii) counterclaims brought by the Association in proceedings instituted against it; or iv) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by both the Developer and the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the alternative dispute resolution provisions of this Article XIV, if applicable.

Section 14.7 Miscellaneous Alternative Dispute Resolution Provisions.

(a) **Conflicting Provisions.** Any conflict or discrepancy between the terms and conditions set forth in this Article and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.

(b) **TIME IS OF ESSENCE.** All periods of time set forth herein or calculated pursuant to provisions of this Article will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE XV

Rights of Eligible Mortgage Holders

Section 15.1 Introduction. This Section establishes certain standards and covenants that are for the benefit of Eligible Mortgagees. This Section is supplemental to, and not in substitution for, any other provisions of the Master Deed, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict in the application to Eligible Mortgagees of this Article XV and other provisions of this Master Deed, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Section from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements.

Section 15.2 Eligible Mortgagees. Wherever in the Constituent Documents the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of the Institutional Mortgagees holding or insuring first lien Mortgages on Units which have provided to the Association written requests, stating their names and addresses and the street addresses of the Units to which their Mortgages relate, to receive written notice of

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the matters for which they are entitled to vote, and which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to first Mortgages held by Eligible Mortgagees.

Section 15.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee;
- (b) Any delinquency in the payment of Assessments owed by an Owner whose Unit is subject to a first Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains unpaid for a period of sixty (60) days.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.4; and
- (e) Any judgment rendered against the Association.

Section 15.4 Consents Required: Constituent Documents' Changes. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, no amendment of any material provision of the Constituent Documents by the Owners described in this Section 15.4 may be effective without the vote of sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), or any greater vote required in the Constituent Documents or the Nonprofit Corporation Act, and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Constituent Documents). The foregoing approval requirements do not apply to amendments effected by the exercise of any rights of the Developer to amend the Constituent Documents until expiration of the Transition Period. Consent of an Eligible Mortgagee is deemed granted if no denial is received within thirty (30) days after the Eligible Mortgagee receives notice of the proposed changes. Material provisions requiring such Members' vote and Eligible Mortgagees' approval include, but are not limited to, any provision affecting:

- (a) Assessments, assessment liens, or subordination of assessment liens;
- (b) Voting rights;
- (c) Reserves for maintenance, repair and replacement of the Common Elements;
- (d) Responsibility for maintenance and repairs;

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(e) Reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only the Eligible Mortgagees, which hold Mortgages on such Units, must approve such action;

(f) Rights to use Common Elements and Limited Common Elements;

(g) Boundaries of Units except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding mortgages on such Unit or Units must approve such action;

(h) Expansion or contraction of the Regime, or the addition, annexation or withdrawal of property to or from the Regime, except pursuant to Developer's right to do so expand the Regime pursuant to any provision of this Master Deed;

(i) Insurance or fidelity bonds;

(j) Leasing of Units;

(k) Imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(l) Establishment of self-management when professional management had been required previously by the Constituent Documents or by an Eligible Mortgagee;

(m) Restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Constituent Documents;

(n) Termination of the legal status of the Regime after occurrence of substantial destruction or condemnation; and

(o) Any provision that expressly benefits Eligible Mortgagees.

Section 15.5 Actions. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, the Association may not take any of the following actions without the approval of at least fifty-one (51%) of the Eligible Mortgagees or such higher percentage as set forth herein:

(a) The conveyance or encumbrance of the Common Elements or any portion thereof, as to which at least a sixty-seven percent (67%) approval by Eligible Mortgagees is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements for the benefit of the Regime shall not be deemed a conveyance or encumbrance within the meaning of this clause;

(b) The restoration or repair of the Property after damage or a partial condemnation in a manner other than that specified in the Constituent Documents;

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(c) The termination of the legal status of the Regime for reasons other than substantial destruction or condemnation, as to which at least sixty-seven percent (67%) approval by Eligible Mortgagees is required;

(d) The alteration of any partition or creation of any aperture between adjoining Units when Unit boundaries are not otherwise being affected, in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(e) The merger of the Association with any other common interest community;

(f) The granting of any easements, leases, licenses and concessions through or over the Common Elements excluding, however, any utility easements serving or to serve the Regime and excluding any leases, licenses or concessions for no more than one year;

(g) The assignment of the future income of the Association, including its right to receive Common Expense Assessments; and

(h) Any action taken not to repair or replace the Property.

The foregoing consents do not apply to the exercise of any right reserved by the Developer in the Constituent Documents.

Section 15.6 Change From Monthly Assessment. The Association may not change the period for collection of regularly budgeted Common Expenses Assessments to other than monthly without the consent of all Eligible Mortgagees.

Section 15.7 Developer's Reserved Rights. No rights reserved by the Developer may be voluntarily abandoned or terminated by the Developer unless all persons holding security interests in the Developer's reserved rights consent to the abandonment or termination.

Section 15.8 Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

Section 15.9 Financial Statements. The Association shall provide any Eligible Mortgagee, which submits a written request, with a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if the number of Units is 50 or more, or if the number of Units is less than 50 and no audited statement is otherwise required under the Constituent Documents, any Eligible Mortgagee may have an audited statement prepared at its own expense.

Section 15.10 Enforcement. The provisions of this Article XV are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 15.11 Attendance at Meetings. Any representative of an Eligible Mortgagee may attend any meeting that a Unit Owner may attend.

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ARTICLE XVI

General Provisions

Section 16.1 Adherence to Provisions of Master Deed, Bylaws and Rules and Regulations. Rules and Regulations of the Association shall be provided to every renter of a Unit. Any rental agency handling an Owner's rental must further agree to abide by the Rules and Regulations and will be responsible for informing persons renting through its agency of any breaches of the Rules and Regulations by said persons and for taking any and all necessary corrective action. Should a particular agency or person continue not to take corrective action against the renters it has contracted with, or refuse to cooperate with the Association in the enforcement of its Rules and Regulations or other provisions of the Regime Documents, the Association may require the Owner to cease using the services of that particular rental agency. Refusal to do so may result in fines against the Owner in an amount to be determined by the Board of Directors. Any fines will be added to and become a part of the Assessment against the Unit and Owner.

Section 16.2 Amendment. Amendments to this Master Deed, except as herein expressly provided to the contrary, including, but not limited to amendments pursuant to Article XII which may be made without the consent or approval of either the Board or the Members, will be proposed by the Board of Directors in accordance with the following procedure:

(a) Notice. Notice of the subject matter of the proposed amendment or amendments will be included in the notice of the meeting of the Association at which such proposed amendment or amendments are to be considered.

(b) Adoption. The Master Deed may be amended at any time and from time to time at a meeting of the Association called in accordance with the Bylaws and this Master Deed upon the vote of Members holding sixty-seven percent (67%) or more of the total vote in the Association; provided, however, that if the Association will vote to amend the Bylaws in any respect, such amendment will be set forth in an amendment to this Master Deed and will be valid only when approved by Members holding more than fifty percent (50%) of the total vote in the Association.

(c) Nondiscrimination. Irrespective of the foregoing, no amendment will (i) alter the Percentage Interest applicable to each Unit (except as permitted in accordance with Article VI and Article XI hereof); or (ii) discriminate against any Owner or against any Unit or class or group of Units, unless in each instance all Owners adversely affected thereby and their respective Eligible Mortgagees expressly consent thereto in writing. Notwithstanding any Rule or Regulation or other restriction, the Board of Directors of the Association will make reasonable accommodations in its Rules and Regulations or other restrictions as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Unit and the Common Elements, and in furtherance thereof is authorized and empowered to assign Common Element parking spaces for handicap parking generally or to assign same to a person for exclusive use as handicap parking.

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(d) Necessary Amendments. Notwithstanding any other provisions of this Master Deed to the contrary, if any amendment is necessary in the judgment of the Board to cure any ambiguity or to correct or supplement any provisions of the Regime Documents that are defective, missing or inconsistent with any other provisions thereof, or if such amendment is necessary to conform to the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other secondary Mortgage market lenders, guarantors or insurers with respect to condominium projects, then at any time and from time to time the Board may effect an appropriate corrective amendment so long as written objection to such amendment is not received from Members representing at least fifty-one percent (51%) of the total votes of the Association within twenty (20) days after written notice of the proposed amendment is given to all Members.

(e) Recording. A copy of each amendment provided for in this Section will be certified by the Association as having been duly adopted and will be effective when recorded.

(f) Approval of the Developer. In recognition of the fact that certain provisions of this Master Deed are for the benefit of the Developer, no amendment in derogation of any right reserved or granted to the Developer by provisions of this Master Deed may be made without the written approval of the Developer.

(g) Transition Period Amendments by Developer. Notwithstanding any other provision of this Master Deed to the contrary, during the Transition Period the Developer may amend the Regime Documents without the necessity or requirement of having to give notice to or obtain the consent of the Association or any Owner in order to give effect to the Developer's development and operational plan for the Regime, or to correct or clarify any term or provision of the Regime Documents which, in the exercise of its reasonable judgment, is required or desirable to conform to the requirements of the Condominium Act.

Section 16.3 Termination. The Regime may be terminated and the Project removed from the provisions of the Act in the following manner:

(a) Agreement. All of the Owners may remove the Project from the provisions of the Act by an instrument to that effect, duly recorded, subject to the Rights of Eligible Mortgage Holders provisions of Article XV of this Master Deed.

(b) Due to Destruction or Condemnation. In the event of the destruction of the entire Project and a vote not to rebuild, or in the event of taking by eminent domain of the entire Project, the Regime will be terminated and the Regime Documents revoked. The determination not to repair or reconstruct after casualty, or the taking of the entire project by eminent domain will be evidenced by a certificate of the Association certifying as to such facts effecting the termination.

Section 16.4 Covenants Running With the Land. All provisions of this Master Deed will be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every Unit and the appurtenances thereto; and each and every provision of this Master Deed will bind and inure to the benefit of the Developer and all

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Owners and claimants of the Project or any part thereof or interest therein, and their heirs, executors, administrators, successors and assigns.

Section 16.5 Enforcement. Each Owner will comply strictly with the Bylaws and with the Rules and Regulations of the Association, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Master Deed and in the deed to his Unit. Failure to comply with any of the same will be grounds for an action to recover sums due, for damages or injunctive relief, or for all three, maintainable by the Board of Directors on behalf of the Association or by any aggrieved Owner. In addition, the rights of any Owner or lessee of an Owner, their families, invitees or guests to use and to enjoy the Common Elements may be suspended by the Board of Directors for continued violation of the Rules and Regulations. Failure by the Association or any Owner to enforce any of the foregoing will in no event be deemed a waiver of the right to do so thereafter.

(a) **Authority and Enforcement.** Subject to the provisions of **Section 16.5(b)** hereof, upon the violation of this Master Deed, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (1) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (2) to suspend an Owner-Member's right to vote in the Association, or (3) to suspend an Owner's or Unit occupant's right to use any of the Common Elements. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Elements will not be terminated hereunder. An Owner or Unit's occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Unit's occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

(b) **Procedure.** Except with respect to the failure to pay Assessments, the Board will not impose a fine in excess of \$100 per occurrence of the event or condition giving rise to the imposition of a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant of the Project for violations of the Master Deed, By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

(i) **Demand to Cease and Desist.** Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

- (A) The alleged violation;
- (B) The action required to abate the violation; and
- (C) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision

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of this Master Deed, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(ii) Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice will contain:

- (A) The nature of the alleged violation;
- (B) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;
- (C) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (D) The proposed sanction to be imposed.

(iii) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if the officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and matter of delivery. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

The \$100 fine limitation herein provided shall be increased, but not decreased, by changes in the CPI, as measured from the month and year in which this Master Deed is recorded in the ROD. "CPI" shall mean the Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, or comparable index if the Consumer Price Index is discontinued.

Section 16.6 Severability. All provisions of this Master Deed and all of the Regime Documents will be construed in a manner which complies with the Act and South Carolina law to the fullest extent possible. If all or any portion of any provision of this Master Deed or any other Regime Documents will be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof or thereof, and such provision will be limited and construed as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

Section 16.7 Gender or Grammar. The singular whenever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed. In addition, the use of the terms "herein" or "hereof" will mean this Master Deed and not merely the Article, Section or Paragraph in which such term is utilized.

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Section 16.8 Headings. All Article and Section headings are utilized merely for convenience and will not restrict or limit the application of the respective Articles or Sections.

Section 16.9 Powers of Attorney. By acceptance of a deed or other conveyance of an interest in a Unit, all Members do hereby grant, and if further required, do agree to vote in a manner to provide to, and to ratify and confirm retention by, Developer of Developer's rights under this Master Deed, including, without limitation, the right to amend this Master Deed in accordance with the provisions hereof. In connection with this voting agreement, each member appoints Developer as proxy for such member with full power of substitution to vote for the member on all such matters on which the member may be entitled to vote, and with respect to which there is a reservation or designation of voting rights in Developer under this Master Deed, and with all powers which the member would possess if personally present at any meeting of members. Such appointment will be, upon acceptance of a deed or other conveyance by the member and without the necessity of further action by the Developer or the member, a power coupled with an interest and will be irrevocable. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Member is recorded in the Charleston County RMC office. This irrevocable proxy will automatically terminate thirty (30) days after the conveyance in the ordinary course of Developer's business of Units representing ninety percent (90%) of the Assigned Values of all the Units shown in Exhibit "C" of this Master Deed. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Developer herein provided, which will run with the land.

Section 16.10 Unit Deeds. In accepting a deed to any Unit, the grantee will be deemed to have accepted and agreed to all terms and conditions contained in this Master Deed and the Exhibits, as amended, and further agrees to execute any and all documents reasonably requested by the Developer or the Association from time to time to expressly evidence the foregoing.

Section 16.11 Conflicts. In the case of any conflict between the Articles of Incorporation and the Master Deed, the Articles of Incorporation shall control; in the case of any conflict between the Master Deed and the Bylaws, the Master Deed shall control; and in the case of any conflict between the Master Deed and any required term or condition imposed by the Condominium Act upon the Association and/or the governance of the Regime that is at variance with the Master Deed and is a mandatory provision of the Condominium Act, the provisions of the Condominium Act shall control.

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ARTICLE XVII

Exhibits

Section 17.1 Exhibits Attached. The following Exhibits are attached hereto and incorporated verbatim in this Master Deed by reference as fully as if set forth herein.

<u>Description</u>	<u>Identification</u>
Legal Description of the Land	A
Site Plan and Floor Plans	B
Schedule of Assigned Values, Percentage Interests and Votes	C
Articles of Incorporation of the Association	D
Bylaws of the Association	E

[SIGNATURE PAGE ATTACHED]

BK U641PG782

IN WITNESS WHEREOF, Developer has caused this Master Deed to be executed to be effective as of this 18th day of October, 2007.

WITNESS:

Jessica L. Krupp
Witness No. 1

Stacey V. Wilson
Witness No. 2

&
Concord ~~and~~ Cumberland, LLC, a South
Carolina limited liability company
By Concord + Cumberland Manager, LLC, its Manager
By: Janet K. Safran

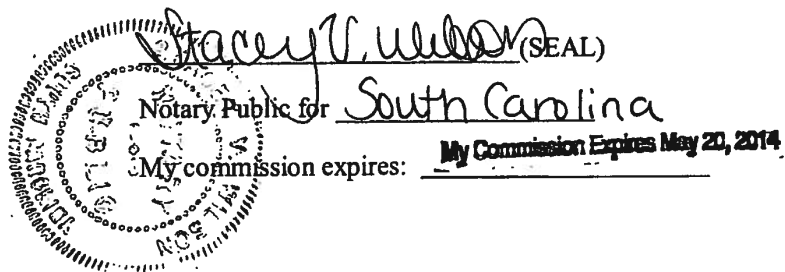
Name: Janet K. SafranTitle: Authorized Agent

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

I, Stacey V. Wilson a Notary Public for South Carolina do hereby
certify that Concord ~~and~~ Cumberland, LLC, a South Carolina limited liability company, by
Janet K. Safran, its Authorized Agent, personally appeared before me this
day and acknowledged the due execution of the foregoing instrument. by Concord + Cumberland
Manager, LLC, its Manager

Witness my hand and seal this 18th day of October, 2007.



BK T642PG501

STATE OF SOUTH CAROLINA) FIRST AMENDMENT TO MASTER DEED OF
) CONCORD AND CUMBERLAND
 COUNTY OF CHARLESTON) HORIZONTAL PROPERTY REGIME

THIS FIRST AMENDMENT TO MASTER DEED OF CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME (the "First Amendment" is made this 29th day of October, 2007, by Concord & Cumberland, LLC, a South Carolina limited liability company, hereinafter called "Developer."

W I T N E S S E T H:

WHEREAS, the Developer, by "Master Deed of Concord and Cumberland Horizontal Property Regime", recorded October 18, 2007 in the Office of Register of Mesne Conveyances for Charleston County in Book 12-641 at Page 739 (hereinafter referred to as the "Master Deed"), created a horizontal property regime upon certain property situate in Charleston County, South Carolina; and

WHEREAS, the Developer retained the right to amend the Master Deed to give effect to its development plan and is the Owner of all Units in the Regime; and

WHEREAS, the floor plans attached to Exhibit "B" of the Master Deed do not conform to the requirements of the Horizontal Property Act of South Carolina, South Carolina Code of Laws (1976), § 27-31-10, et. seq., and the Developer desires to amend the Master Deed to correct Exhibit "B" and its attached Plans.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Developer does hereby amend the Master Deed by this First Amendment as herein provided, and all Units under the Master Deed shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to the covenants, restrictions, conditions, easements and affirmative obligations set forth therein, and as further amended hereby, and does further declare as follows:

- I. Definitions. The words used in this First Amendment, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Master Deed.
- II. Amendment of Exhibit "B". The Master Deed is hereby amended by deleting in its entirety Exhibit "B" thereto, together with its appended Plans, and by substituting therefor a new Exhibit "B" and appended Plans as attached hereto.

[Remainder of Page Purposely Blank]

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IN WITNESS WHEREOF, the Developer has caused this FIRST AMENDMENT TO MASTER DEED OF CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME to be executed the day and year first above written.

WITNESS:

Jessica L. Krupp
Witness No. 1

Stacey V. Wilson
Witness No. 2

Concord & Cumberland, LLC, a South Carolina limited liability company

By: Kenneth K. Setra

Name: Kenneth K. Setra

Title: Authorized Agent

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

I, Stacey V. Wilson, a Notary Public for South Carolina do hereby certify that Concord & Cumberland, LLC, a South Carolina limited liability company, by Kenneth K. Setra, its Authorized Agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this 29th day of October, 2007.

Stacey V. Wilson (SEAL)

Notary Public for South Carolina

My commission expires: My Commission Expires May 20, 2014

**EXHIBIT A
LEGAL DESCRIPTION**

BK U641 PG 783

ALL that certain piece, parcel or tract of land, containing 0.41 acres with improvements thereon, situate, lying and being in The City of Charleston, County of Charleston, State of South Carolina, being shown and designated on survey prepared for Estates, Inc., prepared by E. M. Seabrook, Jr., Inc., Lewis E. Seabrook, PLS No. 09860, dated July 29, 2005, last revised August 23, 2005 entitled "Survey of a 0.41 Acre Portion of TMS 458-09-02-068, Located at Concord and Cumberland Streets" and having the following courses and distances:

BEGINNING at a point located at the intersection of Cumberland Street and Concord Street, said point being an "X" cut in sidewalk and running along Concord Street in a southeasterly direction S04°10'53"E a distance of 295.24 feet to a 1" iron pin found; thence turning and running along property now or formerly of Vendue Concord Partnership in a southwesterly direction S81°05'42"W a distance of 60.19 feet to a 5/8" iron pin found; thence turning and running along property now or formerly of City of Charleston in a northwesterly direction N04°09'29"W a distance of 297.96 feet to an "X" cut in sidewalk; thence turning and running along Cumberland Street in a northeasterly direction N83°40'41"E a distance of 59.91 feet to the point and place of BEGINNING.

DERIVATION: Limited Warranty Deed to Concord & Cumberland, LLC from the City of Charleston, dated February 14, 2006 and recorded February 16, 2006 in the Office of the RMC for Charleston County, South Carolina in Deed Book C-573, at page 288.

TAX MAP NO.: 458-09-02-068 (portion)

NPCOL1:823361.1-PL-(CAC) 024050-00428

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Exhibit "B"

Site Plan and Floor Plans

CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME

NOTE

Exhibit "B" is composed of the matters set forth below and the attached as-built survey showing the location of the Building, and appended elevation certificate for the Building. Exhibit "B" also includes an attached set of floor plans for the Building, which shows graphically the dimensions, area and location of each Unit therein, and the dimensions, area and location affording access to each Unit.

As to each Unit: All built-in kitchen appliances, the refrigerator, air conditioner units and condensers and hot water heater located in each Unit are part of the Unit in which they are located and are not Common Elements. The balcony, deck, patio or porches adjacent to each Unit, including the railing thereof, are Limited Common Elements and are subject to restrictions as set forth elsewhere in this Master Deed.

Reference to area as Common Elements or elements in this paragraph will be in addition to and read in conjunction with the further designations of Common Elements and elements set out in other portions of this Master Deed and the survey and floor plans making up the balance of this Exhibit "B". The parking level is a Common Element.

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As-Built Survey and Elevation Certification

Attached Hereto

U.S. DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
National Flood Insurance Program

ELEVATION CERTIFICATE

OMB No. 1660-0008
Expires February 28, 2009

Important: Read the instructions on pages 1-8.

SECTION A - PROPERTY INFORMATION		For Insurance Company Use:
A1. Building Owner's Name Concord & Cumberland, LLC		Policy Number
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 175 Concord Street		Company NAIC Number
City Charleston State SC ZIP Code 29401		

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
Charleston County TMS 458-09-02-205

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) residential

A5. Latitude/Longitude: Lat. 32-46-46.9" Long. 79-55-33.1"

Horizontal Datum: ☐ NAD 1927 ☒ NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 6

A8. For a building with a crawl space or enclosure(s), provide

- a) Square footage of crawl space or enclosure(s) _____ sq ft
b) No. of permanent flood openings in the crawl space or enclosure(s) walls within 1.0 foot above adjacent grade _____ sq in
c) Total net area of flood openings in A8.b _____ sq in

A9. For a building with an attached garage, provide:

- a) Square footage of attached garage 17,183 sq ft
b) No. of permanent flood openings in the attached garage walls within 1.0 foot above adjacent grade 6
c) Total net area of flood openings in A9.b 45,036 sq in

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number Charleston 455412		B2. County Name Charleston		B3. State SC	
B4. Map/Panel Number 45019C0518	B5. Suffix J	B6. FIRM Index Date 11/17/04	B7. FIRM Panel Effective/Revised Date 11/17/04	B8. Flood Zone(s) VE	B9. Base Flood Elevation(s) (Zone AO, use base flood depth) 15.0

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.

☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe) _____

B11. Indicate elevation datum used for BFE in Item B9: ☒ NGVD 1929 ☐ NAVD 1988 ☐ Other (Describe) _____

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No
Designation Date _____ ☐ CBRS ☐ OPA

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

- C1. Building elevations are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.
- C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-g below according to the building diagram specified in Item A7.
Benchmark Utilized 866 5530 TIDAL 14 RESET Vertical Datum NGVD 29
Conversion/Comments No conversion. Used 8.30 elevation for benchmark.

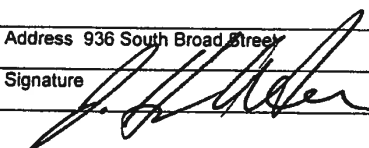
Check the measurement used.

- a) Top of bottom floor (including basement, crawl space, or enclosure floor) 7.32 ☒ feet ☐ meters (Puerto Rico only)
b) Top of the next higher floor 17.39 ☒ feet ☐ meters (Puerto Rico only)
c) Bottom of the lowest horizontal structural member (V Zones only) 16.08 ☒ feet ☐ meters (Puerto Rico only)
d) Attached garage (top of slab) 7.32 ☒ feet ☐ meters (Puerto Rico only)
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment in Comments) 7.32 ☒ feet ☐ meters (Puerto Rico only)
f) Lowest adjacent (finished) grade (LAG) 6.10 ☒ feet ☐ meters (Puerto Rico only)
g) Highest adjacent (finished) grade (HAG) 7.05 ☒ feet ☐ meters (Puerto Rico only)

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

☐ Check here if comments are provided on back of form.

Certifier's Name J. Henry Walker, III		License Number 14532	
Title Owner		Company Name Walker Surveying Services, Inc	
Address 936 South Broad Street		City Camden State SC ZIP Code 29020	
Signature 	Date 9/13/07	Telephone (803) 425-0702	

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IMPORTANT: In these spaces, copy the corresponding information from Section A.		For Insurance Company Use:	
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No 175 Concord Street		Policy Number	
City Charleston State SC ZIP Code 29401		Company NAIC Number	

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments

Walker Surveying Services, Inc. Job number 2007-042

Signature

Date 9/13/07

☐ Check here if attachments**SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)**

For Zones AO and A (without BFE), complete Items E1-E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1-E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.

- E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
- a) Top of bottom floor (including basement, crawl space, or enclosure) is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- b) Top of bottom floor (including basement, crawl space, or enclosure) is _____ ☐ feet ☐ meters ☐ above or ☐ below the LAG.
- E2. For Building Diagrams 6-8 with permanent flood openings provided in Section A Items 8 and/or 9 (see page 8 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E3. Attached garage (top of slab) is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E4. Top of platform of machinery and/or equipment servicing the building is _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.
- E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? ☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. The statements in Sections A, B, and E are correct to the best of my knowledge.

Property Owner's or Owner's Authorized Representative's Name

Address

City

State

ZIP Code

Signature

Date

Telephone

Comments

☐ Check here if attachments**SECTION G - COMMUNITY INFORMATION (OPTIONAL)**

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8 and G9.

- G1. ☐ The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)
- G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.
- G3. ☐ The following information (Items G4.-G9.) is provided for community floodplain management purposes.

G4. Permit Number	G5. Date Permit Issued	G6. Date Certificate Of Compliance/Occupancy Issued

G7. This permit has been issued for: ☐ New Construction ☐ Substantial ImprovementG8. Elevation of as-built lowest floor (including basement) of the building: _____ ☐ feet ☐ meters (PR) Datum _____G9. BFE or (in Zone AO) depth of flooding at the building site: _____ ☐ feet ☐ meters (PR) Datum _____

Local Official's Name	Title
Community Name	Telephone
Signature	Date
Comments	

☐ Check here if attachments

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Building Photographs

See Instructions for Item A6

For Insurance Company Use:

Policy Number

Company NAIC Number

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
175 Concord Street

City Charleston State SC ZIP Code 29401

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least two building photographs below according to the instructions for Item A6. Identify all photographs with: date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." If submitting more photographs than will fit on this page, use the Continuation Page, following.

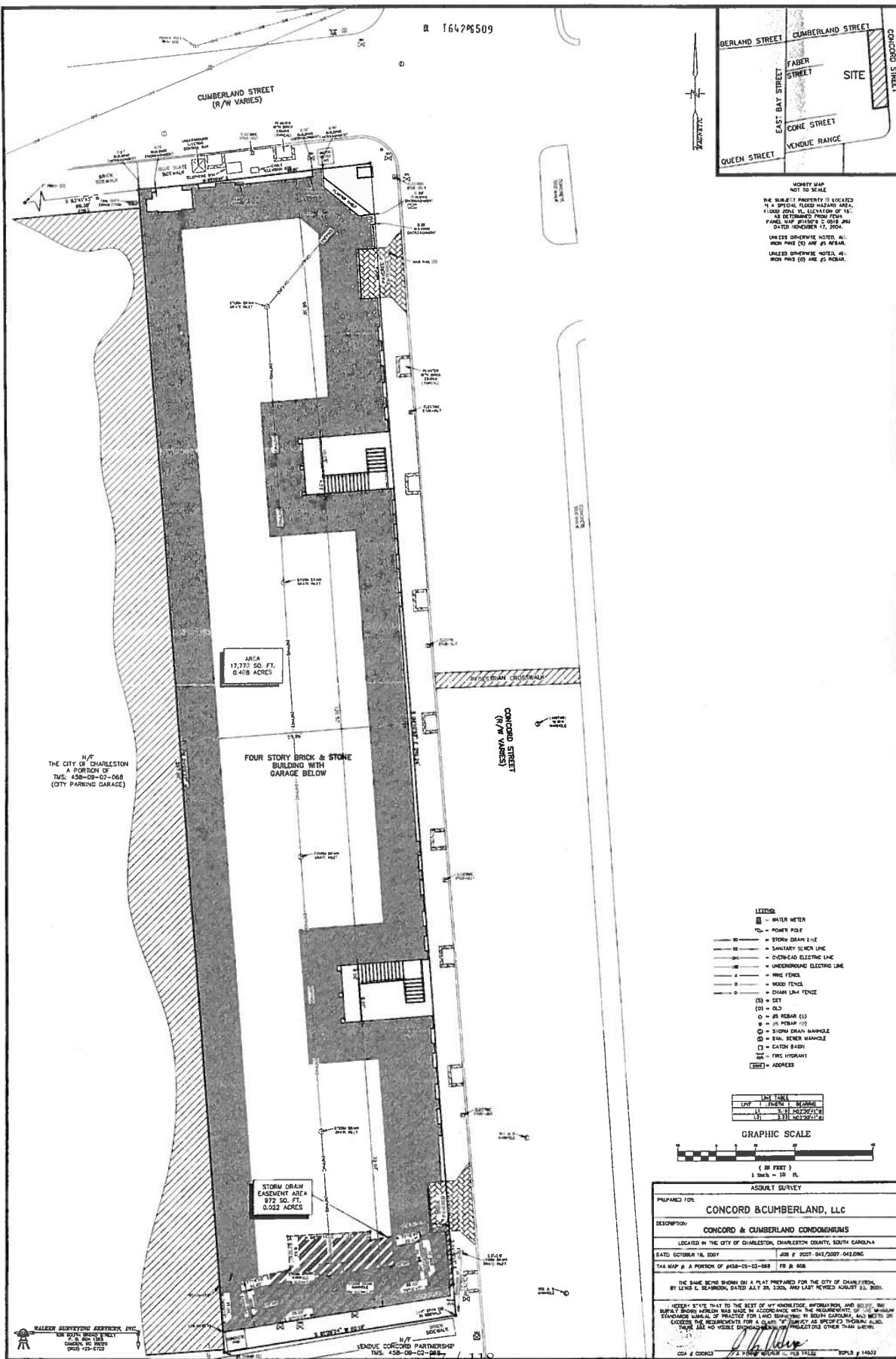


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Building Photographs
Continuation Page

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 175 Concord Street	For Insurance Company Use Policy Number
City Charleston State SC ZIP Code 29401	Company NAIC Number

If submitting more photographs than will fit on the preceding page, affix the additional photographs below. Identify all photographs with: date taken, "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View."





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Floor Plans

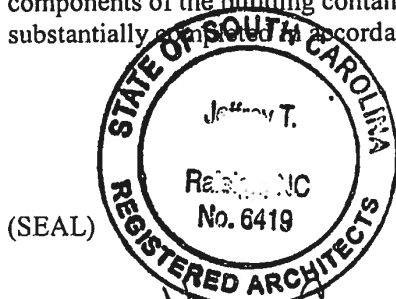
Attached Hereto

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ARCHITECT'S CERTIFICATION

[Pursuant to S.C. Code § 27-31-110]

I, JEFFREY T. DAVIS, a licensed South Carolina Architect, hereby certifies that, to the best of the Architect's knowledge, information and belief, the observable and accessible configuration of the structures, the floor plans and elevations of Building No. _____ being filed simultaneously with the Master Deed of CONCORD & CONGERLAND CONDOMINIUM Horizontal Property Regime graphically show the layout, locations, dimensions, area and unit numbers of each of the TWENTY-SEVEN (27) apartments therein, and with the dimensions, areas and location of the common elements affording access to each such apartment, and all structural components of the building containing or comprising the apartments thereby created are substantially in accordance with the plans.



Jeffrey T. Davis

Licensed Architect

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, a Notary Public of the County and State aforesaid, certify that Jeffrey T. Davis being duly sworn personally appeared before me this day and acknowledged the due execution of the foregoing document.

Witness my hand and official seal this 29th day of Oct, 2007.

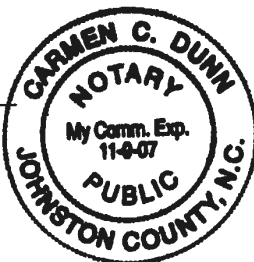
Carmen C. Dunn

Notary Public

My Commission Expires:

11-9-07

(SEAL)



Concord & Cumberland Condominiums

BK T642P6513

STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

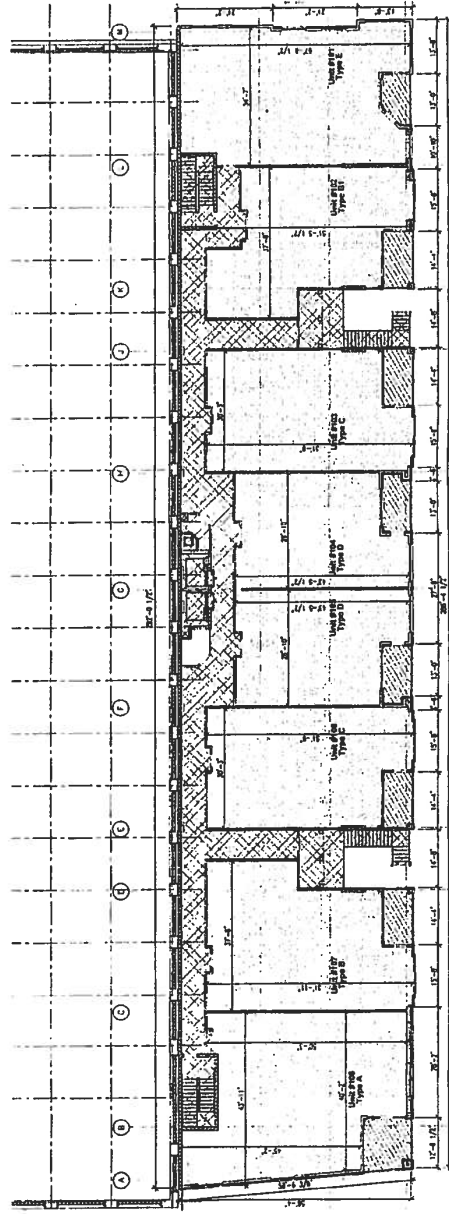
1. I, ALBERT L. LARSEN, CERTIFY THAT I AM A LICENSED ARCHITECT REGISTERED IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS FOR THE CONDOMINIUMS WERE PREPARED BY HIMSELF OR HERSELF OR BY AN ARCHITECT FIRM OR FIRM OF ARCHITECTS AND THAT SUCH PLANS OR SPECIFICATIONS WERE PREPARED IN ACCORDANCE WITH THE ACT OF COMPLETION, AS FULFILLED AND APPROVED BY THE CITY OF CHARLESTON.

CONDOMINIUM SUITES NO. _____
TOTAL SQUARE FEET OF THE SUITES 178

1. SUCH PLANS OR PLANS FULLY AND ACCURATELY REPRESENT THE LAYOUT, LOCATION, CEILING AND FLOOR ELEVATIONS, UNIT DIMENSIONS AND DIMENSIONS OF THE BUILDING AS SHOWN ON THE PLANS AND SPECIFICATIONS.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS FOR THE CONDOMINIUMS WERE PREPARED BY HIMSELF OR HERSELF OR BY AN ARCHITECT FIRM OR FIRM OF ARCHITECTS AND THAT SUCH PLANS OR SPECIFICATIONS WERE PREPARED IN ACCORDANCE WITH THE ACT OF COMPLETION, AS FULFILLED AND APPROVED BY THE CITY OF CHARLESTON.

THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
I HAVE NOT BEEN CONVICTED OF A CRIME INVOLVING FRAUD OR DECEIT.
I HAVE NOT BEEN CONVICTED OF A CRIME INVOLVING THE VIOLATION OF ANY PROFESSIONAL OR STATUTORY REQUIREMENTS.
I HAVE NOT BEEN CONVICTED OF A CRIME INVOLVING THE VIOLATION OF ANY PROFESSIONAL OR STATUTORY REQUIREMENTS.
I HAVE NOT BEEN CONVICTED OF A CRIME INVOLVING THE VIOLATION OF ANY PROFESSIONAL OR STATUTORY REQUIREMENTS.

LEGEND
COMMON ELEMENTS
RESIDENTIAL UNIT
UNIT COMMON ELEMENTS



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
FIRST FLOOR PLAN
SCALE: 1/8"=1'-0"

Concord & Cumberland Condominiums

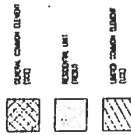
BN T642P6514

STATE SOUTH CAROLINA
COUNTY CHARLESTON

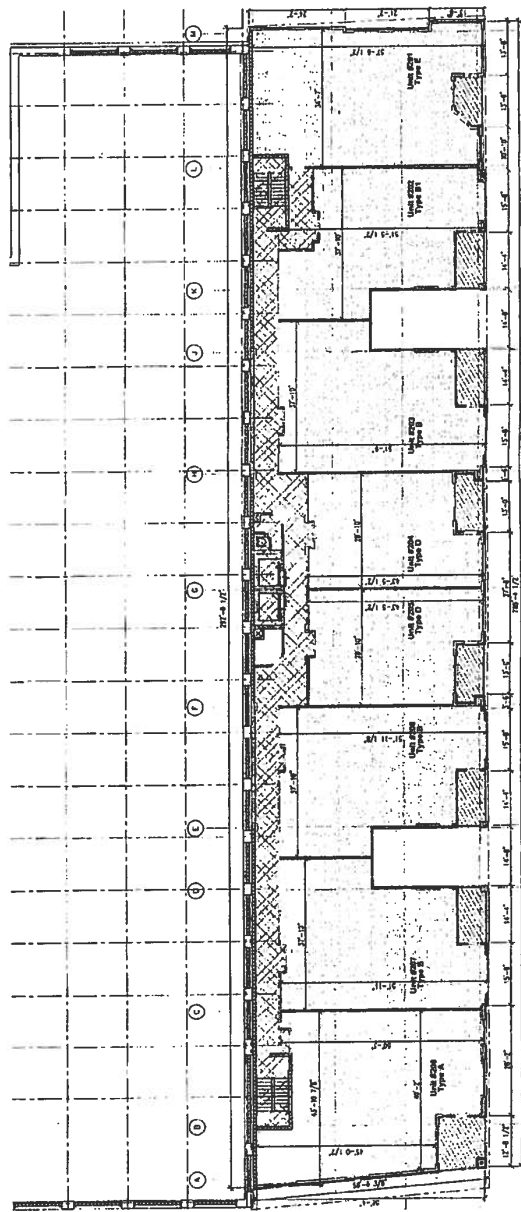
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, ARTHUR L. BONE, OFFERED THAT HE IS A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS ARE HIS OWN WORK AND WERE PREPARED BY HIM OR UNDER HIS CLOSE PERSONAL SUPERVISION AND TO THE BEST OF HIS KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS AND LAWS.

CONDOMINIUM SALES NO. 20160201002502955



THIS PLAN WAS PREPARED BY ARTHUR L. BONE ON JULY 2017.
 THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS ARE HIS OWN WORK AND WERE PREPARED BY HIM OR UNDER HIS CLOSE PERSONAL SUPERVISION AND TO THE BEST OF HIS KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS AND LAWS.



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
SECOND FLOOR PLAN
 SCALE: 1/16"=1'-0"

Concord & Cumberland Condominiums

8K T64296515

STATE SOUTH CAROLINA
COUNTY CHARLESTON

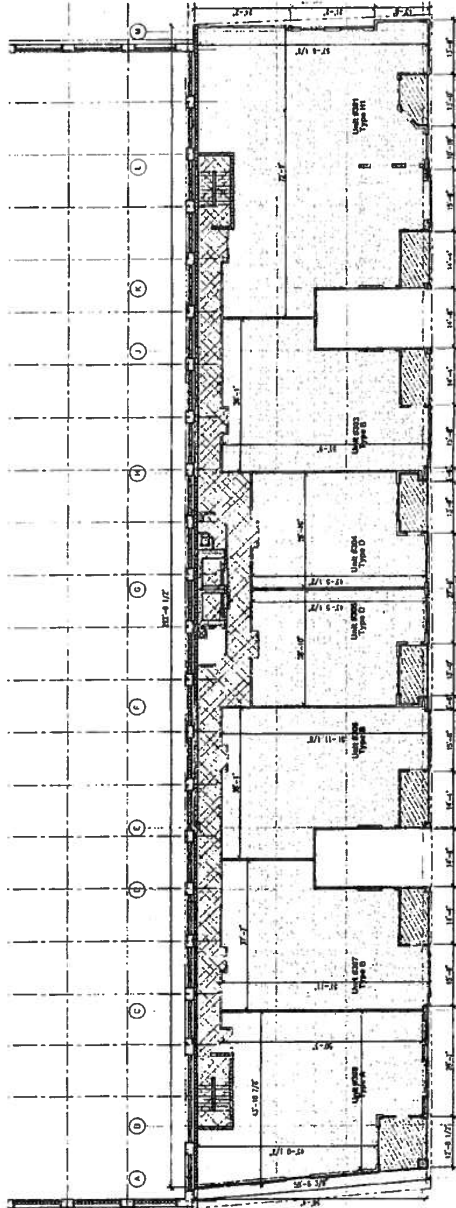
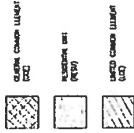
THE UNDISCLOSED COUNTELS AS FOLLOWS:

1. KATHLEEN J. DAVIS CERTIFIES THAT HE IS A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA
2. HE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CHURCHILL & CLIMBERLAND CONDOS ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE CITY OF CHARLESTON

COMOCHILA STATES NO.:
301_303_304_305_306_307 & 308

1. SUCH PLANS OR PLANS FULLY AND ACCURATELY DEPICT THE LAYOUT, LOCATION, CEILING AND FLOOR ELEVATIONS, VERTICAL HEIGHTS AND DIMENSIONS OF THE TENTS, AS BUILT.
2. THE UNDERSTANDING OF THE LAYOUT OF THE TENTS WAS ACTUALLY OBTAINED BY VISUAL INSPECTION OF THE TENTS, AND NOT BY THE USE OF SUCH PLANS OR PLANS FULLY AND ACCURATELY DEPICT THE LAYOUT, AS BUILT, TO HIS BEST KNOWLEDGE AND BELIEF.

No. 2464 DATE OF JUL 2007
 REGISTERED ARCHITECT 11119
 SIGN AND SUCCEDED BEFORE ME CORINNE DUBOIS
 No. 2478 DATE OF JULY 2007
CORINNE DUBOIS COMMISSION EXPIRES
 NOVEMBER 9, 2007



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

THIRD FLOOR PLAN

SCALE: 1/16" = 1'-0"

Concord & Cumberland Condominiums

8K T642PG516

STATE SOUTH CAROLINA
COUNTY CHARLESTON

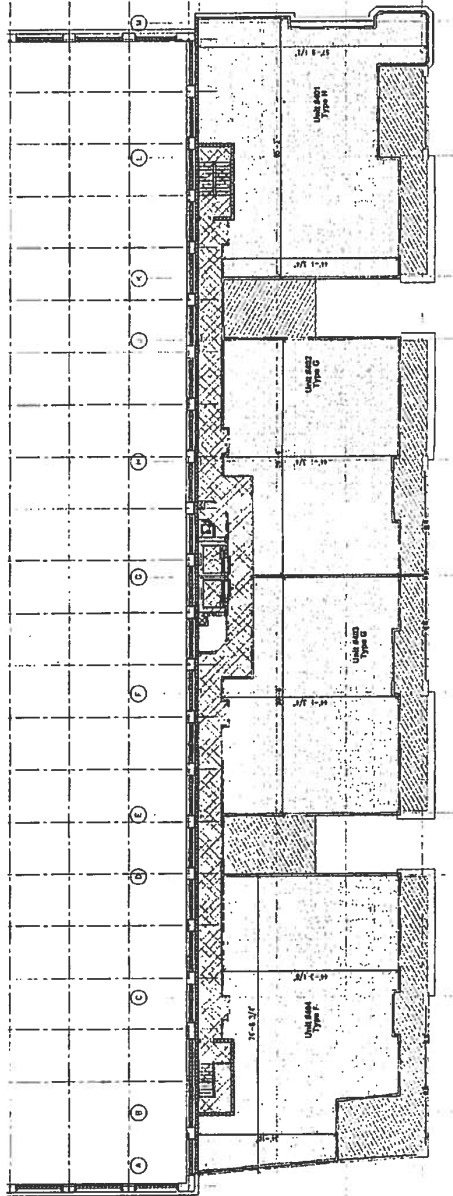
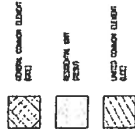
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. JOSEPH L. SMITH CERTIFIES THAT HE IS A LICENSED ARCHITECT REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS ARE HIS OWN WORK OR THAT HE HAS FULLY AND COMPLETELY REVIEWED THE PLANS AND DRAWINGS AND THAT SUCH PLANS OR DRAWINGS TRULY AND ACCURATELY REPRESENT THE PROJECT AS FILED WITH AND APPROVED BY THE ARCHITECTURAL BOARD.

CONDOMINIUM SHEET NO. 401.02.01.01.01.01

3. EACH UNIT OR PART THEREOF IS FULLY AND ACCURATELY IDENTIFIED BY THE UNIT, LOCATION, CLING, AND PLANT IDENTIFICATION UNIT NUMBER AND DIMENSIONS OF THE UNIT, IS IDENTIFIED.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTIVELY REVIEWED THE PLANS AND DRAWINGS OF THE PROJECT AND THAT SUCH PLANS OR DRAWINGS TRULY AND ACCURATELY REPRESENT THE PROJECT AS FILED WITH AND APPROVED BY THE ARCHITECTURAL BOARD.

THIS PLAN WAS PREPARED BY JOSEPH L. SMITH ARCHITECT / 5412
DATE OF NOVEMBER 9, 2017
DATE OF NOVEMBER 9, 2017
DATE OF NOVEMBER 9, 2017
DATE OF NOVEMBER 9, 2017



ADDRESS: 175 COMCORD STREET, CHARLESTON, SC

FOURTH FLOOR PLAN

SCALE: 1/16"=1'-0"

Concord & Cumberland Condominiums

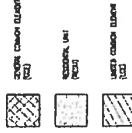
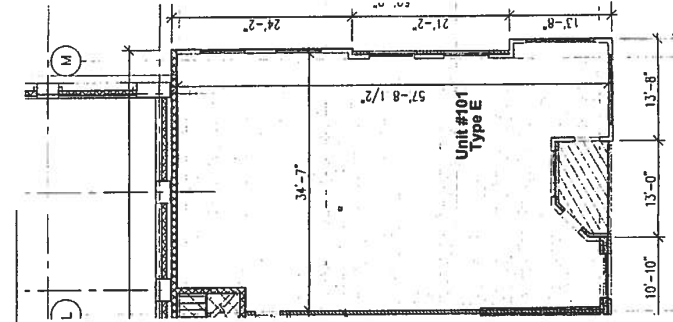
8K T642PG517

STATE: SOUTH CAROLINA
COUNTY: CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, JEREMY L. JAMES, ARCHITECT, REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA, HAVE PREPARED THE PLANS OF THE CONDOMINIUM UNIT SHOWN HEREON, AND I HEREBY CERTIFY THAT THE PLANS OF THE CONDOMINIUM UNIT SHOWN HEREON ARE TRUE AND CORRECT, AND THAT I HAVE NOT BEEN REPAID FOR MY SERVICES BY ANY OTHER PARTY.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OF THE CONDOMINIUM UNIT SHOWN HEREON ARE TRUE AND CORRECT, AND THAT I HAVE NOT BEEN REPAID FOR MY SERVICES BY ANY OTHER PARTY.

CONDOMINIUM UNIT NO. 101



THE UNIT NO. 101 OF THE CONDOMINIUM PROJECT, REGISTERED ARCHITECT J. JAMES, HAS BEEN DESIGNED BY ME, JEREMY L. JAMES, ARCHITECT, REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA, AND I HEREBY CERTIFY THAT THE PLANS OF THE CONDOMINIUM UNIT SHOWN HEREON ARE TRUE AND CORRECT, AND THAT I HAVE NOT BEEN REPAID FOR MY SERVICES BY ANY OTHER PARTY.



AREA TABULATION DATA	
HEATED AREA - TERRACE	1,881 SF
TOTAL GROSS AREA	1,936 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #101
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

STATE SOUTH CAROLINA
COUNTY CHARLESTON

BOOK 7642PG518

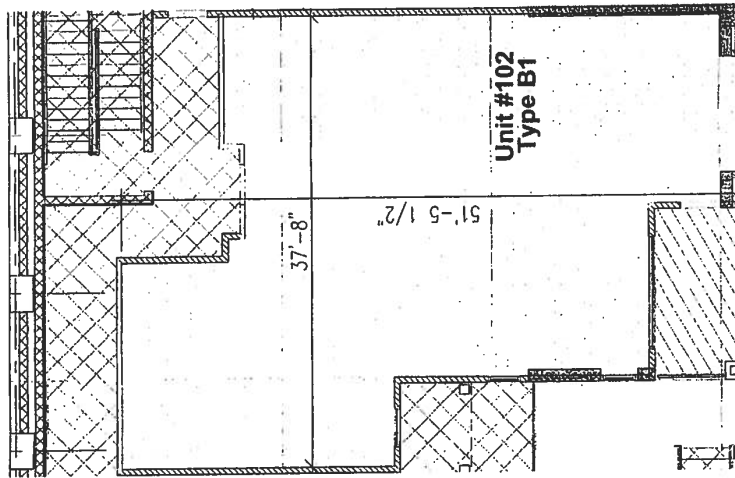
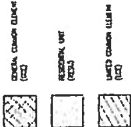
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. JOHN L. DOWNS CERTIFIES THAT HE IS A LICENSED ARCHITECT AND THAT HE IS THE ARCHITECT OF RECORD FOR THE PROJECT.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS SUBMITTED TO THE BOARD OF MANAGERS FOR REVIEW AND APPROVAL BY THE BOARD OF MANAGERS OF THE BUILDING AS FILED HEREIN AND APPROVED BY THE CITY OF CHARLESTON.

CONDOMINIUM SHEET NO. 102

3. SUCH PLANS OR PLANS FULLY AND ACCURATELY REFLECT THE PROJECT, INCLUDING ALL CHANGES AND REVISIONS, UNIT DIMENSIONS AND FINISHES OF THE PROJECT, AS WELL AS ALL OTHER INFORMATION REQUIRED BY THE CITY OF CHARLESTON.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS SUBMITTED TO THE BOARD OF MANAGERS FOR REVIEW AND APPROVAL BY THE BOARD OF MANAGERS OF THE BUILDING AS FILED HEREIN AND APPROVED BY THE CITY OF CHARLESTON.

THE PLAN WAS PREPARED BY JOHN L. DOWNS DATE JULY 2007
AND WAS DISCLOSED BEFORE ME, JOHN L. DOWNS, DATE JULY 2007
BY JOHN L. DOWNS DATE JULY 2007
IN PRESENCE OF JOHN L. DOWNS BY COMMISSION EXPOSURE
NOTARIES PUBLIC
NOVEMBER 8, 2007



AREA TABULATION DATA	
HEATED AREA	1,434 SF
TERRACE	100 SF
TOTAL GROSS AREA	1,534 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #102

SCALE: 3/16" = 1'-0"

Concord & Cumberland Condominiums

STATE SOUTH CAROLINA OK T642PG519

STATE SOUTH CAROLINA COUNTY CHESLTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

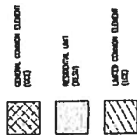
1. JOHN J. LEWIS CONVINCED THAT HE IS A WARRIOR, RECOGNIZED THE VALUE OF A GOOD DESIGN.
2. THE UNDERSTOOD ARCHITECT KNOWS THAT THE PLANS OR DESIGN OF THE CONCRETE CONSTRUCTION CONDOMINIUMS ARE AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA.
3. STEP PLANS ON PLANS ROLL AND CONCRETE WORK ON THE CONCRETE CONSTRUCTION CONDOMINIUMS LOCATED ON THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF FLORIDA, AND THE UNDERSTOOD ARCHITECT KNOWS THAT HE IS AN ACCURATE COPY OF THE PLANS AND DESIGNS OF THE BUILDING AS <

COMPONENT SYSTEMS NO.

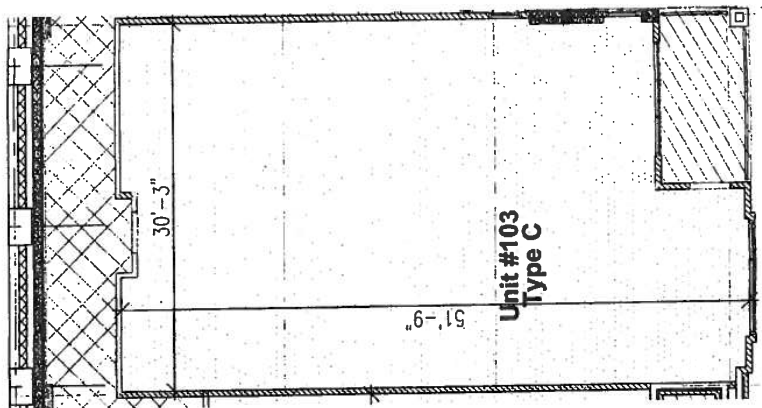
103

DATE _____ TIME _____ DAY OF _____ MONTH _____ YEAR _____
 SIGNED AND RECORDED BEFORE ME _____ CARRIE ELLUM
 I, CLAUDE CHRISTENSEN, #1110
 JUNE TWENTY 20 MAY 1912

2017 9 30



AREA TABULATION DATA	
HEATED AREA: TERRACE	1,443 SF 100 SF
TOTAL GROSS AREA	1,543 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #103

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

STATE SOUTH CAROLINA
COUNTY CHARLESTON

BK T642PG521

THE UNDERSIGNED CERTIFIES AS FOLLOWS

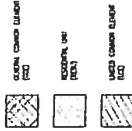
1. JENNIFER L. BAKER CERTIFIES THAT SHE IS A LICENSED REGISTERED ARCHITECT IN THE STATE OF MISSISSIPPI.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCRETE CONSTRUCTION CONCERNING ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF MISSISSIPPI.
3. THE PLANS OR PLANS FULLY AND ACCURATELY REFLECT THE DESIGN, LOCATION, CONSTRUCTION, MATERIALS, AND FINISHES, NUMBER AND DIMENSIONS OF THE WALLS, AS BUILT.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT SHE HAS ACTUALLY OBSERVED THE BUILDING, COMPARED WITH THE SAME PLANS OR DRAWINGS, AND THAT THE BUILDING IS IN SUBSTANTIAL ACCORDANCE WITH THE PLANS, AS BUILT, TO THE BEST KNOWLEDGE AND BELIEF.

CONSUMERS SERVICE NO.

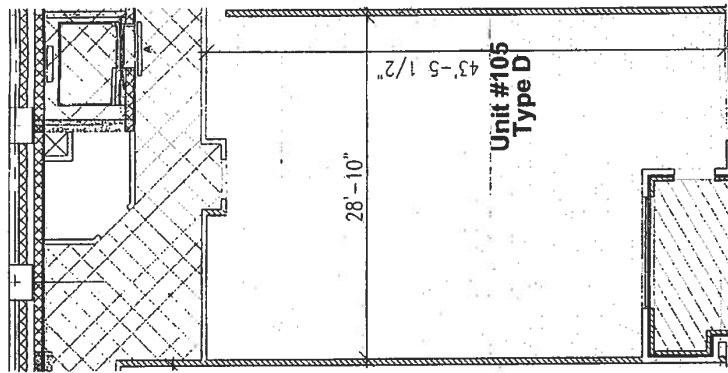
102

THIS 24th DAY OF JULY 2007
 REGISTERED ARCHITECT / SALES
 SIGNED AND SUBSCRIBED BEFORE ME, CHRISTIAN LAMM
 THE 25th DAY OF JULY 2007
William C. Brien COMMISSIONER
 NOVEMBER 9, 2007

NOVEMBER 9, 2007



AREA TABULATION DATA	
HEATED AREA TERRACE	1,127 SF 95 SF
TOTAL GROSS AREA	1,222 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #105

SCALE: 3/16"=1'-0"

10 OF 32

Concord & Cumberland Condominiums

STATE: SOUTH CAROLINA
COUNTY: CHARLESTON

OK

T64206522

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

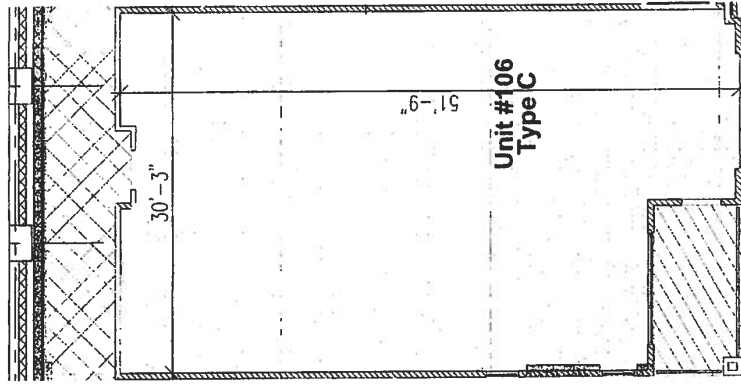
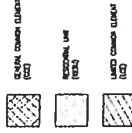
1. I, DAVID L. JONES, CONVEYOR, HAVE BEEN A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS OF THE CONCORD & CUMBERLAND CONDOMINIUMS AS FILED WITH ME AND APPROVED BY THE STATE OF SOUTH CAROLINA ACCURATELY REFLECT THE UNIT, AS BUILT, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

CONDOMINIUM UNIT NO. 106

THIS PLAN OR PLANS HAVE BEEN APPROVED BY THE UNIT, LOCATION, CEILING AND FLOOR ELEVATIONS, UNIT NUMBER AND DIMENSIONS OF THE UNIT, AS BUILT.

THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTUALLY VISITED THE UNIT, AS BUILT, AND THAT THE PLANS OR SPECIFICATIONS OF THE CONCORD & CUMBERLAND CONDOMINIUMS AS FILED WITH ME AND APPROVED BY THE STATE OF SOUTH CAROLINA ACCURATELY REFLECT THE UNIT, AS BUILT, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

DATE OF REGISTRATION: JULY 2017
DATE OF EXPIRATION: JULY 2017
DATE OF EXPIRATION: JULY 2017
DATE OF EXPIRATION: JULY 2017



AREA TABULATION DATA	
REQUIRED AREA:	1,443 SF
TOTAL GROSS AREA:	1,543 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #106

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BK T642PG523

STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

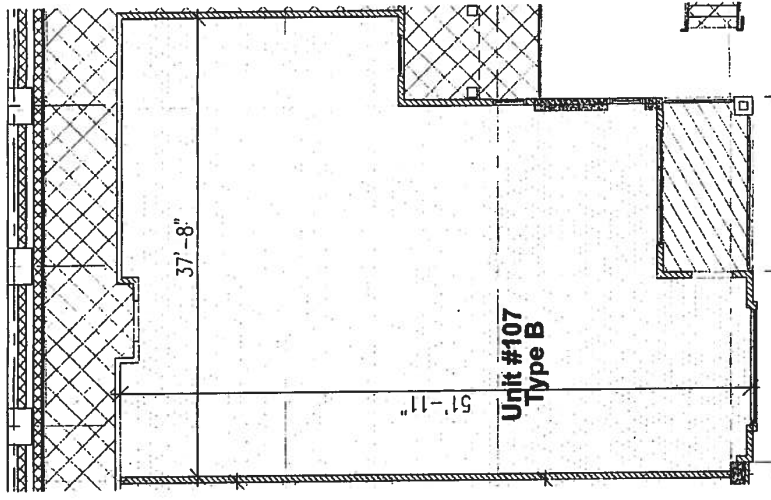
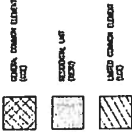
1. I, JEFFREY L. LANGE, CERTIFY THAT HE IS A LICENSED ARCHITECT REGISTERED IN THE STATE OF SOUTH CAROLINA.
2. I HAVE PREPARED THESE PLANS AND SPECIFICATIONS IN ACCORDANCE WITH THE ARCHITECTURAL PROFESSIONAL ACT AND THE RULES OF THE BOARD OF ARCHITECTS OF THE STATE OF SOUTH CAROLINA.
3. I HAVE REVIEWED THE PLANS AND SPECIFICATIONS OF THE BUILDING AND I CERTIFY THAT THEY COMPLY WITH THE BUILDING CODES AND ORDINANCES OF THE CITY OF CHARLESTON, SOUTH CAROLINA.
4. I HAVE REVIEWED THE PLANS AND SPECIFICATIONS OF THE BUILDING AND I CERTIFY THAT THEY COMPLY WITH THE BUILDING CODES AND ORDINANCES OF THE CITY OF CHARLESTON, SOUTH CAROLINA.

CONDOMINIUM SETS NO. 107

1. SUCH PLANS OR PLANS FULLY AND ACCURATELY REFLECT THE INTENT AND DESIGN OF THE ARCHITECT AND THE BUILDING OFFICIALS AND THE BUILDING OFFICIALS HAVE REVIEWED THE PLANS AND SPECIFICATIONS OF THE UNIT, AS SHOWN.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTUALLY OBSERVED THE BUILDING, COMPARED WITH THE SAME PLANS OR SPECIFICATIONS, AND THAT THE BUILDING IS IN SUBSTANTIAL ACCORDANCE WITH THE PLANS AND SPECIFICATIONS OF THE UNIT, AS SHOWN, TO HIS BEST KNOWLEDGE AND BELIEF.

EXHIBIT 9, 2007

THIS PLAN WAS PREPARED BY THE ARCHITECT ON JULY 2007.
THE ARCHITECT HAS REVIEWED THE PLANS AND SPECIFICATIONS OF THE UNIT, AS SHOWN, AND HAS CERTIFIED THAT THEY COMPLY WITH THE BUILDING CODES AND ORDINANCES OF THE CITY OF CHARLESTON, SOUTH CAROLINA.
THE ARCHITECT HAS REVIEWED THE PLANS AND SPECIFICATIONS OF THE BUILDING AND I CERTIFY THAT THEY COMPLY WITH THE BUILDING CODES AND ORDINANCES OF THE CITY OF CHARLESTON, SOUTH CAROLINA.



AREA TABULATION DATA		
UNITED AREA:	1,615 SF	
TERRACE:	100 SF	
TOTAL GROSS AREA:	1,715 SF	



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #107
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BK T64296524

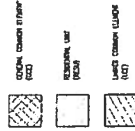
STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

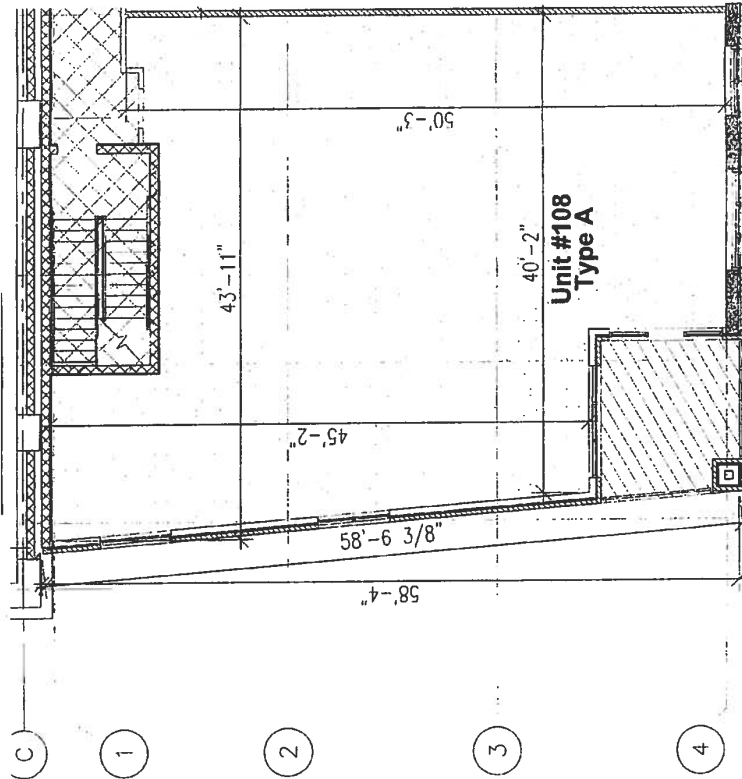
1. JEROME L. JAMES, CERTIFIES THAT HE IS A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS OF THE CONDOMINIUM UNIT SHOWN ON THESE PLANS ARE AN ACCURATE COPY OF THE PLANS AND DIMENSIONS OF THE BUILDING AS FILED WITH AND APPROVED BY THE CLERK OF CHARLESTON.

CONDOMINIUM UNIT NO. 108

1. SUCH PLANS OR PLANS FULLY AND ACCURATELY REFLECT THE EXISTING LOCATION, COORDINATES AND PLUMB LINES, UNIT DIMENSIONS AND DIMENSIONS OF THE BUILDING, AS SHOWN ON THESE PLANS.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS OF THE CONDOMINIUM UNIT SHOWN ON THESE PLANS ARE AN ACCURATE COPY OF THE PLANS AND DIMENSIONS OF THE BUILDING AS FILED WITH AND APPROVED BY THE CLERK OF CHARLESTON.



DATE OF JULY 2021
REGISTERED ARCHITECT J. JAMES
NO. 2524
DATE OF JULY 2021
JAMES L. JAMES
ARCHITECT
NOTARY PUBLIC
SOUTH CAROLINA
COMMISSION EXPIRES NOVEMBER 8, 2027



AREA TABULATION DATA		
HEATED AREA	1,968 SF	
TERACE	150 SF	
TOTAL GROSS AREA	2,108 SF	



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #108
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

OK T642P526

SITE: SOUTH LARSEN
COUNTY: CHARLESTON

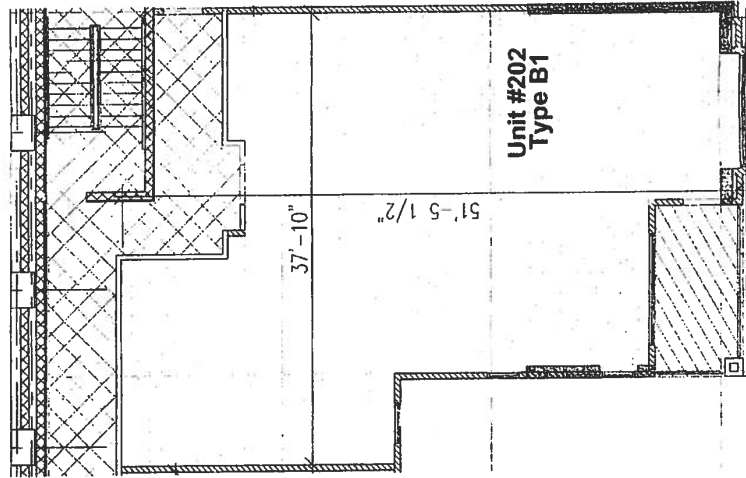
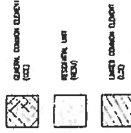
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, REBECCA L. LINDS, CERTIFY THAT I AM A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS ARE MY OWN WORK OR THAT I AM A PARTNER, EMPLOYEE, OR AGENT OF AN ARCHITECTURAL FIRM THAT HAS BEEN APPROVED BY THE STATE OF CHARLESTON.

CONDOMINIUM SHEET NO. 202

3. SUCH PLANS OR PLANS FULLY AND ACCURATELY DEPICT THE UNIT'S LOCATION, COORDINATES AND FLOOR ELEVATIONS, UNIT NUMBER AND DIMENSIONS OF THE UNIT, AS SHOWN.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS CAREFULLY EXAMINED THE PLANS AND DRAWINGS OF THE UNIT, AND THAT SUCH PLANS OR DRAWINGS FULLY AND ACCURATELY DEPICT THE UNIT, AS SHOWN, TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A PARTNER, EMPLOYEE, OR AGENT OF AN ARCHITECTURAL FIRM THAT HAS BEEN APPROVED BY THE STATE OF CHARLESTON.



AREA TABULATION DATA	
HEATED AREA:	1,434 SF
TERRACE:	100 SF
TOTAL GROSS AREA:	1,534 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #202

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

12592791 XRB

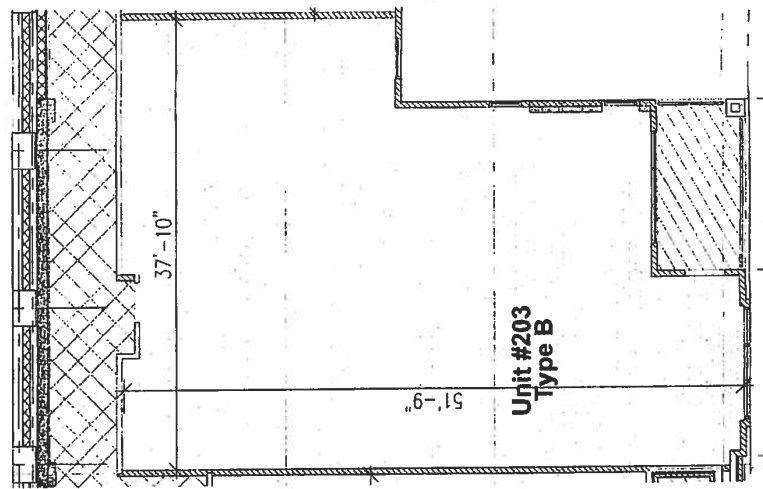
STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONJUGATED & CONJUGATED CONJUGATIONS ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF CALIFORNIA.
2. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONJUGATED & CONJUGATED CONJUGATIONS ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF CALIFORNIA.
3. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONJUGATED & CONJUGATED CONJUGATIONS ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF CALIFORNIA.
4. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONJUGATED & CONJUGATED CONJUGATIONS ARE AN ACCURATE COPY OF THE PLANS AND DRAWINGS OF THE BUILDING AS FILED WITH AND APPROVED BY THE STATE OF CALIFORNIA.

CONDOMINIUM SUITES NO. 1

203



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #203

SCALE: 3/16" = 1'-0"

AREA TABULATION DATA	
HEATED AREA: TERRACE:	1,615 SF 100 SF
TOTAL GROSS AREA:	1,715 SF



COOL COMMON (CCT)	REASONING (RC)	UNITED COMMON (CCT)
		

THIS _____ DAY OF JULY 2007
 REGISTERED ARCHITECT / 6419
 SIGNED AND SUBSCRIBED BEFORE ME CORREIN BARNHARTT
 15TH DAY OF JULY 2007
 Correin Barnhartt, Wisconsin Licensee

WISCONSIN & 2007
 MENARD CARPENTRY



16 OF 32

Concord & Cumberland Condominiums

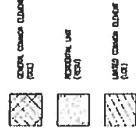
STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

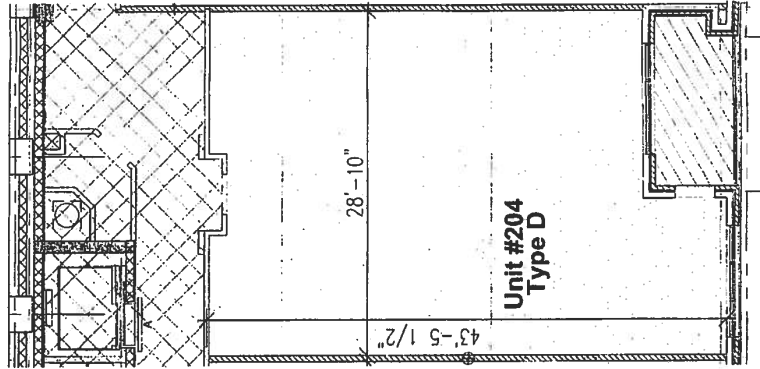
1. ATTORNEY L. JAMES CERTIFIES THAT HE IS A LICENSED ATTORNEY AND IS THE ATTORNEY FOR THE PROJECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS FOR THE CONDOMINIUMS ARE TRUE AND CORRECT AND THAT THE PLANS AND SPECIFICATIONS ARE IN ACCORDANCE WITH THE ACT OF CONDOMINIUMS AS FILED WITH AND APPROVED BY THE ACT OF CONDOMINIUMS.

CONDOMINIUM SITE NO. 204

BK T642P6528



DATE 2017 DAY OF JULY YEAR 2017
REGISTERED ARCHITECT / DATE
SIGNED AND EXEMPTED BEFORE ME DATE
DATE 2017 DAY OF JULY YEAR 2017
SIGNED AND EXEMPTED BEFORE ME DATE
DATE 2017 DAY OF JULY YEAR 2017



AREA TABULATION DATA	
HEATED AREA - TERRACE	1,177 SF
TOTAL GROSS AREA	1,222 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #204
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BL T642P6529

STATE _____
COUNTY _____

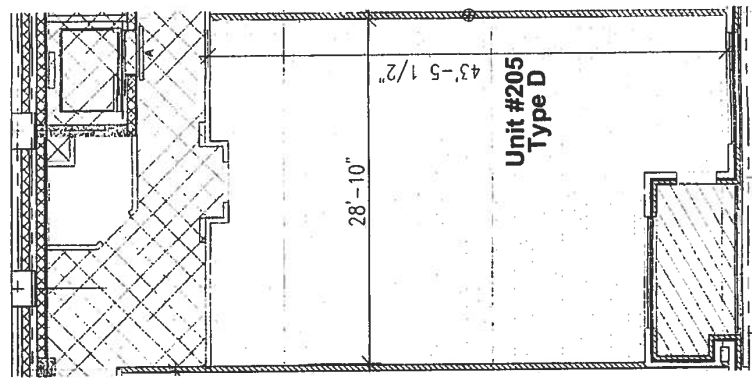
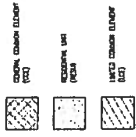
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, _____, REGISTERED ARCHITECT IN THE STATE OF _____, CERTIFY THAT HE IS A LICENSED ARCHITECT AND THAT THE PLANS OR DRAWINGS OF THE CONDOMINIUM SUBDIVISION, INCLUDING THE BUILDING AS FIED HEREIN, HAVE BEEN PREPARED BY HIM OR UNDER HIS CLOSE PERSONAL SUPERVISION AND APPROVED BY THE STATE OF CHARLESTON.

CONDOMINIUM UNIT NO. _____

2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONDOMINIUM SUBDIVISION, INCLUDING THE BUILDING AS FIED HEREIN, HAVE BEEN PREPARED BY HIM OR UNDER HIS CLOSE PERSONAL SUPERVISION AND APPROVED BY THE STATE OF CHARLESTON.

THE _____ UNIT OF _____ REGISTERED ARCHITECT _____ DATE _____
SHOWN AND DESCRIBED BEFORE ME _____ COMMISSIONER _____
THE _____ UNIT OF _____ DATE _____
APPROVED BY ME _____ COMMISSIONER _____
WITNESSES MY HAND AND SEAL OF OFFICE _____
AT CHARLESTON, SOUTH CAROLINA, THIS _____ DAY OF _____, 2020.



AREA TABULATION DATA		
HEATED AREA	1,127 SF	
TERRACE	95 SF	
TOTAL GROSS AREA	1,222 SF	



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #205
SCALE: 1/16"=1'-0"

Concord & Cumberland Condominiums

STATE SOUTH CAROLINA COUNTY CHARLESTON

06592491 T642PG530

SCOTT, BY SIGNING OVERSEAS, AND

- [illegible]

CONCOMITANT SYMPTOMS NO.:

10

FILED _____ MAY 10, 2007
DAY OF _____ JULY 2007

REGISTERED ARCHITECT / \$419

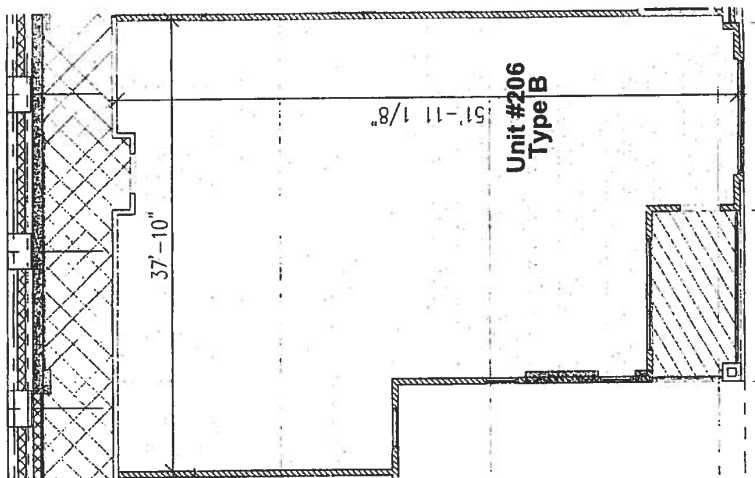
SIGNATURE _____
SUBSCRIBED BEFORE ME CAROL DUM

TESTED _____ DAY OF _____ JULY 2007

[Signature]

NOTARY PUBLIC IN COMMISSION EXPIRES:
NOVEMBER 9, 2007

NOVEMBER 9, 2007



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #206

SCALE: 3/16"=1'-0"

AREA TABULATION DATA	
HEATED AREA TERRACE	1,615 SF 100 SF
TOTAL GROSS AREA	1,715 SF



Concord & Cumberland Condominiums

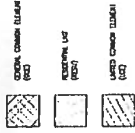
8K T642P6531

STATE: SOUTH CAROLINA
COUNTY: CHARLESTON

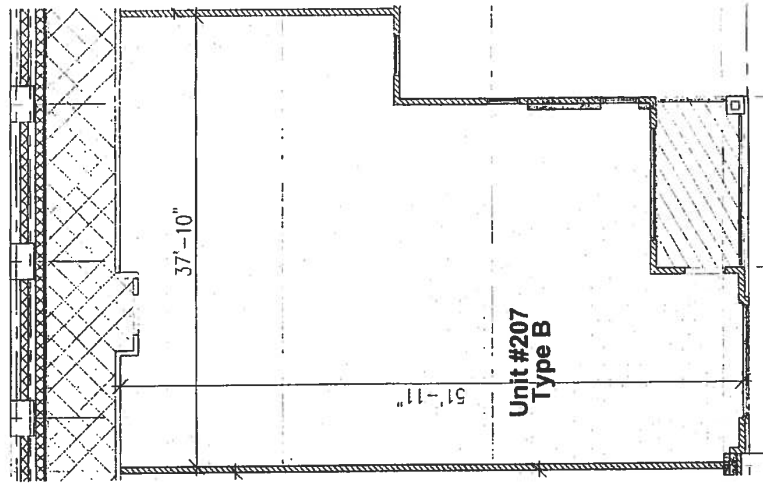
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. ALL INFORMATION CONTAINED HEREIN IS A TRUE AND ACCURATE REPRESENTATION OF THE FACTS AND CIRCUMSTANCES OF THE PROJECT.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS SUBMITTED TO THE BOARD OF DIRECTORS OF THE CONDOMINIUM ARE AN ACCURATE COPY OF THE PLANS AND SPECIFICATIONS OF THE BUILDING AS FILED WITH AND APPROVED BY THE CITY OF CHARLESTON.
3. SUCH PLANS OR PLANS TRULY AND ACCURATELY DEPICT THE BUILDING AND THE BUILDING'S LOCATION, AND THE BUILDING'S LOCATION AND DIMENSIONS OF THE BUILDING AS SHOWN ON THE PLANS.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTUALLY OBSERVED THE BUILDING, COMPARED WITH THE SAME PLANS OR SPECIFICATIONS, AND THAT SUCH PLANS OR SPECIFICATIONS TRULY AND ACCURATELY DEPICT THE BUILDING'S LOCATION, DIMENSIONS AND BUILDING.

CONDOMINIUM UNIT #207



THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA. I HAVE REVIEWED THE PLANS AND SPECIFICATIONS AND I CERTIFY THAT THEY COMPLY WITH THE CITY OF CHARLESTON ORDINANCES AND THE SOUTH CAROLINA CONDOMINIUM ACT. I HAVE ALSO REVIEWED THE PLANS AND SPECIFICATIONS AND I CERTIFY THAT THEY COMPLY WITH THE CITY OF CHARLESTON ORDINANCES AND THE SOUTH CAROLINA CONDOMINIUM ACT.



AREA TABULATION DATA	
HEATED AREA:	1,615 SF
TERRACE:	100 SF
TOTAL GROSS AREA:	1,715 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #207
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

OR T642PG532

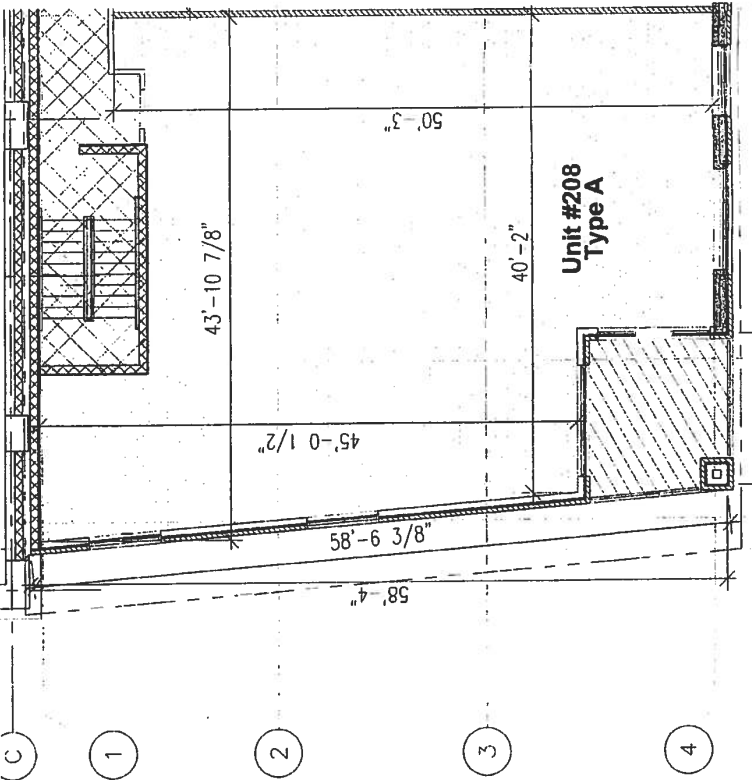
STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, CHARLES E. BOWEN, CERTIFY THAT I AM A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS HAVE BEEN PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL CITY, STATE AND FEDERAL REQUIREMENTS AND THAT SUCH PLANS OR DRAWINGS FULLY AND ACCURATELY REPRESENT THE LATEST AS BUILT TO THE BEST KNOWLEDGE AND BELIEF.

CONDOMINIUM SUITE NO. 208

DATE: 2020 MAY 15 DAY OF MAY 2020
REGISTERED ARCHITECT: CHARLES E. BOWEN
DATE: 2020 MAY 15 DAY OF MAY 2020
REGISTERED BEFORE ME: CHARLES E. BOWEN
NOTARY PUBLIC
UNITED STATES OF AMERICA



AREA TABULATION DATA	
HEATED AREA- TERRACE	1,958 SF
TOTAL GROSS AREA	2,108 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #208

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

8K T642PG533

STATE SOUTH CAROLINA
COUNTY CHARLESTON

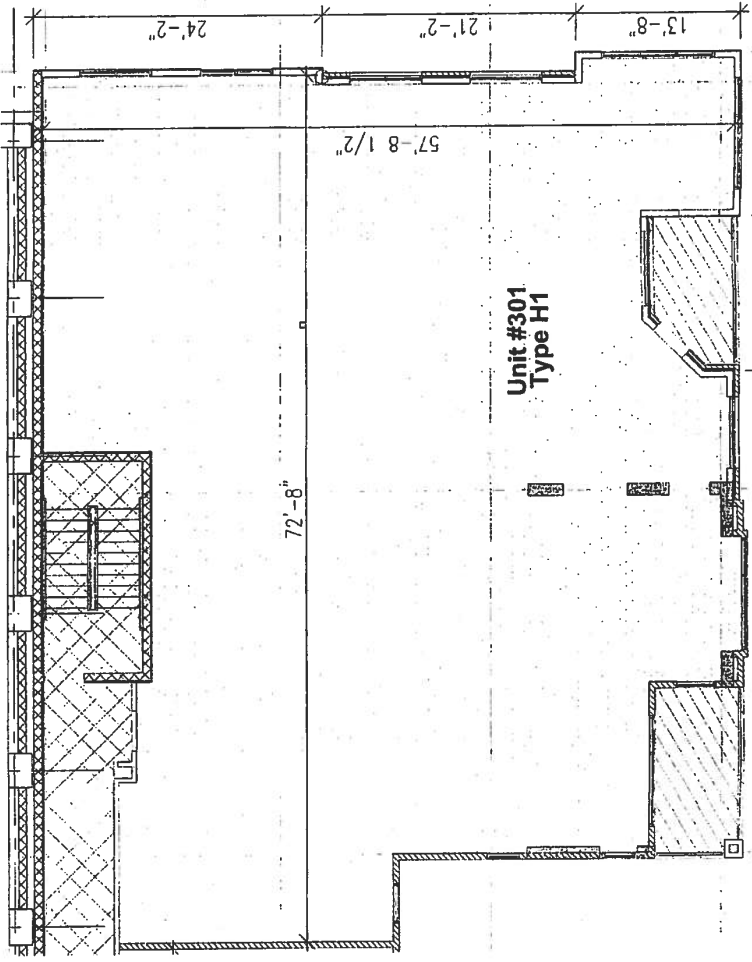
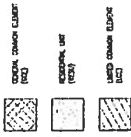
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. I, JAMES C. DUNN, ARCHITECT, HAVE PREPARED THE PLANS FOR THE CONDOMINIUM UNIT SHOWN HEREON.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR ARCHITECTURAL DETAILS SHOWN HEREON ARE AN ACCURATE COPY OF THE PLANS AND DETAILS AS FILED WITH AND APPROVED BY THE OFFICE OF RECORDS.

CONDOMINIUM UNIT NO. 301

3. SUCH PLANS OR PLANS FULLY AND ACCURATELY SHOW THE UNIT'S LOCATION AND AREA, AND THE LOCATION AND AREA OF THE COMMON AREAS AND THE LOCATION AND AREA OF THE COMMON AREAS.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS COMPLETED THE REQUIRED SURVEYING AND MEASUREMENTS AND THAT SUCH PLANS OR PLANS FULLY AND ACCURATELY SHOW THE UNIT'S LOCATION AND AREA, AND THE LOCATION AND AREA OF THE COMMON AREAS AND THE LOCATION AND AREA OF THE COMMON AREAS.

THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A duly Licensed Architect in the State of South Carolina. My Commission Expires on 07/01/2021. My Commission Number is 12345. My Seal Number is 12345.



AREA TABULATION DATA	
HEATED AREA	1,454
TERRACE	75
TERRACE	100
TOTAL GROSS AREA	3,629 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #301
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

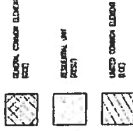
BK T642P6534

STATE SOUTH CAROLINA
COUNTY CHARLESTON

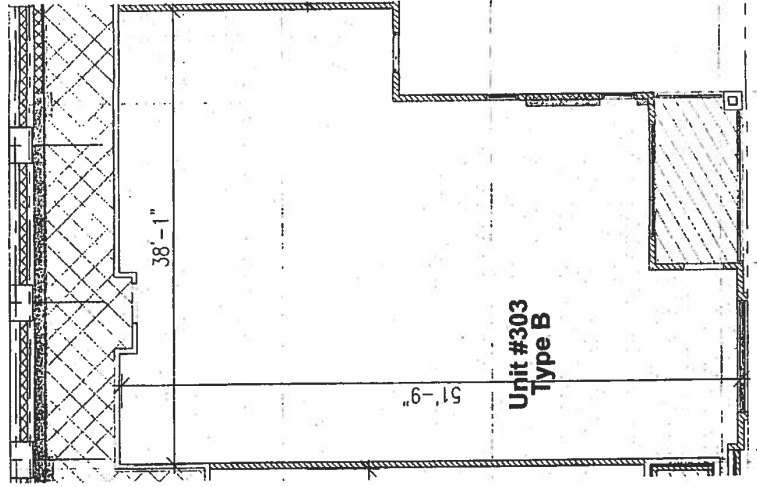
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. ARTIST L. BORG CERTIFIES THAT HE IS A LICENSED ARCHITECT REGISTERED IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS SUBMITTED FOR RECORDATION AND APPROVAL ARE HIS OWN WORK AND THAT HE HAS NOT BEEN ASSISTED BY ANY OTHER PERSON IN THE PREPARATION OF THE PLANS OR SPECIFICATIONS.

CONDOMINIUM UNIT NO. 303



THE 153 DAY OF JULY 2007
I, ARTIST L. BORG, REGISTERED ARCHITECT, 6118
SIGNED AND SUBSCRIBED BEFORE ME, CONCORD BORG
THE 153 DAY OF JULY 2007
I, James E. Borg, of CONDOMINIUM EXPRESS,
RECORDED & 207



AREA TABULATION DATA	
HEATED AREA, TERRACE	1,615 SF
TOTAL GROSS AREA	1,715 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #303

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BK T642PG535

STATE SOUTH CAROLINA
COUNTY CHARLESTON

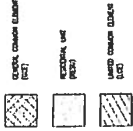
THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. ATTORNEY L. BING CERTIFIES THAT HE IS A LICENSED ATTORNEY IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS, AS FILED WITH AND APPROVED BY THE STATE OF SOUTH CAROLINA, ARE TRUE AND CORRECT.

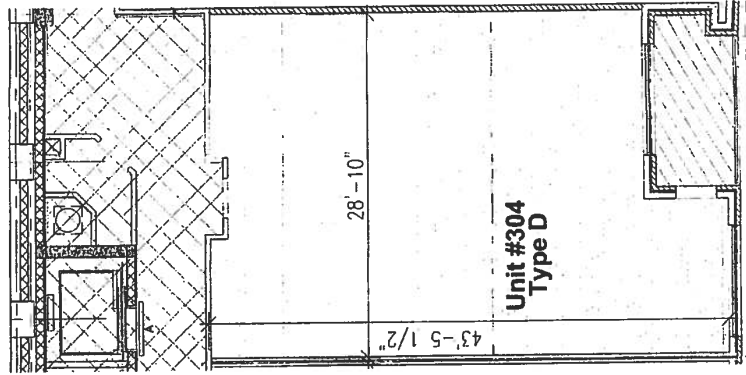
CONDOMINIUM UNIT #304

1. SUCH PLANS OR PLANS FULLY AND ACCURATELY DEPICT THE UNIT, INCLUDING CEILING AND FLOOR ELEVATIONS, WALLS, PARTITIONS AND DIMENSIONS OF THE UNIT, AS WELL AS THE LOCATION OF THE UNIT WITHIN THE BUILDING.
2. THE UNDERSIGNED HEREBY CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS, AS FILED WITH AND APPROVED BY THE STATE OF SOUTH CAROLINA, ARE TRUE AND CORRECT.

CONDOMINIUM UNIT #304



THE 2014 PLAN OF RECORDED ARCHITECT L. BING WAS RECORDED BEFORE ME, CHARLES BING, THE 2014 PLAN OF RECORDED ARCHITECT L. BING WAS RECORDED BEFORE ME, CHARLES BING, THE 2014 PLAN OF RECORDED ARCHITECT L. BING WAS RECORDED BEFORE ME, CHARLES BING.



AREA TABULATION DATA	
HEATED AREA: TERRACE	1,127 SF
TOTAL GROSS AREA	1,272 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #304

SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BK T642P6536

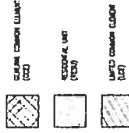
STATE: SOUTH CAROLINA
COUNTY: CHARLESTON

THE UNDERSIGNED CERTAINS AS FOLLOWS:

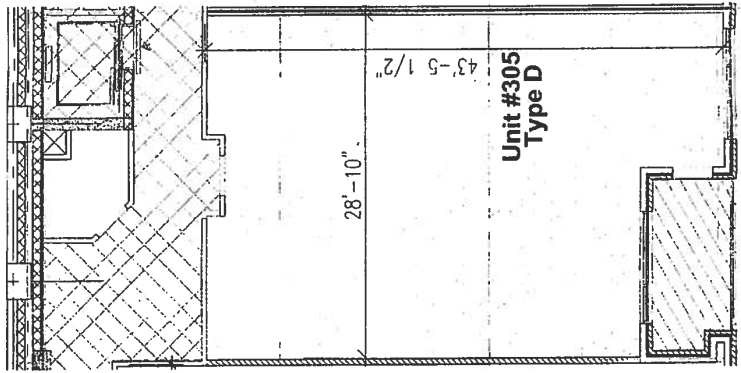
1. JEROME L. LINES, OWNER'S SON, IS A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTAINS THAT THE PLANS OF CONCORD & CUMBERLAND CONDOMINIUMS ARE CORRECTLY DRAWN AND CONFORM TO THE REQUIREMENTS OF THE BUILDING CODE AS THEY ARE AND APPROVED BY THE STATE OF SOUTH CAROLINA.

CONDOMINIUM UNIT NO. 305

3. SUCH PLANS OR PLANS ONLY AND ACCORDING TO THE LAND, LOCATION, CEILING AND FLOOR ELEVATIONS, UNIT NUMBERS AND DIMENSIONS OF THE UNIT, AS BUILT.
4. THE UNDERSIGNED ARCHITECT CERTAINS THAT HE HAS ACTUALLY INSPECTED THE CONDOMINIUMS AND FOUND THEM TO BE CORRECTLY DRAWN AND CONFORM TO THE REQUIREMENTS OF THE BUILDING CODE AS THEY ARE AND APPROVED BY THE STATE OF SOUTH CAROLINA.



THIS PLAN WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA. I HEREBY CERTIFY THAT THE PLANS ARE CORRECT AND CONFORM TO THE REQUIREMENTS OF THE BUILDING CODE AS THEY ARE AND APPROVED BY THE STATE OF SOUTH CAROLINA.



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #305
SCALE: 3/16"=1'-0"

AREA TABULATION DATA	
HEATED AREA:	1,177 SF
TERRACE:	95 SF
TOTAL GROSS AREA:	1,272 SF



Concord & Cumberland Condominiums

STATE SOUTH CAROLINA
COUNTY CHARLESTON

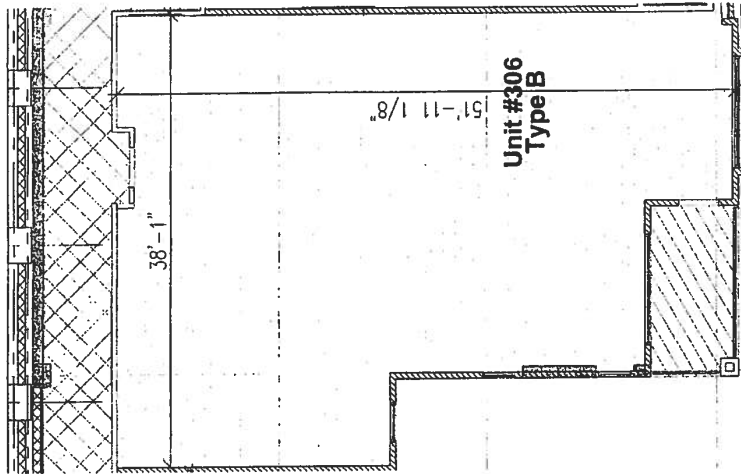
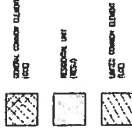
BK T642P6537

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

1. JOHN L. LANE, CERTIFIED THAT HE IS A LICENSED ARCHITECT REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OF CONCORD & CUMBERLAND CONDOMINIUMS WERE PREPARED BY HIMSELF OR UNDER HIS CLOSE PERSONAL SUPERVISION AND THAT HE HAS REVIEWED THE PLANS AND APPROVED THEM AS SHOWN ON THESE PLANS.
3. SUCH PLANS OF PLANS, FULLY AND ACCURATELY REFLECT THE UNIT'S LOCATION, CEILING AND FLOOR ELEVATIONS, UNIT NUMBER AND DIMENSIONS OF THE UNIT, AS SHOWN.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTUALLY MEASURED THE UNIT'S DIMENSIONS AND THAT THE DIMENSIONS SHOWN ON THESE PLANS ARE CORRECT AND THAT THE UNIT'S DIMENSIONS ARE SHOWN AS SHOWN ON THESE PLANS.

CONDOMINIUM SHEET NO. 306

DATE 2/26/20 DAY OF JAN YEAR 2020
REGISTERED ARCHITECT J. L. LANE
SIGNATURE OF ARCHITECT [Signature]
DATE 2/26/20 DAY OF JAN YEAR 2020
SIGNATURE OF OWNER [Signature]
DATE 2/26/20 DAY OF JAN YEAR 2020
SIGNATURE OF COMMONS (OWNER)



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #306

SCALE: 3/16"=1'-0"

AREA TABULATION DATA	
HEATED AREA-TERRACE:	1,615 SF
TOTAL GROSS AREA:	1,715 SF



Concord & Cumberland Condominiums

STATE: SOUTH CAROLINA
COUNTY: CHARLESTON

BOOK T64296538

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

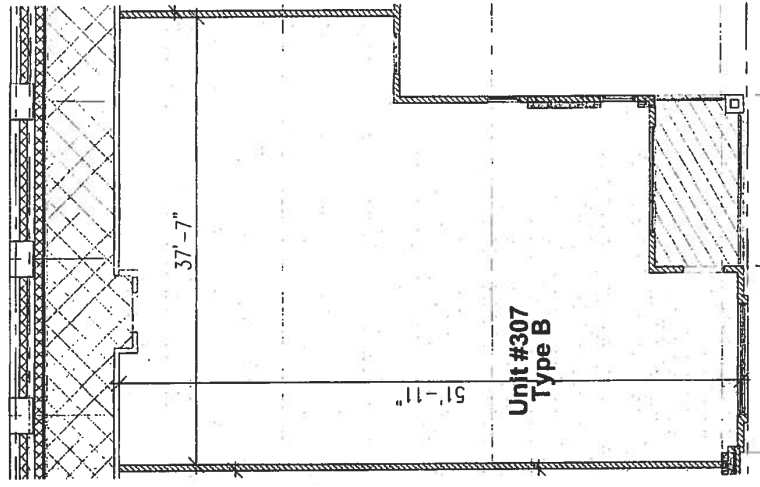
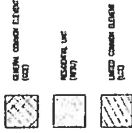
1. I, DAVID C. DUNN, CERTIFY THAT I AM A LICENSED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR DRAWINGS OF THE CONCORD & CUMBERLAND CONDOMINIUMS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND AS THEY WERE PREPARED BY THE OFFICE OF CHARLESTON.

CONDOMINIUM UNIT NO. 307

3. SUCH PLANS OR PLANS SHALL AND ACCURATELY REFLECT THE LAYOUT, LOCATION, CEILING AND FLOOR ELEVATIONS, THE NUMBER AND DIMENSIONS OF THE UNITS, AS SHOWN.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS PERSONALLY INSPECTED THE CONDOMINIUMS AND THAT SUCH PLANS OR DRAWINGS TRULY AND ACCURATELY REFLECT THE LAYOUT, AS SHOWN, IN HIS BEST KNOWLEDGE AND BELIEF.

THIS 20th DAY OF JULY, 2020, REGISTERED ARCHITECT I, DAVID C. DUNN, HAVE SIGNED THESE PLANS OR DRAWINGS BEFORE ME, CLERK OF COURT, IN THE PRESENCE OF 2 WITNESSES, DAVID C. DUNN AND DAVID C. DUNN, BOTH OF WHOM ARE RESIDENTS OF THE STATE OF SOUTH CAROLINA.

NOTARIAL PUBLIC



AREA TABULATION DATA	
HEATED AREA:	1,615 SF
TERRACE:	100 SF
TOTAL GROSS AREA:	1,715 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #307
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

OK T64295540

STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

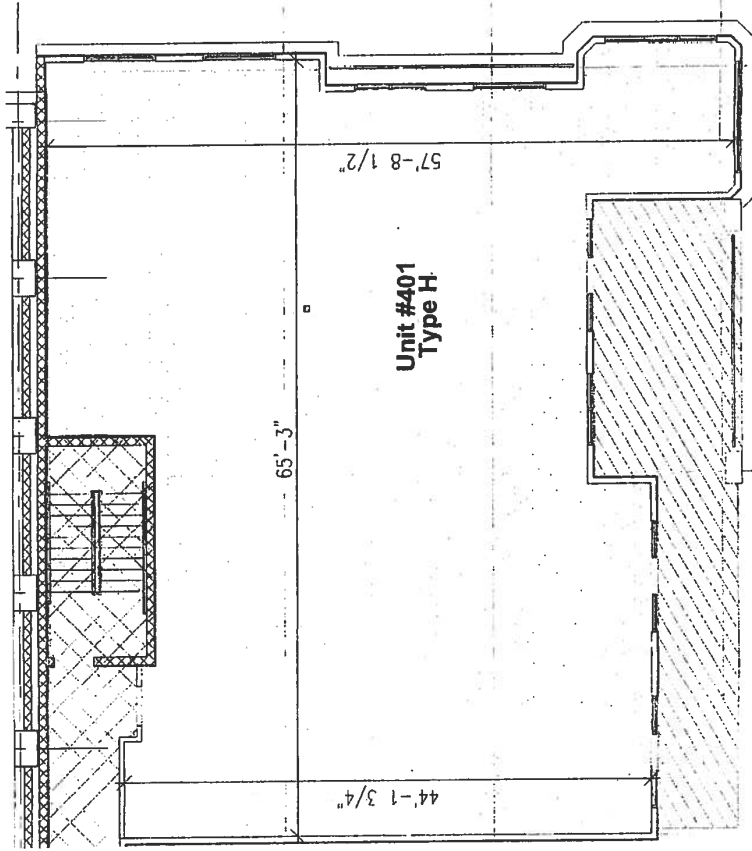
1. I, LESTER J. LINES, CERTIFY THAT I AM A LICENSED ARCHITECT REGISTERED IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR SPECIFICATIONS OF THE CONCORD & CUMBERLAND CONDOMINIUMS WERE PREPARED BY HIMSELF OR UNDER HIS CLOSE PERSONAL SUPERVISION AND THAT HE HAS ACCURATELY REPORTED THE UNIT'S AS SHOWN TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

CONDOMINIUM SHEET NO. 401

THIS PLAN OR PLANS FIRST AND ACCURATELY DEPICT THE UNIT'S LOCATION, CLING AND EXISTING ELEVATIONS, UNIT NUMBERS AND DIMENSIONS OF THE UNIT'S AS SHOWN TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS ACTUALLY INSPECTED THE UNIT'S AND THAT THE PLANS OR SPECIFICATIONS OF THE UNIT'S ACCURATELY REPORTED THE UNIT'S AS SHOWN TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

DATE OF PREPARATION: NOVEMBER 1, 2017
DATE OF REVISION: NOVEMBER 1, 2017
DATE OF RECORDING: NOVEMBER 1, 2017



AREA TABULATION DATA	
HEAD AREA: TERRACE	2,926 SF
TOTAL GROSS AREA	477 SF
	1,403 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC
UNIT #401
SCALE: 3/16"=1'-0"

Concord & Cumberland Condominiums

BK T64295542

STATE SOUTH CAROLINA
COUNTY CHARLESTON

THE UNDERSIGNED CERTIFIES AS FOLLOWS:

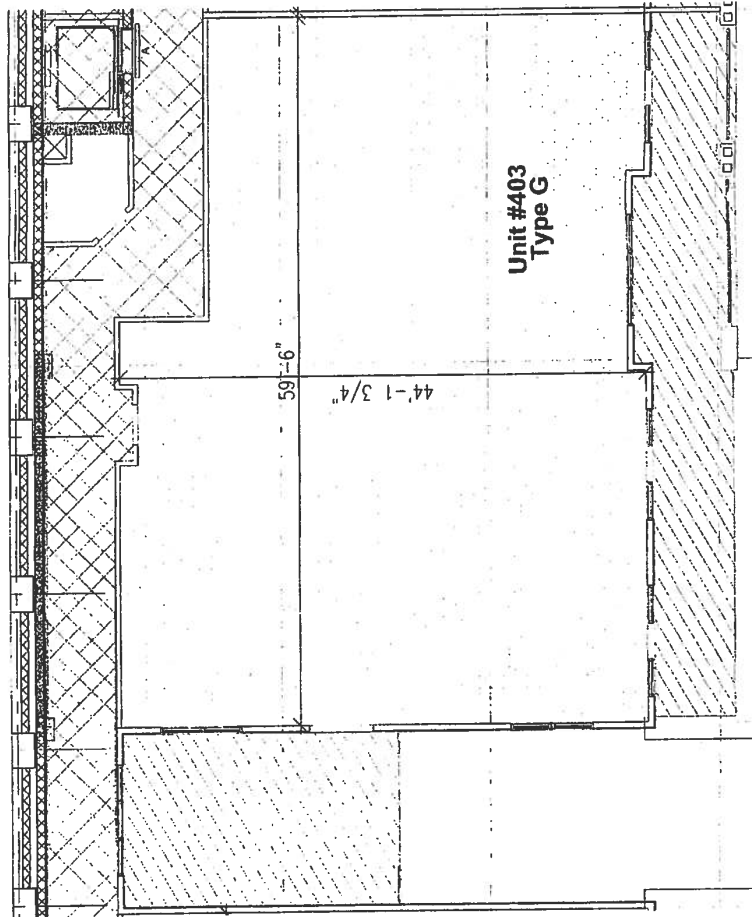
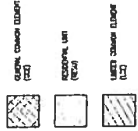
1. STRELL JAMES CERTIFIES THAT HE IS A LICENSED REGISTERED ARCHITECT IN THE STATE OF SOUTH CAROLINA.
2. THE UNDERSIGNED ARCHITECT CERTIFIES THAT THE PLANS OR EXHIBITS OF THE CONCORD & CUMBERLAND CONDOMINIUMS ARE HIS OWN WORK OR THAT HE HAS PREPARED THEM IN CONJUNCTION WITH AN ARCHITECT FIRM AND THAT HE HAS BEEN FULLY AND COMPLETELY INFORMED BY THE STATE OF CHARLESTON AS TO THE RULES AND REGULATIONS OF THE STATE OF CHARLESTON.

CONDOMINIUM SUITS IN:

643

3. SEEN PLANS OF PLANS DULY AND ACCURATELY DEPICT THE LAYOUT, LOCATION, COORDINATE AND OTHER INFORMATION UNIT NUMBER AND DIMENSIONS OF THE SUITS AS SHOWN.
4. THE UNDERSIGNED ARCHITECT CERTIFIES THAT HE HAS FULLY AND COMPLETELY INFORMED THE STATE OF CHARLESTON AS TO THE RULES AND REGULATIONS OF THE STATE OF CHARLESTON AS TO THE RULES AND REGULATIONS OF THE STATE OF CHARLESTON AS TO THE RULES AND REGULATIONS OF THE STATE OF CHARLESTON.

DATE 10/1/2017 DAY OF MONDAY MONTH OF OCTOBER YEAR 2017
NOTED BY James Strell REGISTERED ARCHITECT
DATE 10/1/2017 DAY OF MONDAY MONTH OF OCTOBER YEAR 2017
NOTED BY James Strell REGISTERED ARCHITECT



AREA TABULATION DATA	
HEATED AREA:	2,178 SF
TERRACE:	341 SF
TERRACE:	427 SF
TOTAL GROSS AREA:	3,146 SF



ADDRESS: 175 CONCORD STREET, CHARLESTON, SC

UNIT #403

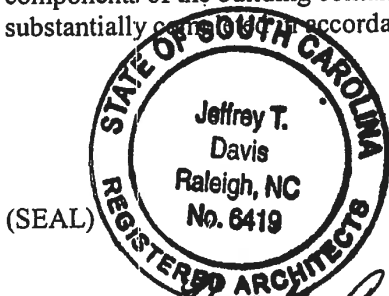
SCALE: 3/16"=1'-0"

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ARCHITECT'S CERTIFICATION

[Pursuant to S.C. Code § 27-31-110]

I, JEFFREY DAVIS, a licensed South Carolina Architect, hereby certifies that, to the best of the Architect's knowledge, information and belief, the observable and accessible configuration of the structures, the floor plans and elevations of Building No. _____ being filed simultaneously with the Master Deed of CONCORD AND CUMBERLAND Horizontal Property Regime graphically show the layout, locations, dimensions, area and unit numbers of each of the TWENTY SEVEN (27) apartments therein, and with the dimensions, areas and location of the common elements affording access to each such apartment, and all structural components of the building containing or comprising the apartments thereby created are substantially in accordance with the plans.



Jeffrey T. Davis
 Licensed Architect #6419

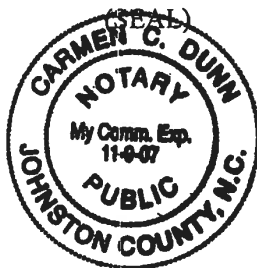
STATE OF North CarolinaCOUNTY OF Wake

I, a Notary Public of the County and State aforesaid, certify that Jeffrey T. Davis being duly sworn personally appeared before me this day and acknowledged the due execution of the foregoing document.

Witness my hand and official seal this 26th day of July, 2007.

Carmen C. Dunn
 Notary Public

My Commission Expires:

11-9-2007

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Exhibit "C"**Schedule of Assigned Values, Percentage Interests and Votes**

This is a schedule of Assigned Values, Percentage Interests in the Common Elements and number of votes appurtenant to Units in Concord and Cumberland Horizontal Property Regime. There is one (1) Building containing twenty-seven (27) Units. The Assigned Values are for purposes of calculating Percentage Interests and votes only and has no relationship to the actual value of a Unit.

Concord and Cumberland Horizontal Property Regime			
Unit Numbering	Assigned Value	Percentage Interest	Votes
101	\$2,000	4.25532%	2.00
102	\$1,500	3.19149%	1.50
103	\$1,500	3.19149%	1.50
104	\$1,000	2.12766%	1.00
105	\$1,000	2.12766%	1.00
106	\$1,500	3.19149%	1.50
107	\$1,500	3.19149%	1.50
108	\$2,000	4.25532%	2.00
201	\$2,000	4.25532%	2.00
202	\$1,500	3.19149%	1.50
203	\$1,500	3.19149%	1.50
204	\$1,000	2.12766%	1.00
205	\$1,000	2.12766%	1.00
206	\$1,500	3.19149%	1.50
207	\$1,500	3.19149%	1.50
208	\$2,000	4.25532%	2.00
301	\$3,500	7.44681%	3.50
303	\$1,500	3.19149%	1.50
304	\$1,000	2.12766%	1.00
305	\$1,000	2.12766%	1.00
306	\$1,500	3.19149%	1.50
307	\$1,500	3.19149%	1.50
308	\$2,000	4.25532%	2.00
401	\$3,000	6.38298%	3.00

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Concord and Cumberland Horizontal Property Regime			
Unit Numbering	Assigned Value	Percentage Interest	Votes
402	\$2,500	5.31915%	2.50
403	\$2,500	5.31915%	2.50
404	\$3,000	6.38298%	3.00
	\$47,000	100.00002%	47.00

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CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME

Bylaws

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BY-LAWS

CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME

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BYLAWS**CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME****ARTICLE I****NAME AND LOCATION****1.1 Name and Location.**

The name of the corporation is CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, hereinafter referred to as the "Association." The principal office of the Association shall be located at the Project, or at such other place as may be designated by the Board.

ARTICLE II**DEFINITIONS****2.1 Incorporation.**

The definitions contained in the Master Deed are incorporated by reference herein.

2.2 The Master Deed.

"Master Deed" shall mean and refer to the Master Deed of Concord and Cumberland Horizontal Property Regime recorded in the Office of the Register of Deeds ("ROD") for Charleston County, South Carolina, and subsequent amendments thereto. The Master Deed has been executed and recorded pursuant to the South Carolina Horizontal Property Act, S.C. Code Section 27-31-10, et. seq. (1976, as amended). The terms and conditions of the Master Deed, including, but not limited to, provisions of the Master Deed prescribing duties, responsibilities and powers concerning property and Association administration and management; member voting; levying assessments for the maintenance, repair and replacement of general and limited common elements of the Regime; adoption of Rules and Regulations; imposition of fines; remedies for violations of covenants, conditions and restrictions of the Master Deed and these Bylaws; mandatory and voluntary alternative dispute resolution; reconstruction of the Regime and application of insurance proceeds in the event of a casualty loss are hereby incorporated in these Bylaws by reference, and shall apply, pursuant to and as may be required by the Horizontal Property Act, as if fully set forth herein. Conflicting provisions of the Articles of Incorporation, these Bylaws and the Master Deed shall be resolved pursuant to Section 11.2 below of these Bylaws.

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ARTICLE III**MEETING OF MEMBERS AND VOTING****3.1 Annual Meeting.**

The first meeting of the Members, whether an annual or a special meeting, shall be held on such day and at such time as the Board, upon majority vote, shall determine and which shall occur not more than twelve (12) months following the date of the close of the sale of the first Unit in the Regime. Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board.

3.2 Special Meetings.

Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing five percent (5%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the five percent (5%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with the Nonprofit Corporation Act.

3.3 Notice and Place of Meetings.

Unless otherwise provided in the Master Deed, the Articles of Incorporation, in these By-Laws, or in the Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) but not more than sixty (60) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing five percent (5%) of the total voting power of the Association, written notice of such meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the Members; or (c) amending the Articles of Incorporation. Meetings shall be held within the Project or at a meeting place within the same county, as close to the Project as possible.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, upon a written ballot, or in person or by proxy, either before or after the

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meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

3.4 Quorum.

Unless otherwise provided herein, in the Master Deed, the Articles of Incorporation, or the Nonprofit Corporation Act, the presence of Members representing a majority of the Percentage Interests, casting votes in a written ballot, or voting in person or by proxy at a meeting duly called, shall constitute a quorum for the transaction of business; provided, however, in the absence of a Member's actual presence or representation by proxy or by delivery of a written ballot, if so provided by the Board, the Member shall be deemed present and the Board shall have the power and authority to vote for and in behalf of such Member deemed to be present. Notice of the meeting shall provide the manner in which the Board will cast the votes of absent Members that are deemed present as aforesaid. The Members present at a duly called or held meeting at which a quorum may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Members to leave less than such required quorum, provided that Members representing twenty percent (20%) of the total votes of the Association remain present in person and/or by proxy. Except as otherwise provided in the Master Deed or in these Bylaws, any action taken shall be approved by a majority of the votes cast by the number of Members required to constitute such quorum. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

3.5 Ballots and Representative Voting.

(a) Written Ballots.

Any vote of Members on a matter that would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered to every Member by the Association. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the votes cast by ballot represent or exceed the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (1) indicate the record date for Members eligible to vote; (2) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (3) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of directors, which shall be by plurality); (4) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be

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counted in the vote to be taken; and (5) state that in the event a ballot is not returned, either voting for or against the matter, the Board of Directors shall cast such vote in behalf of such Member in the manner set forth in the ballot solicitation. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies.

All of the provisions of this Section 3.5(b) are subject to Section 16.9 of the Master Deed. To the extent that a provision set forth in this Section is inconsistent with Section 16.9 of the Master Deed, the provisions of Section 16.9 of the Master Deed shall control. At all meetings of Members, each Member may vote by ballot, if so provided by the Board, or may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Unit, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the Nonprofit Corporation Act, or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

3.6 Membership and Voting.

All Owners, including the Developer (as defined in the Master Deed), shall be entitled to such number of votes assigned to the Owner's Unit as shall be set forth in Exhibit "C" to the Master Deed, which are calculated by reference to the Owner's Percentage Interest in the Regime. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine as provided in the Master Deed, but in no event shall more than the assigned vote be cast with respect to any Unit. In the absence of a Member's actual presence or representation by proxy or

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by delivery of a written ballot, if so provided by the Board, the Member shall be deemed present and the Board shall have the power and authority to vote for and in behalf of such Member deemed to be present, a further provided in Section 6.10 of these Bylaws below.

(a) Approval by Members.

Except as otherwise provided in the Master Deed, the Articles of Incorporation, these By-Laws, or the Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority.

(b) Prorata Voting.

Notwithstanding the assignment of votes based upon the Owner's Percentage Interest and as reflected in Exhibit "C" to the Master Deed, and as further provided in Section 11.2(b) of the Master Deed, and if such vote assignment otherwise provides disproportionate votes among the Owners, at the option of the Board of Directors and as a convenience to the Association, any vote of the Association may be taken on an alternative basis under which each Class A Member shall be entitled to one vote for each Unit owned. Any vote by the Association which is conducted pursuant to this Section 3.6(b) and Section 11.2(b) of the Master Deed shall be re-counted pursuant to the assigned votes set forth on Exhibit "C" to the Master Deed upon the prompt petition to the Board of Directors by any Class A Member and if the outcome falls within the statistical margin of error for being altered by virtue of the use of this alternate means of counting votes.

3.7 Developer's Right to Disapprove Board and Committee Decisions.

This Section (b) may not be amended during the Transition Period, as defined in the Master Deed, without the express written consent of the Developer.

(a) During the Transition Period, the Developer shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section (b). This veto power shall be exercisable only by the Developer, its successors, and assigns who specifically take this power in a recorded instrument.

(b) No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(i) In the absence of the physical presence of any employee of the Developer who waives written notice, the Developer shall have been given written notice of each meeting and the actions approved at the meeting of the Board or any committee. Such written notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time; and

(ii) The Developer shall have and is hereby granted a veto power over any such action, policy, or program approved by any committee or the Board of Directors and to be taken by any committee or Board or the Association or any individual member of the

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Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Developer, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions of these Bylaws. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

3.8 Eligibility to Vote.

Voting rights attributable to Units shall not vest until the Association has levied Assessments against those Units. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Unit and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Master Deed. A Member's good standing shall be determined as of the record date established in accordance with Section 3.9. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing. Votes allocated to Units owned by the Association are not eligible to vote and may not be cast.

3.9 Record Dates.

(a) Record Dates Established by the Board.

For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, or in the Nonprofit Corporation Act. The record dates established by the Board pursuant to this Section shall be as follows:

(i) Record Date for Notice of Meetings.

In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(ii) Record Date for Voting.

In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(iii) Record Date for Action by Written Ballot Without Meeting.

In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

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(iv) Record Date for Other Lawful Action.

In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(v) "Record Date" Means as of the Close of Business.

For purposes of this subparagraph (a), a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

(b) Failure of Board to Fix a Record Date.

If the Board, for any reason, fails to establish a record date, rules set forth in the Nonprofit Corporation Act shall apply:

3.10 Action Without Meeting.

Any action that may be taken at any annual or special meeting of Members (except the election of Directors) may be taken without a meeting in accordance with the provisions of the Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

3.11 Conduct of Meetings.

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the Nonprofit Corporation Act. Any Member of the Association may attend meetings of the Board, except when the Board adjourns to executive session to consider litigation, matters that relate to the formulation of contracts with third parties, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the Board. In any matter relating to the discipline of an Association Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

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ARTICLE IV**BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE****4.1 Number.**

A Board of Directors, all directors of which must be Members of the Association, or an officer, director, employee or agent of a Member, including Developer, shall manage the affairs of the Association. The initial Board of Directors shall consist of three (3) Directors who shall be appointed by the Developer. The Developer shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to the Master Deed until the expiration of the Transition Period. Within sixty (60) days after the expiration of the Transition Period, the Members shall elect five (5) Directors. The Association shall call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, such special meeting of the Members to elect the Board of Directors, or the date on which the Association shall count the written ballots distributed to the Members with such notice or the election of the Board of Directors. Each year thereafter, the Members shall elect such number of Directors as shall exist whose terms are expiring.

4.2 Term of Office.

The election of Directors shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However, at the meeting of the Association following expiration of the Transition Period held to elect five (5) Directors or the date following expiration of the Transition Period when written ballots are to be counted for the election of such Directors pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next three (3) nominees receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected.

4.3 Removal; Vacancies.

A Director appointed by the Developer may only be removed by the Developer, otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by sixty-seven percent (67%) of the votes of the Members voting by written ballot, if so provided by the Board, or voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Director may be elected at the same meeting at which the vacancy is created by the removal of the Director. A Director whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than 10 days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of a Director, the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Director. A successor Director shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

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4.4 Compensation.

No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

4.5 Indemnification of Corporate Agents.

The Association shall indemnify any present or former Director, officer, employee or other agent of the Association to the fullest extent authorized under the Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination.

The Board, or a committee appointed by the Board in its sole discretion, shall make nomination for election to the Board of Directors from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Board shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election.

The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Master Deed. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Directors at a meeting shall be by secret written ballot. Voting for Directors may also be conducted by written ballot pursuant to Section 3.5(a).

ARTICLE VI

MEETINGS OF DIRECTORS

6.1 Regular Meetings.

Regular meetings of the Board of Directors shall be held at least annually at such place within the Project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists with the Project, the Board shall select a room as close as possible to the Project. Should a regularly scheduled meeting fall upon a legal

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holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

6.2 Special Meetings.

Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

6.3 Quorum: Vote of the Board.

A majority of the Directors then in office (but not less than two (2) shall constitute a quorum for the transaction of business by the Board of Directors. Every act performed or decisions made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.4 Executive Session.

The Board may, with approval of a majority of the Directors present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.5 Telephone Meetings.

Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

6.6 Waiver of Notice.

The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (i) a quorum is present, and (ii) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minute. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.7 Notice of Adjourned Meeting.

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal

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notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.8 Action Without Meeting.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

6.9 Notices Generally.

Notice of any meeting of the Board of Directors, whether regular or special, shall be given to each Director by one (1) of the following methods; (i) by personal delivery; (ii) written notice by first class mail, postage prepaid; (iii) by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; (iv) by telegram, charges prepaid; or (v) by facsimile transmission to the fax number of the Directors or to e-mail address of the Directors, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Director's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however, notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company, faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

6.10 Vote of Board in Behalf of Absent Members Deemed Present.

With respect to all matters intended to be put before the members for vote at any regular or special meeting, the Board of Directors shall by majority vote determine the manner in which the Board will cast votes for and in behalf of absent Members deemed present pursuant to Section 3.4 above.

6.11 Parliamentary Procedure at Meetings.

All meetings of the Board shall be conducted in accordance with the general principles of parliamentary procedure. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

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ARTICLE VII**POWERS AND DUTIES OF THE BOARD OF DIRECTORS****7.1 Duties.**

It shall be the duty of the Board of Directors to:

(a) Maintenance.

Perform the maintenance described in the Master Deed;

(b) Insurance.

Maintain insurance as required by the Master Deed;

(c) Discharge of Liens.

Discharge by payment, if necessary, any lien against the Common Elements and assess the cost thereof to the Member or Members responsible for the existence of the lien;

(d) Assessments.

Fix, levy, collect and enforce Assessments as set forth in the Master Deed;

(e) Expenses and Obligations.

Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

(f) Records.

Cause to be kept a complete record of all its acts and affairs and to present a statement thereof to the Members at the annual meeting of the Members, at any special meeting when such statement is requested in writing by one-fourth (¼) of the Members; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership;

(g) Supervision.

Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(h) Enforcement.

Enforce these Bylaws and the Master Deed;

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(i) Review of Financial Records.

Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components that the Association is obligated to maintain.

(j) Reserve Account Withdrawal Restrictions.

Require that at least two (2) signatures are needed for the withdrawal of monies for the Association's reserve accounts, at least one (1) of which shall be that of a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

(k) Reserve Account Fund Management

The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

(l) Reserve Studies.

At least every five (5) years the Board shall cause an independent analysis of the reserve component of the operating budget to be conducted to confirm that component replacement costs and useful lives are accurately reflected in the reserve allocation.

7.2 Powers. The Board of Directors shall have power to:(a) Manager:

Employ a manager as provided in the Master Deed;

(b) Adoption of Rules; Set Aside Common Element Parking for Handicap.

Adopt rules in accordance with the Master Deed, including rules setting aside Common Element parking spaces as handicap parking only, and adopt rules limiting the number of cars that will be permitted to be parked in the Common Element parking spaces;

(c) Assessments, Liens and Fines.

Levy and collect Assessments and impose fines as provided in the Master Deed.

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(d) Enforcement (Notice and Hearing).

Enforce these Bylaws and/or the Master Deed, provided that at least fifteen (15) days' prior notice of any charges (other than Assessment) or potential discipline or fine and the reasons therefor are given to the Member affected, and that an opportunity is provided for the Member to be heard, orally or in writing not less than five (5) days before the effective date of the discipline or fine (subject to Section 16.5 of the Master Deed and the limitations of such Section), said hearing to be before the Board. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first class or registered mail sent to the last address of the Member as shown on the Association's records.

(e) Contracts.

Contract for goods and/or services in accordance with the Master Deed.

(f) Delegation.

Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Master Deed or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

(g) Appointment of Trustee.

Appoint a trustee as provided in the Master Deed.

(h) Borrowings.

Borrow money (1) for the purpose of improving the Regime, or any portion thereof, (2) for constructing, repairing, maintaining or improving any facilities located or to be located within the Regime, (3) for providing services authorized herein, and, (4) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Elements; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Developer, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

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(i) Other Powers.

In addition to any other power contained herein or in the Master Deed, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act.

7.3 Prohibited Acts.

The Board shall not take any actions prohibited of it under the Master Deed except with the vote or written consent of a majority of the Members other than Developer.

ARTICLE VIII**OFFICERS AND THEIR DUTIES**8.1 Enumeration of Officers.

The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Directors, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

8.2 Election of Officers.

The Developer shall have the sole right to appoint and remove officers during the Transition Period. Thereafter, all officers shall hold office at the pleasure of the Board.

8.3 Term.

The Board shall elect the officers of this Association annually and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments.

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal.

Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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8.6 Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Duties of the Officers.

(a) President.

The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a South Carolina nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

(b) Vice President.

The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary.

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

(d) Treasurer.

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to an Association manager.

ARTICLE IX

COMMITTEES

9.1 Appointment.

An Architectural Review Committee may be appointed as provided in the Master Deed. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (1) take any

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final action on matters which, under the Nonprofit Corporation Act also requires Members' approval; (2) fill vacancies on the Board of Directors or in any committee; (3) amend or repeal Bylaws or adopt new Bylaws; (4) amend or repeal any resolution of the Board of Directors; (5) appoint any other committees of the Board of Directors or the members of those committees; (6) approve any transaction to which the Association is a party and in which one (1) or more Directors have a material financial interest.

ARTICLE X

BOOKS AND RECORDS

10.1 Inspection by Members.

The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board shall prescribe. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

10.2 Rules for Inspection.

The Board shall establish reasonable rules with respect to:

- (i) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (ii) Hours and days of the week when such an inspection may be made;
- (iii) Payment of the cost of reproducing copies of documents requested by a Member.

10.3 Inspection by Directors.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board.

Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Regime, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments

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levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Unit. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

ARTICLE XI

MISCELLANEOUS

11.1 Amendments.

Prior to close of the sale of the first Unit, Developer may amend these Bylaws. After sale of the first Unit these Bylaws may be amended, only as provided in the Master Deed or in the Nonprofit Corporation Act.

11.2 Conflicts.

In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Master Deed and these Bylaws, the Master Deed shall control; and in the case of any conflict between these Bylaws and any required term or condition imposed by the Horizontal Property Regime Act upon the Association and/or the governance of Concord and Cumberland Horizontal Property Regime that is at variance with the Bylaws and is a mandatory provision of such Act, the provisions of the Horizontal Property Regime Act shall control.

11.3 Fiscal Year.

Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
)

TCC OF CHARLESTON, INC.)

Case No.: 2016-CP-10-2955

Plaintiff,)

v.)

CONCORD AND CUMERLAND, LLC.,)

CONCORD & CUMBERLAND HPR,)

LEO HALL, DIANE HALL, BEA H.)

SMITH, MARGARET C. POPE,)

WILLIAM D. FOSTER, JR., GENE G.)

FOSTER, MATTISON J.)

MACGILLIVRAY, TERESA)

MACGILLIVRAY, PAMELA L.)

VAUGHN, NELIA A. PATRICIO, Trustee)

of the Nelia A. Patricio Revocable Trust)

Agreement, STUART D. REEVES,)

EDWARD T. STROM, BARBARA K.)

HENDERSON, JAMES R. CLARKE,)

PAUL A. BRIM, ROBERT K. SEIDL,)

JENNIFER M. SEIDL, ROBERT)

KENNETH SEIDL, II, M. BERT)

STOREY, THOMAS R. MATHER,)

EDWARD T. STROM, 304 CONCORD &)

CUMBERLAND, LLC, MARION M.)

SIMPSON F/K/A MARION MOORE)

MCDONALD SIMPSON, KATHY)

GARDNER, GREGORY J. GARDNER,)

FREEMAN WATERFRONT)

PROPERTIES, LLC, JO-ANN COOPER,)

BETTY Y. SEGAL, ROBERT M. LEVIN)

AND BONITA K. LEVIN, DONALD D.)

LEONARD, BETTY L. BEATTY,)

MATTELLEN, LLC, AND THOMAS R.)

DEBNAM, Trustee of the Trust Agreement)

of Thomas R. Debnam,)

Defendants.)

**TCC OF CHARLESTON, INC.'S
OBJECTION TO PROCEEDING,**

**MEMORANDUM IN OPPOSITION
TO PENDING MOTIONS FOR
SUMMARY JUDGMENT, AND**

**RESPONSE TO MOTION TO
DEPOSIT FUNDS**

TCC of Charleston, Inc. (“TCC”) provides this memorandum in opposition to Concord & Cumberland HPR’s (“the HPR’s”) motion for summary judgment, Betty Beatty’s (“Ms. Beatty’s”) motion for summary judgment, and the HPR’s motion to deposit funds. TCC first notes procedural irregularities with regard to the two summary judgment motions—including that, because the motions deal with foreclosure and lien issues, they should be referred to the Master in Equity—and then addresses the merits of all three motions.

I. Summary Judgment Would Be Premature

The HPR resisted lifting the stay in this matter for over a year but now seeks to bypass the Master in Equity in hopes of securing an expedited ruling on its summary judgment motion and, thereby, an appeal. This Court should decline to do so.

A. The Stay of This Matter

This case was stayed for over three years beginning in January 2017 to allow for arbitration between TCC and the HPR. Following the arbitration, TCC moved to lift the stay in June 2019. The HPR opposed lifting the stay and continued to oppose it pending a decision on its motion to vacate or modify the award, apparently on the basis that the arbitration panel’s jurisdiction would terminate only after that motion was decided. Indeed, following the issuance of the panel’s Final Award on August 12, 2019, the HPR stated in an August 28, 2019 email to the Court:

The HPR’s position is that the Arbitration Panel retains jurisdiction at this point, and thus we have not consented to lift the stay.

Exh. A.

On December 11, 2019—after the filing of its summary judgment motion—the HPR still would not consent to lifting the stay and wrote to undersigned counsel, stating:

We do object to lifting the stay, as we think the Motion to Lift [the stay] is subject to the Motion to Vacate or Correct.

Exh. B.

The HPR's motion to vacate was ultimately denied in January of this year, and the HPR's motion for reconsideration was denied on May 1. **Exh. C.** As the case was effectively stayed from January 2017 until the beginning of this month, there has been no opportunity to take discovery on matters relating to foreclosure, which is the focus of the motions for summary judgment.

B. The HPR's Claim of Urgency

The HPR urged that an approaching deadline to notice an appeal requires this Court to expedite hearing of this motion. This contention is erroneous. First, there is currently no appealable order in this case, as an order denying a motion to vacate an arbitration award is not immediately appealable.¹ As there is no judgment against the HPR, there is no final order disposing of all causes of action currently pending against the HPR that may be appealed.

Second, therefore, until this motion is decided, how would an appeal be taken?

Third, in correspondence with this Court, the HPR stated that its summary judgment motion is unrelated to the matters it would seek to appeal (*see Exh. D; infra* note 6). An appeal stays only those matters related to the questions on appeal. *Jackson v. Speed*, 326 S.C. 289, 311 (1997) ("Although service of notice of an intent to appeal divests the lower court of jurisdiction over the order appealed, the lower court retains jurisdiction over matters not affected by the appeal."). Accordingly, were the order denying the HPR's motion to vacate the award

¹ The South Carolina Arbitration Act lists the arbitration orders that are immediately appealable. S.C. Code § 15-48-200.

appealable, the HPR's summary judgment motion would likely have been able to proceed even during the pendency of an appeal.

C. Now That the Stay Is Lifted

Following the lifting of the stay, TCC served discovery (**Exh. E**) and moved to amend its pleading to reflect the arbitration result affirmed by Judge Jefferson earlier this month. The discovery bears on issues central to the remaining portions of these parties' disputes; the motions for summary judgment should not be ruled upon until the deciding court and the parties have the benefit of this discovery and any follow-up discovery. *Carolina Alliance for Fair Empl. v. S.C. Dep't of Labor, Licensing & Reg.*, 337 S.C. 476, 484, (Ct. App. 1999) (noting summary judgment is not appropriate "where further inquiry into the facts of the case is desirable to clarify the application of the law"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986) ("summary judgment [must] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition").

Further, a motion to amend the pleading has been filed by TCC reflecting the proceedings before the arbitration panel and asserting additional claims resulting from the panel's decision and Judge Jefferson's order. Leave to amend a pleading should be freely granted, Rule 15, S.C.R.C.P. Should leave be granted, any order on the HPR's motion for summary judgment would not dispose of all claims against the HPR.

D. Conclusion

A grant of summary judgment would be procedurally improper for the reasons above. Moreover, TCC has sought to amend its pleading to reflect its pursuit of attorneys' fees pursuant to the mechanics' lien statute. The question of fees was before the arbitration panel by

agreement, as evidenced by both parties' requests for attorneys' fees in proposed orders submitted to the arbitrators. The HPR's proposed order stated:

Further, the Panel agrees to entertain a motion by [the HPR] for payment by TCC of its attorney's fees and expenses incurred in this matter if submitted with *[sic]* 10 days of issuance of this Reasoned Award.

Exh. L. After TCC prevailed in the arbitration, however, the HPR successfully contended that any award of attorneys' fees was not a matter for the panel. Accordingly, TCC has sought leave to assert an additional equitable cause of action against HPR with regard to these fees.

The HPR objected to lifting the stay for a year after arbitration and then represented to this Court that appellate deadlines are imminent in order to prevent TCC from pursuing attorneys' fees or exercising its amendment and discovery rights. A decision on its pending motion for summary judgment would be premature.

II. All Matters Should Be Before the Master in Equity

As noted above, the foreclosure portion of this case was stayed pending arbitration, and the HPR's motion relates specifically to the foreclosure cause of action asserted against all defendants. Foreclosure is an action in equity that must be referred to the Master. Rule 71, S.C.R.C.P.; *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360 (Ct. App. 1993) (noting actions for foreclosure are actions in equity and that the court can refer to the Master *on its own motion*); *see also S.C. Cnty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 95–96 (Ct. App. 2017) (noting that, in foreclosure actions, Rule 53 empowers the Clerk of Court to refer the case to the Master, even without an order of the court).

All matters now pending following the lifting of the stay are equitable. Equitable matters, including matters relating to foreclosure and the validity of mechanics' liens, are properly referred to the jurisdiction of the Master in Equity. TCC therefore objects to these

matters proceeding before this Court and requests that the case be referred to the Master. Such a motion is not required as Rule 53, S.C.R.C.P. empowers the Court or the Clerk of Court to refer the case without a motion.²

III. Ms. Beatty Is Not Entitled to Summary Judgment

Were this Court to consider Ms. Beatty's motion for summary judgment, it should deny it. The basis for Ms. Beatty's motion for summary judgment is that the lien against her property was not perfected because service was not timely completed. This argument fails.

A. Date of Last Work

The mechanic's lien statute requires that a lien be filed and served "within ninety days after he ceases to labor on or furnish labor or materials for such building" in order to be perfected. S.C. Code § 29-5-90. Ms. Beatty argues the last day that labor or material was furnished for the property was March 17, 2016, which was the date of substantial completion listed in the statement of account filed with the amended lien.

Additional work—even minor work—performed after substantial completion extends the period within which the lien must be served. *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 130–32 (2006) (holding delivery of a box of surplus ceiling tiles that was not required under the contract extended the date to serve a lien). As the *Butler* court noted:

The deadline to serve and record a mechanic's lien begins running from the date the last material was furnished or work performed, regardless of whether such material or work is insignificant and regardless of whether the final work is delayed, provided the reason for the delay is not to improperly extend the period for perfecting the lien.

² There is no timeliness issue with this request to refer the case to the Master in Equity, as no motion or notice is required. TCC includes this request in this filing so as to give notice.

Id. at 131.

While the March 17 date was identified as the last day of work in the statement of account filed with TCC's lien,³ it was not the last day labor or materials were provided under the contract and/or at the request of the owner. The project superintendent, Ryan Tomberlin, was onsite performing work pursuant to the contract at the owner's request in April, May, and June of 2016. **Exh. F.** Indeed, Mr. Tomberlin returned onsite to perform warranty work as provided for in the contract on June 7–9, 2016.

Ms. Beatty was personally served with the amended lien and suit on June 22, 2016, only thirteen days after June 9. **Exh. G.** Her argument therefore fails, and her motion for summary judgment must be denied.

B. Service on the Unit Owners Generally

TCC's lien relates to work performed on the common elements at 175 Concord Street pursuant to a contract with the HPR. The Master Deed defines the HPR (there, the "Association") as "an association of and limited to Owners of the Units" (**Exh. H** at § 1.1) and establishes that it "will be made up of all the Owners of Units in the Regime." **Exh. H** at § 2.1. The HPR has broad powers and duties under its Bylaws and Master Deed, including to "[l]evy and collect Assessments" and "[d]ischarge by payment, if necessary, any lien against the Common Elements." **Exh. I** at §§ 7.1, 7.2.

³ A lien is not invalidated on the basis of an error in the statement of account. S.C. Code § 29-5-100.

The HPR was served with the lien and suit to foreclose on June 15, 2016.⁴ **Exh. J.** Counsel representing the HPR and numerous unit owners was granted an indefinite extension to file responsive pleadings. Rule 5(b)(1), S.C.R.C.P. provides that service may be made on counsel representing a party. Discovery has been served requesting information establishing which unit owners retained counsel and when, which may bear on the determination of the date of service of those owners (including Ms. Beatty). Summary judgment would be premature prior to this discovery being conducted and followed up on.

C. Avoidance of Service

Numerous defendants sought to avoid service of the pleadings. The attached affidavit of John Gamble establishes that the HPR changed the building's door code after several unit owners had been served to thwart effective service on the remaining owners. **Exh. K.** These owners are estopped from arguing untimely service. In addition, many owners are non-residents of South Carolina, as to whom the time to serve may be tolled. Discovery will establish these facts.

IV. The HPR Is Not Entitled to Summary Judgment

Should this Court reach the HPR's motion,⁵ it should likewise be denied. The HPR contends that Section 27-31-230 of the South Carolina Horizontal Property Act relieves it of any obligation to satisfy the lien filed by TCC. This is erroneous.

The purpose of this provision in the statute was not to extinguish a future lienor's rights as to horizontal property regimes; rather, it was to prevent a developer from encumbering the

⁴ Whether service on the HPR constitutes service of the individual homeowners is a matter to be decided by the Master in Equity as part of determining entitlement to fees under the mechanics' lien statute.

⁵ Whether a lien may be foreclosed against a Horizontal Property Regime is squarely within the jurisdiction of the Master in Equity.

interests of the various unit-owners by giving a lien against the whole property. *Resolution Tr. Corp. v. Eagle Lake & Golf Condos.*, 310 S.C. 473, 476–77 (Ct. App. 1993) (noting the purpose of the statute “is to prevent an individual condominium owner or in this case, the developer, from encumbering the interests of others by giving a lien against the whole property once the master deed is filed”). The statute was not intended to abrogate valid lien rights; it cannot preclude a lien against the property that (i) relates to work on common areas of the building *contracted for by the HPR*, and (ii) was, as will be developed in further discovery, properly filed and served upon the HPR and the individual unit owners.

Further, the HPR’s bylaws set forth the duties of the HPR, including contracting for and performing maintenance as to the common elements and “[d]ischarg[ing] by payment, if necessary, *any lien against the Common Elements . . .*” **Exh. I** at § 7.1(c) (emphasis added). The foreclosure claim against the HPR seeks to compel this action, and the statute cannot relieve the HPR of obligations set forth in its own bylaws.

However, as argued *supra*, the motion is premature. The HPR seeks the ability to file an appeal in this matter in order to delay a ruling on TCC’s entitlement to attorneys’ fees.⁶ It cannot

⁶ As Mr. Ford stated in an email to the Court requesting the HPR’s motion be scheduled for hearing:

Our Notice of Appeal on the Arbitration issue heard by Judge Jefferson is due on June 1, 2020. The issue being presented in the Motion for Summary Judgment is important to this case but is unrelated to the appealable issue. As such, we would greatly appreciate the opportunity to have this motion heard as soon as possible and before our June 1, 2020 Notice of Appeal deadline for purposes of efficiency - my understanding is that the Notice of Appeal will automatically stay the entire case, and we would have to take additional costly and timely steps to file a motion to lift the stay in order to have our motion for summary judgment heard.

Exh. D.

appeal here without a final order disposing of all the causes of action pending against it, hence its request for an expedited ruling on its summary judgment motion. The HPR cannot escape or delay determination of this liability by attempting to manufacture an appeal, and its effort to prematurely obtain summary judgment for this purpose ought to be rejected by this Court.

V. Depositing Funds in Court

TCC does not object to the HPR depositing funds with this Court. TCC disagrees, however, that the deposit would (i) satisfy the HPR's obligations to TCC or (ii) halt the accrual of interest. Determination of the effect of the deposit of these funds would be premature at a time when TCC's full damages have not yet been determined.

As stated above, TCC seeks an award of its attorneys' fees from the HPR as the prevailing party under the mechanics' lien statute.⁷ The HPR hopes to lodge an appeal to delay any ruling as to TCC's entitlement to fees by obtaining an order on the causes of action currently pending against it and depositing with the Court the amount awarded in arbitration. The HPR cannot deny or delay TCC's pursuit of these amounts by depositing funds in court.

Second, interest under the contract between TCC and the HPR continues to accrue and is not stopped by depositing the funds into Court. *Renaissance Enterprises v. Ocean Resorts, Inc.*, 334 S.C. 324, 327 (1999) ("In conclusion, a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract."). No judgment has been entered, so there is no judgment interest accruing that would be stopped either.

Accordingly, depositing the funds into Court would neither stop the interest nor serve as a satisfaction of the arbitration award to facilitate an appeal by the HPR.

⁷ TCC submits this is yet another matter for decision by the Master in Equity.

VI. Conclusion

For the reasons stated, this case ought to be referred to the Master in Equity, including for a ruling on the pending motions, as all remaining issues are equitable. In the alternative, the motions for summary judgment ought to be denied, and any depositing of funds with the Court ought to be held to have no effect on the accrual of interest.

Respectfully submitted,

EPTING & RANNIK, LLC

This 22nd day of May, 2020
Charleston, SC

/s/ Jaan G. Rannik
Jaan G. Rannik
46A State Street
Charleston, South Carolina 29401
843-377-1871
843-377-1310 (fax)
jgr@epting-law.com

ATTORNEY FOR TCC OF CHARLESTON, INC.

EXHIBIT A

Angela Gross

From: Ford, Cordes <Cordes.Ford@wbd-us.com>
Sent: Wednesday, August 28, 2019 12:14 PM
To: Caroline Crisler. Leonard; Andrew K. Epting; Laura Dukes Beck
Cc: Martha S. Dennis; Jaan Rannik; Walden, Andrew
Subject: RE: TCC v. Concord and Cumberland, 2016-CP-10-2955

All -

The HPR's position is that the Arbitration Panel retains jurisdiction at this point, and thus we have not consented to lift the stay. In short, the Panel has recently modified its prior Orders and made new findings, which we are reviewing.

I am not opposed to setting the Motion to Lift the Stay for hearing, but if it is set too soon, it may well be premature. I agree it would not be prudent to add the Motion to Vacate for hearing at this time.

Kind regards - Cordes

Cordes Ford

Partner
 Womble Bond Dickinson (US) LLP

d: 843-720-4631
 m: 843-425-7270
 e: Cordes.Ford@wbd-us.com

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From: Caroline Crisler. Leonard <cleonard@charlestoncounty.org>
Sent: Wednesday, August 28, 2019 12:01 PM
To: Andrew K. Epting <ake@epting-law.com>; Laura Dukes Beck <LBeck@charlestoncounty.org>
Cc: Ford, Cordes <Cordes.Ford@wbd-us.com>; Martha S. Dennis <MDennis@charlestoncounty.org>; Jaan Rannik <jgr@epting-law.com>
Subject: RE: TCC v. Concord and Cumberland, 2016-CP-10-2955

EXHIBIT B

Angela Gross

From: Angela Gross
Sent: Friday, May 22, 2020 2:58 PM
To: Angela Gross
Subject: FW: hearing next week

From: Ford, Cordes <Cordes.Ford@wbd-us.com>
Sent: Wednesday, December 11, 2019 5:00 PM
To: Andrew K. Epting <ake@epting-law.com>; Walden, Andrew <Andrew.Walden@wbd-us.com>
Cc: Jaan Rannik <jgr@epting-law.com>
Subject: RE: hearing next week

Drew –

We do object to lifting the stay, as we think the Motion to Lift is subject to the Motion to Vacate or Correct. When the court resolves the latter, perhaps Monday, or perhaps sometime thereafter, and perhaps after remand, the stay might then be lifted, and the most recent motion would become ripe.

We are prepared to have the prior motion to vacate subsumed into (or substituted by) the most recent one and heard Monday if the Court allows. In the event the stay is lifted, do you object to going forward with our most recent motion?

Thanks and best – Cordes

Cordes Ford

Partner
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EXHIBIT C

TCC OF CHARLESTON, INC.	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
	)	Case No.: 2016-CP-10-02955
Plaintiff,	)	
	)	
v.	)	
	)	
CONCORD AND CUMERLAND, LLC.,	)	
CONCORD & CUMBERLAND HPR,	)	
LEO HALL, DIANE HALL, BEA H.	)	
SMITH, MARGARET C. POPE,	)	
WILLIAM D. FOSTER, JR., GENE G.	)	
FOSTER, MATTISON J.	)	
MACGILLIVRAY, TERESA	)	
MACGILLIVRAY, PAMELA L.	)	
VAUGHN, NELIA A. PATRICIO, Trustee	)	
of the Nelia A. Patricio Revocable Trust	)	
Agreement, STUART D. REEVES,	)	
EDWARD T. STROM, BARBARA K.	)	
HENDERSON, JAMES R. CLARKE,	)	
PAUL A. BRIM, ROBERT K. SEIDL,	)	
JENNIFER M. SEIDL, ROBERT	)	
KENNETH SEIDL, II, M. BERT	)	
STOREY, THOMAS R. MATHER,	)	
EDWARD T. STROM, 304 CONCORD &	)	
CUMBERLAND, LLC, MARION M.	)	
SIMPSON F/K/A MARION MOORE	)	
MCDONALD SIMPSON, KATHY	)	
GARDNER, GREGORY J. GARDNER,	)	
FREEMAN WATERFRONT	)	
PROPERTIES, LLC, JO-ANN COOPER,	)	
BETTY Y. SEGAL, ROBERT M. LEVIN	)	
AND BONITA K. LEVIN, DONALD D.	)	
LEONARD, BETTY L. BEATTY,	)	
MATTELLEN, LLC, AND THOMAS R.	)	
DEBNAM, Trustee of the Trust Agreement	)	
of Thomas R. Debnam,	)	
	)	
Defendants.	)	

**ORDER ON CONCORD &
 CUMBERLAND HPR'S MOTION TO
 TO ALTER/AMEND**

Presiding Judge:
 Plaintiff's Attorney:

Hon. Deadra L. Jefferson
 Jaan Rannik, Esq., and
 Andrew Epting, Jr., Esq.

Defendants Concord and
 Cumberland, LLC's
 Attorney:

Cordes Ford, Esq.

Defendant Concord and
Cumberland HPR's

Attorney:

Andrew Walden, Esq.

Date of Hearing:

December 16, 2019

Court Reporter:

Lorraine Harris

THIS MATTER comes before the Court by way of Defendant Concord & Cumberland HPR's (hereinafter "HPR") Motion to Reconsider, Alter, or Amend Judgment pursuant to Rule 59 (e), SCRCP, filed February 10, 2020. HPR asks the Court to Amend its Order, January 30, 2020 Denying HPR's Motion to Vacate or Modify and Granting Plaintiff's Motion to Lift Stay. HPR filed its Motion to Reconsider on February 10, 2020. TCC filed its response in opposition to HPR's Motion on March 12, 2020. HPR filed its reply to TCC's response on April 22, 2020. Having considered HPR's Motion, as well as the various interests balanced by the Court at the time of the ruling, HPR's Motion to Reconsider, Alter, or Amend is hereby Denied.¹

FINDINGS OF FACT AND PROCEDURAL HISTORY

On February 27, 2014, HPR contracted with TCC to perform a scope of work at 175 Concord. The contract was cost plus a fee, with a guaranteed maximum price ("GMP") of \$3,923,939.00. Corrected Arbitration Award at 3. The contract consisted on an A102 and A201 as modified by the parties. Id. HPR designated Tom Mather as its initial owner's representative and the project architect was Shawn Mellin of Glick Boehm and Associates ("GBA"). Id. Generally, TCC was to declad the building, apply waterproofing, replace the windows, and apply new cladding. Id.

A Notice to Proceed was issued on July 28, 2014. Id. The contract required the work to be substantially completed 306 days after the Notice to Proceed, specifically May 30, 2015. Id.

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

Substantial competition occurred on March 8, 2016. Id. It is undisputed that the condition of the building was different from what TCC contemplated when it originally submitted its bid. Id. During the course of the work, at least 134 proposed change orders (“PCOs”) were requested by TCC. Id. \$1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to \$5,877,084.00 as of February 2016. Id. The paid PCOs were paid on a cost-plus basis. Id. This dispute involves architect approved but unpaid PCOs, architect approved but unpaid retainage, and remaining unapproved PCOs. Id.

The matter came before an arbitration panel by the Order of the Honorable Roger M. Young, Sr. dated December 30, 2016, staying the case and compelling arbitration between the parties. Id. at 2. The Arbitration Panel (“the Panel”) conducted a merits hearing on January 21 – 24, 2019. Each part was represented by counsel and presented exhibits and witness testimony. The Panel issued an Award on April 16, 2019. Id. The Panel subsequently issued a Corrected Arbitration Award on August 12, 2019 which “corrects, amends, and supplements” its April 16, 2019 Award. Id. at 1. HPR filed a Motion to Change the Corrected Arbitration Award on September 7, 2019, which the Panel denied in its October 23, 2019 order.

On June 17, 2019, TCC filed a Motion to Lift Stay, and on July 16, 2019, HPR filed a Motion to Vacate or Modify the Panel’s Corrected Arbitration Award. A hearing was held on December 16, 2019 before this Court, and on January 30, 2020, the Court issued an Order Granting TCC’s Motion to Lift Stay and Denying HPR’s Motion to Vacate the Panel’s Corrected Arbitration Award.

CONCLUSIONS OF LAW

“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

I. HPR’s contention that the Court’s January 30, 2020 Order relies on new findings of fact as to the Conditional Release and Waiver of Liens is without merit.

HPR argues:

The Court’s Order is improperly based on new findings of fact. On page 8, the Court states: “The Court finds no error or manifest disregard of the law in the panel’s findings, especially in light of a contemporaneous email from HPR’s agent confirming the agreement.” The Panel made no such finding regarding any “contemporaneous email,” and the Court has no legal basis to make the finding in its Order.

Motion to Reconsider at 3 (emphasis omitted). HPR’s argument is based on the contested Conditional Release and Waiver of Liens (“Lien Waivers”) accompanying each pay application, specifically Pay Application 17.

In its Corrected Arbitration Award, the Panel found that the Lien Waivers were not enforceable in the present circumstances, stating:

Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens. HPR cannot now claim that the Conditional Release and Waiver of Liens bar TCC's claims.

Corrected Award at 5. The record reflects that Lien Waivers were provided with every payment application over the course of the project. However, when issues began to arise with the scope of the project and PCOs, the parties came to an agreement whereby they would resolve certain matters at the conclusion of the project. Corrected Award at 4. ("Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project.")

TCC asserts that this agreement was memorialized by an email between counsel for the parties. The Court did not introduce new evidence or make new findings of fact by referring to this email. However, in light of the fact that the Panel did not explicitly reference the email in its Corrected Award, the Court will clarify that it did not rely on the email in issuing its January 30, 2020 Order. Referencing the email was merely a reflection of the entire record the Panel had access to in reaching its Corrected Award and ultimate conclusion that HPR was estopped from claiming the protections of the Lien Waiver. The Court's reference to the email was harmless error as the Court had a separate basis for concluding there was no manifest disregard of the law by the Panel. As a result, the Court's Order dated January 30, 2020 is modified at Page eight (8) to redact any reference to the email of HPR's agent, as it was not a specific finding of the Panel and not relied upon in this Court's final ruling on the merits.

However, absent consideration of the email, there was sufficient evidence of HPR and TCC's conduct for the Panel to conclude that the Lien Waivers were not controlling, namely, "that TCC had signed Conditional Release and Waivers of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and, made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens." Corrected Award at 5.

Additionally, and more importantly, the Court can discern no manifest disregard of the law or any other violation of S.C. Code Ann. § 15-48-130(a) that would empower the Court to vacate the Panel's Corrected Award. The Panel's conclusion that HPR is estopped from asserting that the Lien Waivers bar TCC's claim is not predicated on a violation of statutory law or a manifest disregard of the law, and therefore the Court will not disturb the Panel's conclusions. Further, as explained supra, the Court did not rely on any new evidence or findings of fact in reaching this conclusion, and referenced the email merely in an observatory capacity based on the entirety of the record presented to the Panel, but in no way relied upon the email to reach its decision. Accordingly, HPR's Motion is respectfully Denied as to this ground.

II. HPR's contention that the Court's January 30, 2020 Order relies on new findings of fact as to the GMP and out-of-scope items is without merit.

Similar to the argument supra, HPR argues that the Court relied on new findings of fact in concluding that there was no evidence of error or manifest disregard of the law in the Panel's finding that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis.

The parties contracted for a guaranteed maximum contract price of \$3,923,030.00. Corrected Award at 3. However, the Panel found that the condition of the building was different from what TCC contemplated when it originally submitted its bid. Id. To address the difference in the condition of the building, TCC submitted at least 134 PCOs, and those PCOs were paid on a

cost-plus basis. Id. This additional work and cost increased the total contract price to \$5,877,084.00. Id.

As addressed supra, the Panel found, “[c]redible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.” Corrected Award at 4. Evidently, sufficient proof existed for the Panel to conclude, “TCC performed additional work outside the original scope of work” which entitled TCC to be paid “a portion of the remaining unapproved PCOs.” Id. at 3-4.

However, in light of the fact that the Panel did not use the exact phrase, “that the GMP provided for in the contract was overcome by the agreement that TCC would fix out-of-scope items and be compensated for those items on a time and material basis,” the Court will clarify. While the Panel phrased the increase to the GMP as “additional costs at the end of the project” on a “cost-plus” basis, and the Court phrased the increase to the GMP as “overcome” by an agreement to be compensated on a “time and material basis,” the difference between the two phrasings is merely semantic, and both phrasings have the same effect. Specifically, that TCC and HPR agreed to address outstanding PCOs and claims at the end of the project, which led to the increase in the GMP. See Corrected Award at 3. (“It is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid. During the course of the work, at least 134 proposed change orders (‘PCOs’) were requested by TCC. \$1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to \$5,877,084.00 as of February 2016. The paid PCOs were paid on a cost-plus basis.”); see id. at 4. (“Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project.”). While the Court may have used

different phrasing, the difference is merely semantic, and the Court did not misstate the substance of the Panel's findings.

Therefore, the Court cannot discern how it introduced new findings of fact that would preclude it from ruling that the Panel made no error or manifestly disregarded the law in concluding that by the agreement of the parties, the additional work and costs overcame the contract's GMP. Finally, the Court can discern no manifest disregard of the law or any other violation of S.C. Code Ann. § 15-48-130(a) that would empower the Court to vacate the Panels' Corrected Award. Accordingly, HPR's Motion is Denied as to this ground. However, to the extent necessary the January 30, 2020 Order of this Court is modified at Page eight (8) to reflect the exact findings of the Panel, which state: "It is undisputed that the condition of the building was different than what TCC contemplated when it originally submitted its bid. During the course of the work, at least 134 proposed change orders ("PCOs") were requested by TCC. \$1,953,145.00 of the PCOs were paid by HPR, increasing the total contract to \$5,877,084.00 as of February 2016. The paid PCOs were paid on a cost-plus basis[;]" "TCC performed additional work outside the original scope of work...[;]" and, "Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project." Corrected Award at 3-4.

III. HPR's contention that the Court did not rule on HPR's argument as to the Panel's October 23, 2019 Order on HPR's Motion for Change of Corrected Arbitration Award is without merit.

After the Panel issued its Corrected Award on August 12, 2019, HPR filed a Motion for Change of Corrected Award on September 7, 2019 ("Motion to Change Corrected Award"), arguing that the Panel made erroneous findings regarding the Lien Waivers and that the Panel awarded upon a matter not submitted to it. Order on HPR Motion for Change of Corrected

Arbitration Award at 1. The Panel issued an Order denying HPR's Motion for Change on October 23, 2019. HPR correctly notes that the Court inadvertently failed to discuss its argument regarding the Panel's October 23, 2019 Order in the Court's January 30, 2020 Order.

In its Corrected Award, the Panel found “that some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens.” Corrected Award at 4-5. In its Motion to Change Corrected Award, HPR argued that the Panel found that “some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens’ of *Payment Application No. 17*.” Order on HPR Motion for Change at 1 (emphasis in original).

This is not what the Panel found. HPR interjected “of Payment Application No. 17” into the Panel's finding where the Panel made no such finding. The Panel addresses this interjection in its October 23, 2019 Order, finding that in its Corrected Award, the Panel concluded that TCC and HPR agreed, prior to Payment Application No. 17, that some of the outstanding PCOs and TCC's claims for additional costs would have to be resolved at the end of the project. The Panel further explained:

Rather, this Panel found from the evidence presented that prior to the submission of Payment Application No. 17 ‘TCC and HPR agreed to address outstanding PCOs and TCC's claims for additional costs at the end of the project.’ This Panel also found evidence that prior to Payment Application No. 17 ‘some of the PCOs and TCC's claims for additional costs were subsequently submitted and paid by the HPR which arose and existed as of the date of the execution of the Conditional Release and Waiver of Liens’ that had been executed by TCC.

Order on HPR Motion for Change of Corrected Award at 1.

HPR argues “any agreement between TCC and HPR that could have somehow indicated that HPR waived, or was not enforcing the Release precedes, not succeeds, Pay Application 17 and the accompanying Release. Clearly, even if there was an agreement to agree that HPR would pay additional costs, such agreement would be superseded by the explicit terms of the later Release.” Motion to Reconsider at 9.

However, this argument was considered and rejected by the Panel. Evidently, sufficient proof existed for the Panel to conclude that HPR and TCC’s agreement to address certain PCOs and costs at the conclusion of the project, coupled with HPR’s conduct of paying PCOs and claims after the execution of other Lien Waivers, estopped HPR from claiming the protections of the Lien Waiver as to Pay Application No. 17. See Corrected Award at 4-5. (“Credible testimony at the hearing was presented and considered by the Panel that TCC and HPR agreed to address outstanding PCOs and TCC’s claims for additional costs at the end of the project...Knowing that TCC had signed Conditional Release and Waiver of Liens, HPR nonetheless agreed to PCOs; signed the Change Orders; and, made payment for claims that may have otherwise been released or barred by the Conditional Release and Waiver of Liens.”) The Court finds that the Panel did not err or manifestly disregard the law in reaching that conclusion. Accordingly, HPR’s Motion is Denied as to this ground.

IV. HPR’s contention that the Court did not rule on the Release document itself is without merit.

HPR argues, “[t]he Court did not rule on or address the Release document itself...” and, “if the Court maintains its denial of the Motion to Vacate, it must do so having determined and held, consistent with the Panel’s factual findings, that the Release was an unambiguous contract, executed by TCC under oath, which was last in time as compared to any other agreement or action

that the Panel found the HPR to have undertaken and upon which the Panel based its disregard of the Release.” Motion to Reconsider at 4.

HPR’s argument is based on a misapprehension of the Court’s scope of authority in ruling on a motion to vacate an arbitration award. Because “[a]rbitration is a favored method of settling disputes in South Carolina,” Pittman Mortg. Co., Inc. v. Edwards, 327 S.C.72, 76 (1997), “[t]he scope of judicial review for an arbitrator’s decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all.” Group III Mgmt., Inc. v. Suncrete of Carolina, Inc., 425 S.C. 141, 149 (Ct. App. 2018) (internal quotations omitted). “Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award.” Pittman, 327 S.C. at 76.

In reviewing an arbitration award, the court’s function is limited “to determin[ing] whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it.” Id. at 150 (internal quotations omitted). Therefore, it is not within the scope of this Court’s authority to rule on or address the Release document itself. Rather, the Court’s only duty is to determine whether the Panel ruled on the Release document without exceeding its power or manifestly disregarding the law.² The Court conducts a thorough inquiry to determine whether the Panel exceeded its power or manifestly disregarded the law on Pages 7 – 10 of its January 30, 2020 Order.

Therefore, the Court will not entertain HPR’s invitation to substitute its interpretation of the Release for the interpretation reached by the Panel in issuing its Corrected Award. Accordingly, HPR’s Motion to Reconsider is Denied as to this ground.

² The Court must also consider whether the Panel violated any of the remaining three statutory grounds enumerated in S.C. Code Ann. § 15-48-130(a) in reaching its award, however, the arbitrators exceeding their authority was the only statutory ground advanced by HPR for vacating the Corrected Award.

V. HPR's contention that the Court did not rule on whether the manifest disregard standard was met is without merit.

HPR contends, “the Court did not consider the circumstances that meet the manifest disregard standard... The Court’s Order does not consider or rule upon whether the manifest disregard standard is met by an arbitration panel’s disregard of unambiguous contract provisions....” Motion to Reconsider at 4.

The Court addressed HPR’s manifest disregard argument on Pages 7 – 8 of its January 30, 2020 Order. Specifically, the Court found that the Panel made express findings consistent with the applicable law and provided reasoned support of those findings. Order on Motion to Lift Stay and Motions to Vacate or Correct Arbitration Award at 7. The Court found, “far from disregarding the law, the panel considered and applied the law, and reached a result that the HPR simply disagrees with. The HPR has not carried its burden of showing the arbitrators manifestly disregarded the law, and this argument for vacating the arbitration award is unavailing.” *Id.* at 8.

Therefore, the Court finds without merit the HPR’s argument that the Court failed to rule upon whether the manifest disregard standard was met. Accordingly, HPR’s Motion to Reconsider is Denied as to this ground.

CONCLUSION

Except as otherwise clarified by the Court *supra*, HPR’s Motion seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of the Motion to Alter or Amend the Judgment. Except as addressed *supra*, HPR has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, HPR’s Motion is heard and respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

April_____, 2020
Charleston, South Carolina
At Chambers



Charleston Common Pleas

Case Caption: Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant,
et al
Case Number: 2016CP1002955
Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-04-30 16:10:51 page 14 of 14

EXHIBIT D

Angela Gross

From: Ford, Cordes <Cordes.Ford@wbd-us.com>
Sent: Tuesday, May 5, 2020 4:49 PM
To: jmccoyle@sccourts.org; jmccoysc@sccourts.org
Cc: LChapman@charlestoncounty.org; jdaigle@yclaw.com; ebuckley@yclaw.com; Andrew K. Epting; Jaan Rannik; Grimball, Henry; Walden, Andrew
Subject: Charleston County Case No.: 2016-CP-10-02955 - Pending Motion for Summary Judgment
Attachments: Motion for Summary Judgment.PDF; Ex. A to MSJ.PDF; Ex. B to MSJ.PDF; Ex. C to MSJ.PDF; Operation of the Trial Courts During the Coronavirus Emergency.pdf

Charleston County Case No.: 2016-CP-10-02955

Dear Judge McCoy and Ms. Maull,

I hope you both are well and staying safe. On behalf of Concord and Cumberland HPR, I am writing to request a hearing on a pending motion for summary judgment that was filed on December 6, 2019. Specifically, we filed the attached motion and exhibits, captioned **Defendant Concord & Cumberland HPR's Motion for Summary Judgment as to Plaintiff's Foreclosure of Mechanic's Lien Cause of Action**. This motion has been pending during resolution of the HPR's Motion to Vacate an Arbitration Award and subsequent Motion for Reconsideration of Judge Jefferson's initial Order, the latter of which Judge Jefferson decided by Order without hearing on May 1.

Our Notice of Appeal on the Arbitration issue heard by Judge Jefferson is due on June 1, 2020. The issue being presented in the Motion for Summary Judgment is important to this case but is unrelated to the appealable issue. As such, we would greatly appreciate the opportunity to have this motion heard as soon as possible and before our June 1, 2020 Notice of Appeal deadline for purposes of efficiency - my understanding is that the Notice of Appeal will automatically stay the entire case, and we would have to take additional costly and timely steps to file a motion to lift the stay in order to have our motion for summary judgment heard.

With that brief background, we would like to request a hearing (either in person or remotely) on this motion pursuant to Paragraph (c)(3) of the South Carolina Supreme Court's Order regarding Operation of the Trial Courts During the Coronavirus Emergency (As Amended April 22, 2020), also attached hereto for your convenience.

Please let us know if you need any additional information in order to consider conducting a remote hearing.

Very respectfully yours,

Cordes Ford

Cordes Ford

Partner
 Womble Bond Dickinson (US) LLP

d: 843-720-4631
 m: 843-425-7270
 e: Cordes.Ford@wbd-us.com

5 Exchange Street
 PO Box 999 (29402)
 Charleston, SC 29401



womblebond dickinson.com



This email is sent for and on behalf of Womble Bond Dickinson (US) LLP. Womble Bond Dickinson (US) LLP is a member of Womble Bond Dickinson (International) Limited, which consists of independent and autonomous law firms providing services in the US, the UK, and elsewhere around the world. Each Womble Bond Dickinson entity is a separate legal entity and is not responsible for the acts or omissions of, nor can bind or obligate, another Womble Bond Dickinson entity. Womble Bond Dickinson (International) Limited does not practice law. Please see www.womblebond dickinson.com/us/legal-notice for further details.

ELECTRONICALLY FILED - 2020 May 22 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2016CP1002955

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

TCC OF CHARLESTON, INC.)

Plaintiff,)

Case No.: 2016-CP-10-2955

v.)

CONCORD AND CUMERLAND, LLC.,)
CONCORD & CUMBERLAND HPR,)
LEO HALL, DIANE HALL, BEA H.)
SMITH, MARGARET C. POPE,)
WILLIAM D. FOSTER, JR., GENE G.)
FOSTER, MATTISON J.)
MACGILLIVRAY, TERESA)
MACGILLIVRAY, PAMELA L.)
VAUGHN, NELIA A. PATRICIO, Trustee)
of the Nelia A. Patricio Revocable Trust)
Agreement, STUART D. REEVES,)
EDWARD T. STROM, BARBARA K.)
HENDERSON, JAMES R. CLARKE,)
PAUL A. BRIM, ROBERT K. SEIDL,)
JENNIFER M. SEIDL, ROBERT)
KENNETH SEIDL, II, M. BERT)
STOREY, THOMAS R. MATHER,)
EDWARD T. STROM, 304 CONCORD &)
CUMBERLAND, LLC, MARION M.)
SIMPSON F/K/A MARION MOORE)
MCDONALD SIMPSON, KATHY)
GARDNER, GREGORY J. GARDNER,)
FREEMAN WATERFRONT)
PROPERTIES, LLC, JOHN FREEMAN,)
JO-ANN COOPER, BETTY Y. SEGAL,)
ROBERT M. LEVIN AND BONITA K.)
LEVIN, DONALD D. LEONARD,)
BETTY L. BEATTY, MATTELLEN,)
LLC, AND THOMAS R. DEBNAM,)
Trustee of the Trust Agreement of Thomas)
R. Debnam,)

Defendants.)

PLAINTIFF'S REQUESTS FOR
PRODUCTION TO DEFENDANTS

TO: THE ABOVE-NAMED DEFENDANTS

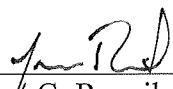
The Plaintiffs, by and through their undersigned attorneys, request the Defendants produce the following described documents, things, or electronically stored information in the care, custody, or control of the Defendants, their attorney(s), and/or other representative(s) or agent(s), for inspection and copying pursuant to Rule 34 of the South Carolina Rules of Civil Procedure.

These requests shall be deemed to continue from the time of service until the time of trial of the action so that information sought, which comes to the knowledge of a party, or her representative or attorney after the original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

1. Please produce all communications in your possession regarding the filing of a lien and lawsuit by TCC of Charleston, Inc. against the HPR and yourself individually.
2. Please produce all notices of or communications relating to all assessments by the HPR since January 1, 2016.

EPTING & RANNIK, LLC

This 22nd day of May, 2020
Charleston, S.C.


Jaan G. Rannik, Esq.
46A State Street
Charleston, South Carolina 29401
Phone: 843-377-1871
Fax: 843-377-1310
E-Mail: jgr@epting-law.com

NOTED
THAT THE COURT HAS ORDERED THAT true and correct copies of this pleading or paper to which this certificate is affixed are served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 22nd day of MAY, 2020 at
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

TCC OF CHARLESTON, INC.)
)
 Plaintiff,)

Case No.: 2016-CP-10-2955

v.)

CONCORD AND CUMERLAND, LLC.,)
 CONCORD & CUMBERLAND HPR,)
 LEO HALL, DIANE HALL, BEA H.)
 SMITH, MARGARET C. POPE,)
 WILLIAM D. FOSTER, JR., GENE G.)
 FOSTER, MATTISON J.)
 MACGILLIVRAY, TERESA)
 MACGILLIVRAY, PAMELA L.)
 VAUGHN, NELIA A. PATRICIO, Trustee)
 of the Nelia A. Patricio Revocable Trust)
 Agreement, STUART D. REEVES,)
 EDWARD T. STROM, BARBARA K.)
 HENDERSON, JAMES R. CLARKE,)
 PAUL A. BRIM, ROBERT K. SEIDL,)
 JENNIFER M. SEIDL, ROBERT)
 KENNETH SEIDL, II, M. BERT)
 STOREY, THOMAS R. MATHER,)
 EDWARD T. STROM, 304 CONCORD &)
 CUMBERLAND, LLC, MARION M.)
 SIMPSON F/K/A MARION MOORE)
 MCDONALD SIMPSON, KATHY)
 GARDNER, GREGORY J. GARDNER,)
 FREEMAN WATERFRONT)
 PROPERTIES, LLC, JOHN FREEMAN,)
 JO-ANN COOPER, BETTY Y. SEGAL,)
 ROBERT M. LEVIN AND BONITA K.)
 LEVIN, DONALD D. LEONARD,)
 BETTY L. BEATTY, MATTELLEN,)
 LLC, AND THOMAS R. DEBNAM,)
 Trustee of the Trust Agreement of Thomas)
 R. Debnam,)
)
 Defendants.)

PLAINTIFF'S INTERROGATORIES
 TO DEFENDANTS

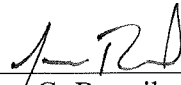
TO: THE ABOVE-NAMED DEFENDANTS

Plaintiff, by and through counsel requests that the Defendants answer each of the interrogatories set forth below in writing and under oath within thirty (30) days after service of these interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

These interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

1. Identify the date or dates you contend you were served with the amended mechanics' lien and statement of account.
2. Identify the manner in which you were served with the amended mechanics' lien and statement of account.
3. Identify the date you were first made aware of the filing of this lawsuit.
4. Identify the date you retained counsel to defend this suit.
5. Identify the amounts you have been assessed by the HPR since January 1, 2016.
6. Identify the date you made payment for each assessments by the HPR since January 1, 2016.
7. Identify where you were residing during the period of June through September, 2016.
8. Identify all dates you were out of state during the period of June through September, 2016.
9. Identify your state of primary residence in 2015 and 2016.

EPTING & RANNIK, LLC


 Jaan G. Rannik, Esq.
 46A State Street
 Charleston, South Carolina 29401
 Phone: 843-377-1871
 Fax: 843-377-1310
 E-Mail: jgr@epting-law.com

This 22nd day of May, 2020
 Charleston, S.C.
 I, [Signature], being duly sworn, depose and say that true and correct copies of the foregoing pleading or paper to which this certificate is affixed were served upon the party(s) named in the action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by registered U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 22 day of MAY, 2020 at
 Charleston, South Carolina

001990

EXHIBIT F

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

TCC OF CHARLESTON, INC.)

Plaintiff,)

Case No.: 2016-CP-10-2955

v.)

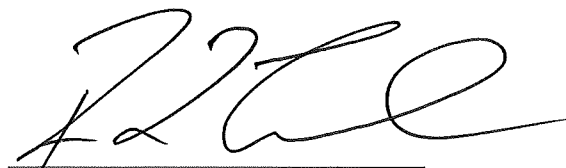
CONCORD AND CUMERLAND, LLC.,)
CONCORD & CUMBERLAND HPR,)
LEO HALL, DIANE HALL, BEA H.)
SMITH, MARGARET C. POPE,)
WILLIAM D. FOSTER, JR., GENE G.)
FOSTER, MATTISON J.)
MACGILLIVRAY, TERESA)
MACGILLIVRAY, PAMELA L.)
VAUGHN, NELIA A. PATRICIO, Trustee)
of the Nelia A. Patricio Revocable Trust)
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HENDERSON, JAMES R. CLARKE,)
PAUL A. BRIM, ROBERT K. SEIDL,)
JENNIFER M. SEIDL, ROBERT)
KENNETH SEIDL, II, M. BERT)
STOREY, THOMAS R. MATHER,)
EDWARD T. STROM, 304 CONCORD &)
CUMBERLAND, LLC, MARION M.)
SIMPSON F/K/A MARION MOORE)
MCDONALD SIMPSON, KATHY)
GARDNER, GREGORY J. GARDNER,)
FREEMAN WATERFRONT)
PROPERTIES, LLC, JOHN FREEMAN,)
JO-ANN COOPER, BETTY Y. SEGAL,)
ROBERT M. LEVIN AND BONITA K.)
LEVIN, DONALD D. LEONARD,)
BETTY L. BEATTY, MATTELLEN,)
LLC, AND THOMAS R. DEBNAM,)
Trustee of the Trust Agreement of Thomas)
R. Debnam,)

Defendants.)

**AFFIDAVIT OF RYAN
TOMBERLIN**

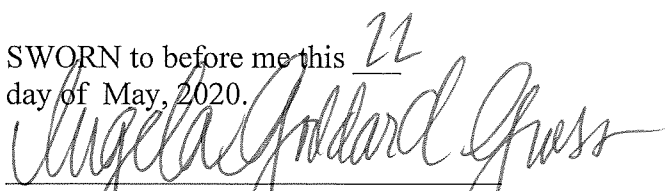
PERSONALLY appeared before me, RYAN TOMBERLIN, who states as follows:

1. My name is Ryan Tomberlin. I am over the age of 18, and I have been a Project Superintendent with Trident for 7 years.
2. I was the Project Superintendent for the project at Concord & Cumberland, located at 175 Concord Street.
3. TCC believed substantial completion of the project was March 17, 2016.
4. As part of completing the work provided for in the contract, and at the request of the owner, Trident performed additional work following substantial completion, including:
 - a. On April 21, 2016, I was onsite supervising the installation of railings on the fourth-floor terrace. Trident managed traffic and operated a lift for a subcontractor, Molony Metals.
 - b. On May 4, 2016, I met the HPR's construction manager, Trey McCraw, onsite to review and verify proper installation of the railings.
 - c. On May 5, 2016, I met Trey McCraw onsite to review potential water intrusion issues.
 - d. From June 7 through June 9, 2016, I was onsite performing warranty work regarding trim at the request of Trey McCraw.
5. The above work was performed because it was necessary to complete the project and the owner requested it and not for purposes of extending any dates relevant to the mechanic's lien statute.
6. Further affiant sayeth naught.



RYAN TOMBERLIN

SWORN to before me this 22
day of May, 2020.


Notary Public for South Carolina

My Commission Expires: 4.26.28

EXHIBIT G

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2016-CP-10-2955

Plaintiff:

TCC OF CHARLESTON

vs.

Defendant:

**CONCORD AND CUMBERLAND, LLC; CONCORD AND CUMBERLAND
HPR ET AL**

For:

Andrew K. Epting, Jr., Esq.
Andrew K. Epting, Jr., LLC
46-A State Street
Charleston, SC 29401

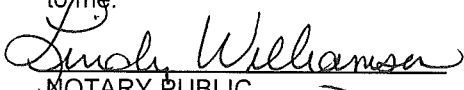
Received by PROCESS SERVICE, INC. to be served on **BETTY BEATTY, 175 CONCORD ST. # 4,
CHARELSTON, SC 29401.**

I, John R. Gamble, being duly sworn, depose and say that on the **22nd day of June, 2016** at 3:47 pm, I:

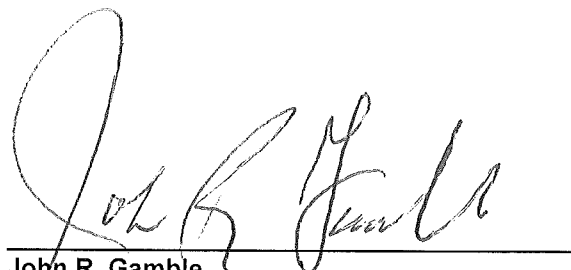
PERSONALLY served by delivering a true copy of the **LETTER; AMENDED LIS PENDENS; AMENDED SUMMONS; AMENDED COMPLAINT; VERIFICATION; AMENDED NOTICE AND CERTIFICATE OF MECHANIC'S LIEN; EXHIBIT A; EXHIBIT B; MOTION TO STAY AND COMPEL ARBITRATION; EXHIBIT A** to: **BETTY BEATTY** at the address of: **175 CONCORD ST. # 4, CHARELSTON, SC 29401.**

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 23rd day
of June, 2016 by the affiant who is personally known
to me.


NOTARY PUBLIC

Commission Expires: 5-6-19



John R. Gamble
PROCESS SERVER

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2016001475

EXHIBIT H

BK U641PG739

THIS MASTER DEED IS SUBJECT TO BINDING ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

STATE OF SOUTH CAROLINA	)	MASTER DEED
	)	CONCORD AND CUMBERLAND
COUNTY OF CHARLESTON	)	HORIZONTAL PROPERTY REGIME

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, Concord & Cumberland, LLC (the "Developer") is a South Carolina limited liability company having its principal place of business located at 1401 Main Street, Suite 650, Columbia, South Carolina 29201; and

WHEREAS, the Developer is the owner of that certain real property (the "Land") more fully described in Exhibit "A" attached hereto located within the community known as Concord and Cumberland, which community includes certain improvements constructed by the Developer in the City of Charleston, Charleston County, South Carolina; and

WHEREAS, the Developer now deems it appropriate to organize a horizontal property regime by duly executing and recording this Master Deed in the Office of the Register of Mesne Conveyances ("RMC") for Charleston County, South Carolina; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Developer hereby submits the Land more fully described in Exhibit "A" attached hereto and all improvements located thereon, together with all easements, rights and appurtenances thereunto belonging, to the provisions of Sections 27-31-10 et seq. of the South Carolina Code of Laws (1976) and hereby creates thereon a horizontal property regime (sometimes termed "condominium ownership") to be known as CONCORD AND CUMBERLAND HORIZONTAL PROPERTY REGIME, subject to the following:

ARTICLE I

Definitions

Section 1.1 Definitions. Unless defined herein or unless the context requires otherwise, the words defined in Section 27-31-20, South Carolina Code of Laws (1976), when used in this Master Deed or any amendment hereto, will have the meaning therein provided. The following words, as well as other defined terms set forth herein, when used in this Master Deed or any amendment or supplement hereto, unless the context requires otherwise, will be deemed to include the singular and plural forms as the context requires and have the following meanings:

"Annual Assessment Period" means the fiscal year of the Association established by the Association's Board of Directors.

"Assessment" means the amount assessed against an Owner and his Unit from time to time by the Association in the manner provided herein.

BK U641 PG 740

"Assigned Value" means the value assigned to each Unit in accordance with Exhibit "C" attached hereto and utilized for purposes of computing the Percentage Interest appurtenant to such Unit, which Assigned Value will not constitute the sales price of the Unit or be relied upon as a representation of the actual value of the Unit.

"Association" means Concord and Cumberland Horizontal Property Regime, being an association of and limited to Owners of the Units located in the Regime in the form of a nonprofit, non-stock membership association which will be incorporated in accordance with the Articles of Incorporation attached hereto as Exhibit "D". In exercising any right or easement granted or reserved to it or to its Board of Directors hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

"Board of Directors" or "Board" means the Board of Directors of the Association, and "director" or "directors" means a member or members of the Board.

"Building" means a structure containing Units.

"Bylaws" means the Bylaws of the Association attached hereto as Exhibit "E," as amended from time to time in accordance with the terms of the Bylaws and this Master Deed.

"Common Elements" means all of the Regime property after excluding the Units, including the following:

1. Easements through the Units for conduits, ducts, plumbing, chimneys, wiring, and other facilities for the furnishing of utility services to Units and the Common Elements; provided, however, such easements through a Unit will be only according to the Plans for the Building, or as the Building is constructed unless otherwise approved by the Unit Owner.
2. An easement of support in every portion of a Unit which contributes to the support of a Building.
3. Easements through the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements.
4. Installation for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the one containing the installation, which installation will include ducts, plumbing, wiring, and other facilities for the rendering of such services.
5. The tangible personal property required for the maintenance and operation of the Units, even though owned by the Association.

When used herein, "Common Elements" will be deemed to include any service provided by the Association in furtherance of the uses and purposes to which any of the aforesaid facilities are put.

BK U641PG743

or such bank or trust company authorized to do trust business in the State of South Carolina and appointed therefor by the Board of Directors.

"Unit" means that part of the Project intended principally for residential use and constituting an "apartment" as defined in the Condominium Act, and situate within the Unit boundaries described in Exhibit "B" attached hereto and in the architect's plans incorporated in and made a part of Exhibit "B", as amended from time to time in accordance with the provisions of this Master Deed. Each Unit will be identified in the architect's plans incorporated in and made a part of Exhibit "B" attached hereto by a specific letter, number or combination thereof, which identification will be sufficient to identify the Unit for all purposes. "Unit" will also mean all the components of ownership held by an Owner, including not only the rights and interests of the Owner in and to the Unit, but also the rights of use of and the undivided interest in the Common Elements. **The Units are unfinished shells to be upfitted and finished by the Owners in accordance with this master Deed and the Rules and Regulations.**

ARTICLE II

Administration

Section 2.1 The Association. The administration of the Regime will be the responsibility of the Association, which will be made up of all the Owners of Units in the Regime. The Regime Documents, as the same may be amended from time to time, will govern the Association and the Owners.

Section 2.2 Membership. Each Owner of a Unit, including the Developer, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of a Unit and ownership of a Unit will be the sole qualification for such membership. In the event that fee title to a Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Mortgagee or any other person who holds an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

Section 2.3 Agreements. The Association will be and hereby is authorized to enter into such contractual arrangements, including without limitation, management contracts, as it may deem necessary or desirable for the administration and operation of the Regime, subject, however, to the following limitations:

(a) Any Regime management agreement entered into during the Transition Period will provide that such contractual arrangement is subject to termination without cause at any time after the expiration of the Transition Period without a penalty upon not more than ninety (90) days prior written notice from the Association, and failing to contain such a provision, the Association will not be bound directly or indirectly by such contractual arrangement following the expiration of such 90-day period.

EXHIBIT I