

2016

**Gables at Sterling Village Homeowners Association, Inc., Plaintiff/  
Appellant v. Castlewood-Sterling Village I. LLC., a Utah Limited  
Liability Company; Jeffrey A. Duke, an Individual; Darren Mansell,  
an Individual; Dan Lybbert, an Individual; Castlewood  
Development, Inc.; Castlewood Builders, LLC, a Utah Limited  
Liability Company; Richard L. Harris, an Individual; And John Does  
1-30, Defendants/Appellees**

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_sc2](https://digitalcommons.law.byu.edu/byu_sc2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

---

**Recommended Citation**

Brief of Appellant, *Gables v Castlewood, Sterling Village LCC*, No. 20160100 (Utah Supreme Court, 2016).  
[https://digitalcommons.law.byu.edu/byu\\_sc2/3417](https://digitalcommons.law.byu.edu/byu_sc2/3417)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (2000– ) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

IN THE SUPREME COURT, STATE OF UTAH

---

GABLES AT STERLING VILLAGE  
HOMEOWNERS ASSOCIATION, INC.,

Plaintiff/Appellant,

v.

CASTLEWOOD-STERLING VILLAGE  
I. LLC., a Utah limited liability company;  
JEFFREY A. DUKE, an individual;  
DARREN MANSELL, an individual;  
DAN LYBBERT, an individual;  
CASTLEWOOD DEVELOPMENT,  
LLC, a Utah limited liability company;  
CASTLEWOOD DEVELOPMENT,  
INC.; CASTLEWOOD BUILDERS,  
LLC, a Utah limited liability company;  
RICHARD L. HARRIS, an individual;  
and John Does 1-30,

Defendants/Appellees.

Appellate Case No. 20160100-SC

---

ADDENDA TO APPELLANT BRIEF

---

Heinz J. Mahler

Shane Peterson

**KIPP & CHRISTIAN, P.C.**

10 Exchange Place, 4<sup>th</sup> Floor

Salt Lake City, Utah 84111

[hjmahler@kipbandchristian.com](mailto:hjmahler@kipbandchristian.com)

[speterson@kipbandchristian.com](mailto:speterson@kipbandchristian.com)

*Attorneys for Castlewood-Sterling Village*

*I, LLC, Castlewood Development LLC,*

*Castlewood Development, Inc., Castlewood*

*Builders, LLC, Richard L. Harris and*

*Jeffrey A. Duke*

A. Richard Vial (10875)

Edward W. McBride, Jr. (8236)

Jeffery J. Owens (10973)

David A. Cox (15826)

**VIAL FOTHERINGHAM LLP**

515 South 400 East, Suite 200

Salt Lake City, UT 84111

Telephone: (801) 355-9594

Fax: (801) 359-1246

*Attorneys for Plaintiff/Appellant*

FILED  
UTAH APPELLATE COURTS

NOV 10 2016



---

IN THE SUPREME COURT, STATE OF UTAH

---

GABLES AT STERLING VILLAGE  
HOMEOWNERS ASSOCIATION, INC.,

Plaintiff/Appellant,

v.

CASTLEWOOD-STERLING VILLAGE  
I. LLC., a Utah limited liability company;  
JEFFREY A. DUKE, an individual;  
DARREN MANSELL, an individual;  
DAN LYBBERT, an individual;  
CASTLEWOOD DEVELOPMENT,  
LLC, a Utah limited liability company;  
CASTLEWOOD DEVELOPMENT,  
INC.; CASTLEWOOD BUILDERS,  
LLC, a Utah limited liability company;  
RICHARD L. HARRIS, an individual;  
and John Does 1-30,

Defendants/Appellees.

Appellate Case No. 20160100-SC

---

ADDENDA TO APPELLANT BRIEF

---

Heinz J. Mahler  
Shane Peterson  
**KIPP & CHRISTIAN, P.C.**  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
[hjmahler@kipbandchristian.com](mailto:hjmahler@kipbandchristian.com)  
[speterson@kipbandchristian.com](mailto:speterson@kipbandchristian.com)  
*Attorneys for Castlewood-Sterling Village  
I, LLC, Castlewood Development LLC,  
Castlewood Development, Inc., Castlewood  
Builders, LLC, Richard L. Harris and  
Jeffrey A. Duke*

A. Richard Vial (10875)  
Edward W. McBride, Jr. (8236)  
Jeffery J. Owens (10973)  
David A. Cox (15826)  
**VIAL FOTHERINGHAM LLP**  
515 South 400 East, Suite 200  
Salt Lake City, UT 84111  
Telephone: (801) 355-9594  
Fax: (801) 359-1246  
*Attorneys for Plaintiff/Appellant*

## TABLE OF CONTENTS

Trial Exhibit 31 (Declaration).....	1
Trial Exhibits 5, 33, 39, 40 .....	2
Trial Exhibit 106 (Sean Gores Estimate).....	3
Trial Exhibit 208 (Marler Estimate) .....	4
Trial Exhibits 107, 109, 110, 112, 113, 120, 123, 124 .....	5
Trial Exhibit 96 (Western Arch. Report) - photos 1d.06; 3d.19; 5a.03, 5b.26, 5b.27, 6d.09, 7d.01, 8d.07; 9d.13, 12d.03, 12d.33, 13a.02, 13b.20, 13d.08, 14a.02; 14a.04, 14a.08. ....	6
Trial Exhibit 101,102, 114, 115, 96 – photos 6d.03; 14a.09; 11d.03; 6d.01, 6d.08, 6d.10, 11b.21, 11b.22, 11b.27, 14d.01, 15b.18 .....	7
Trial Exhibit 3 .....	8
Trial Exhibit 119 .....	9
Trial Exhibit 6 .....	10
Exhibit 118 .....	11
March 4, 2014 Ruling and Order (R. at 4092-4098) .....	12
REP-C (R. at 4292-4303).....	13
Oct. 20, 2015 Ruling and Order –Directed Verdict, (R. at 9818-23) .....	14
Judge Kelly, Fox Point Order .....	15
Jan. 12, 2016, Ruling and Order Indemnification (R. at 10099-10103).....	16

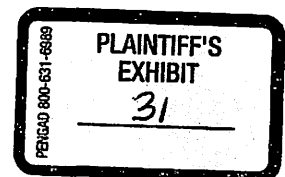


## **ADDENDUM 1**

9766939  
06/28/2006 12:51 PM \$142.00  
Book - 9314 Pg - 5661-5688  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
DENNIS K POOLE  
4543 S 700 E STE.200  
MURRAY UT 84107  
BY: NCT, DEPUTY - WI 28 P.

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
GABLES AT STERLING VILLAGE  
A Planned Unit Development

E:\DKP\Cestlewood\Gables at Sterling declaration.wpd



BK 9314 PG 5661



## TABLE OF CONTENTS

RECITALS: .....	Page 1
I. <u>DEFINITIONS</u> .....	Page 1
II. <u>PROPERTY DESCRIPTION</u> .....	Page 3
2.1. <u>Submission</u> .....	Page 3
2.2. <u>Annexation by Association</u> .....	Page 4
III. <u>MEMBERSHIP AND VOTING RIGHTS</u> .....	Page 4
3.1. <u>Membership</u> .....	Page 4
3.2. <u>Voting Rights</u> .....	Page 4
3.3. <u>Multiple Ownership Interests</u> .....	Page 4
3.4. <u>Record of Ownership</u> .....	Page 4
IV. <u>PROPERTY RIGHTS IN COMMON AREAS</u> .....	Page 5
4.1. <u>Easement of Enjoyment</u> .....	Page 5
4.2. <u>Form for Conveyancing</u> .....	Page 5
4.3. <u>Transfer of Title</u> .....	Page 5
4.4. <u>Limitation on Easement</u> .....	Page 5
V. <u>ASSESSMENTS</u> .....	Page 6
5.1. <u>Personal Obligation and Lien</u> .....	Page 6
5.2. <u>Purpose of Assessments</u> .....	Page 6
5.3. <u>Maximum Monthly Assessment</u> .....	Page 6
5.4. <u>Special Assessments</u> .....	Page 6
5.5. <u>Reimbursement Assessment on Specific Lot</u> .....	Page 6
5.6. <u>Uniform Rate of Assessment</u> .....	Page 7
5.7. <u>Monthly Assessment Due Dates</u> .....	Page 7
5.8. <u>Certificate Regarding Payment</u> .....	Page 7
5.9. <u>Effect of Non-Payment: Remedies</u> .....	Page 7
5.10. <u>Tax Collection by County Authorized</u> .....	Page 8
VI. <u>DUTIES AND POWERS OF THE ASSOCIATION</u> .....	Page 8
6.1. <u>Duties of the Association</u> .....	Page 8
6.2. <u>Powers and Authority of the Association</u> .....	Page 9
6.3. <u>Association Rules</u> .....	Page 10
6.4. <u>Limitation of Liability</u> .....	Page 10
6.5. <u>Insurance</u> .....	Page 10
6.6. <u>Quorum Requirements</u> .....	Page 11
VII. <u>USE RESTRICTIONS</u> .....	Page 11
7.1. <u>Use of Common Area</u> .....	Page 11
7.2. <u>Use of Lots and Living Units</u> .....	Page 11
7.3. <u>Building Features and Materials</u> .....	Page 12
(a) <u>Building Location</u> .....	Page 12
(b) <u>Garages</u> .....	Page 12
(c) <u>Exterior Building Wall Materials</u> .....	Page 12
(d) <u>Roof, Soffit and Facia</u> .....	Page 12
(e) <u>Chimneys</u> .....	Page 12
(f) <u>Mailboxes</u> .....	Page 12
(g) <u>Fences and Walls</u> .....	Page 12

Gables at Sterling Village PUD Declaration  
E:\DKP\Castwood\Gables at Sterling declaration.wpd

(h)	<u>Paving</u>	Page 12
(i)	<u>Solar Equipment</u>	Page 13
(j)	<u>Antennas</u>	Page 13
(k)	<u>Sheet Metal, Flashing and Vents</u>	Page 13
(l)	<u>Mechanical Equipment</u>	Page 13
(m)	<u>Gas and Electric Meters</u>	Page 13
(n)	<u>Exterior Lighting</u>	Page 13
(o)	<u>Landscape Site Preparation Guidelines</u>	Page 13
(p)	<u>Site Grading and Drainage</u>	Page 13
(q)	<u>City and Other Approval</u>	Page 13
(r)	<u>Metal Awnings</u>	Page 13
(s)	<u>Size and Height of Living Unit Location</u>	Page 13
(t)	<u>Recreational Equipment</u>	Page 13
(u)	<u>Outdoor Carpets</u>	Page 13
(v)	<u>Screen Doors</u>	Page 14
(w)	<u>Window Treatments</u>	Page 14
7.4.	<u>Landscaping</u>	Page 14
7.5.	<u>Recreational Vehicles</u>	Page 14
7.6.	<u>Pets</u>	Page 14
7.7.	<u>Common Areas</u>	Page 14
7.8.	<u>Insurance</u>	Page 14
7.9.	<u>Machinery and Equipment</u>	Page 14
7.10.	<u>Maintenance and Repair</u>	Page 14
7.11.	<u>Nuisances</u>	Page 15
7.12.	<u>Right of Entry</u>	Page 15
7.13.	<u>Signs</u>	Page 15
7.14.	<u>Trash Containers and Collection</u>	Page 15
7.15.	<u>Party Wall Provisions</u>	Page 15
7.15.1.	<u>General Rules of Law to Apply</u>	Page 15
7.15.2.	<u>Sharing of Repair and Maintenance</u>	Page 15
7.15.3.	<u>Destruction by Fire or Other Casualty</u>	Page 16
7.15.4.	<u>Weatherproofing</u>	Page 16
7.15.5.	<u>Right to Contribution Runs with Land</u>	Page 16
7.15.6.	<u>Arbitration</u>	Page 16
7.16.	<u>Enforcement of Land Use Restrictions</u>	Page 16
7.17.	<u>Exception for Declarant</u>	Page 16
VIII.	<u>ARCHITECTURAL CONTROL</u>	Page 16
8.1.	<u>Architectural Control Committee</u>	Page 16
8.2.	<u>Submission to Committee</u>	Page 16
8.3.	<u>Standard</u>	Page 17
8.4.	<u>Approval Procedure</u>	Page 17
8.5.	<u>Bond/Security Deposit</u>	Page 17
8.6.	<u>Address for Submittal</u>	Page 17
8.7.	<u>Construction</u>	Page 17
8.8.	<u>Liability for Damages</u>	Page 18
8.9.	<u>Exception for Declarant</u>	Page 18
8.10.	<u>Declarant's Obligation</u>	Page 18
IX.	<u>RIGHTS OF FIRST MORTGAGEE</u>	Page 18
9.1.	<u>Notice of Default</u>	Page 18
9.2.	<u>Abandonment, Termination, Etc.</u>	Page 18
9.3.	<u>Notice of Substantial Damage or Destruction</u>	Page 19
9.4.	<u>Condemnation or Eminent Domain Proceedings</u>	Page 19

Gables at Sterling Village PUD Declaration  
E:\DKP\Castlewood\Gables at Sterling declaration.wpd



9.5.	<u>Hazard Policy to Include Standard Mortgagee Clause</u>	Page 19
9.6.	<u>Rights Upon Foreclosure of Mortgage</u>	Page 19
9.7.	<u>Mortgagees' Rights Concerning Amendments</u>	Page 19
9.8.	<u>Mortgagees' Rights to Inspect Association Records</u>	Page 19
X.	<u>MISCELLANEOUS</u>	Page 19
10.1.	<u>Notices</u>	Page 19
10.2.	<u>Amendment</u>	Page 19
10.3.	<u>Consent in Lieu of Voting</u>	Page 20
10.4.	<u>Lease Provision</u>	Page 20
10.5.	<u>Declarant's Rights Assignable</u>	Page 20
10.6.	<u>Dissolution</u>	Page 20
10.7.	<u>Declarant's Covenant to Construct Common Areas</u>	Page 21
10.8.	<u>Enforcement by City</u>	Page 21
10.9.	<u>Interpretation</u>	Page 21
10.10.	<u>Property Part of Development</u>	Page 21
10.11.	<u>Covenants to Run With Land</u>	Page 21
10.12.	<u>Effective Date</u>	Page 21
10.13.	<u>Lender's Agreement of Subordination</u>	Page 21
EXHIBIT A		
	<u>LEGAL DESCRIPTION</u>	Page 23
EXHIBIT B		
	<u>PERCENTAGE INTERESTS</u>	Page 24

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
GABLES AT STERLING VILLAGE  
A Planned Unit Development

THIS DECLARATION made and executed this 29<sup>th</sup> day of June, 2006, by CASTLEWOOD-STERLING VILLAGE I, L.L.C., a Utah limited liability company with its principal place of business located in Midvale, State of Utah (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of property more particularly described in Article II of this Declaration.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, liens hereinafter set forth.

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be organized under the laws of the State of Utah, a non-profit corporation, GABLES AT STERLING VILLAGE HOMEOWNERS ASSOCIATION, INC.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

1.1. Association shall mean and refer to Gables at Sterling Village Homeowners Association, Inc., a Utah non-profit corporation.

1.2. Building Pad shall mean and refer to that area of ground in a Lot in which a Living Unit can be located as shown on the Plat. If the Plat does not separately designate a Building Pad, the Building Pad shall be co-extensive with the Private Area (Lot) described upon the Plat, excluding, however, setbacks which may be required by the terms of this Declaration or by appropriate governmental agencies.

1.3. Common Areas shall mean and refer to that part of the Property which is not included with the Lots which is owned by the Association for the common use and enjoyment of the Owners, or the limited use of certain Owners as to Limited Common Areas, together with all improvements thereon and all

Gables at Sterling Village PUO Declaration  
E:\DKP\Castlewood\Gables at Sterling declaration.wpd

Page 1

BK 9314 PG 5665



easements appurtenant thereto including but not limited to private utility lines and personal property owned by the Association when the context so requires.

1.4. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.5. Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.6. Limited Common Areas shall mean and refer to those Common Areas designated herein or on the Plat as reserved for the use of a certain Lot or Lots to the exclusion of other Lots.

1.7. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence. Each Living Unit will be constructed as an attached home meaning a single family dwelling, with walls or roofs in common with one or more other single family dwellings.

1.8. Lot shall mean and refer to any one of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Living Unit. Each Lot is on the Plat as a "Private Area" with corresponding Lot number.

1.9. Member shall mean and refer to every person who holds a membership in the Association.

1.10. Mortgage shall mean any mortgage, deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.11. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.12. Officers shall mean and refer to the Officers of the Association as duly elected or appointed in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.13. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.14. Parcel shall mean and refer to the Property which is subject to this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah, is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise the Development. The real property described in Article II of this Declaration constitutes a Parcel.

1.15. Percentage Interest shall mean and refer to the undivided percentage interest of each Owner in the Common Areas and facilities of the Property. The Percentage Interest which is appurtenant to a Living Unit shall be equal to one divided by seventy-eight (78), expressed as a Percentage. The Percentage Interest of each Lot and the Living Unit located thereon is set forth in Exhibit "B" attached hereto and incorporated herein by reference. "Percentage Interests" shall be the sum total of each and every Percentage Interest and shall equal 100%. Declarant is authorized to make minor adjustments in the Percentage Interests to assure that the total adds up to 100%.

1.16. Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision or Lots created by the Plat shall comprise the Development; and (d) which is filed for record in the office of the County Recorder of Salt Lake County, Utah. The Plat of Gables at Sterling Village PUD Subdivision was recorded in the office of the Salt Lake County Recorder on August 4, 2005, as Entry No. 9451488 in Book 9169, beginning at page 2935, creating separately numbered Lots. Said plat constitutes a Plat.

1.17. Private Streets shall mean and refer to all of the undedicated roads and streets within the Subdivision as designated upon a Plat which the Declarant has reserved as an easement for ingress and egress for pedestrian and vehicular traffic for the use, in common, of Members. Private Streets shall for all purposes be deemed to be Common Areas.

1.18. Property shall mean and refer to all of the real property which is covered by a Plat.

1.19. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

## II. PROPERTY DESCRIPTION

2.1. Submission. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Salt Lake County, State of Utah.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Lots included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Living Unit on each and every Lot; and (ii) to improve the Common Areas with such facilities, including, but not limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which

affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; and that certain Declaration of Covenants, Conditions and Restrictions for Sterling Village (hereinafter called the "Master Declaration") dated May 1, 2005, and recorded September 15, 2005, as Entry No. 9490902 in Book 9188, beginning at page 4923 of the Official Records of the Salt Lake County Recorder.

2.2. Annexation by Association. The Association may annex real property to the Development only after obtaining approval of such annexation from (a) the owner or owners of the real property to be annexed, and (b) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose and so long as the Class B membership exists, the written consent of the Declarant.

### III. MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

3.2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one (1) vote for each Living Unit or Lot (if no Living Unit is located thereon) owned. The vote appurtenant to each Unit shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The vote appurtenant to each Unit may not be divided between multiple Owners of such Unit or between matters which require the vote of Owners.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Living Unit or Lot (if no Living Unit is located thereon) owned. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or

(b) The expiration of Seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3.3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the

release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Section 5.5.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas and the Private Streets. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.2. Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, contained within Gables at Sterling Village, A Planned Unit Development., as the same is identified in the Plat recorded in Book 9169, at Page 2935, and in the "Declaration of Covenants, Conditions and Restrictions of Gables at Sterling Village, A Planned Unit Development." recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and Private Streets described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Plat in the official record of the Salt Lake County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4.3. Transfer of Title. Declarant agrees to convey and by recording of the Plat does convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), reserving the right to complete the same according to Declarant's intentions.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas and Private Streets shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Architectural Control Committee to approve and designate the point of access to and from a Lot to the Private Streets in accordance with the requirements of Article VIII;

(c) The right of South Jordan and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas, the Private Streets and any sewer, water and storm drain trunk lines to any public agency or

Gables at Sterling Village PUD Declaration  
E:\DKP\Castledwood\Gables at Sterling declaration.wpd

authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

## V. ASSESSMENTS

5.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

5.3. Maximum Monthly Assessment. As of the date set under Section 5.7, each Lot shall be subject to a monthly assessment of not more than One Hundred Fifty Dollars (\$150.00). From and after January 1, 2007, the maximum monthly assessment may be increased or decreased so long as the change is assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), present in person or represented by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The Officers of the Association may from time to time and in their discretion set the amount of the monthly assessment at any sum not in excess of the then applicable maximum amount.

5.4. Special Assessments. From and after the date set under Section 5.7 (the date of a first conveyance), the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonable capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessments must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each Class of Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.5. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Sections 5.3 and 5.4 above, the Officers may levy at any time



Special Assessments (a) on each Lot specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 6.1(c), Section 6.2(a), or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

5.6. Uniform Rate of Assessment. Except as provided in Section 5.5 above or in this Section 5.6, monthly and special assessments shall be apportioned among all Owners in proportion to their respective Percentage Interests. Declarant, for each unsold Lot owned by it in the development, shall pay monthly assessments as herein provided; provided that until such date as Declarant closes and conveys a Lot to an Owner (other than Declarant) or otherwise allows or causes the Living Unit located upon a Lot to be occupied, the monthly assessment attributable to such Lot shall be \$1.00; further provided that in lieu of any other obligation, Declarant shall (a) make a contribution to the Association of \$200.00 for each Living Unit sold which amount shall be due and payable to the Association as of the date of each such sale, and (b) in the event the Association does not have sufficient funds to maintain and operate the Common Areas and to fulfill its ordinary and reasonable obligations under this Declaration (excluding the establishment of reserves), the Declarant shall make contributions to the Association in sufficient amounts as shall permit the payment of all such costs provided that the obligation of this Declarant under this Section 5.6 (b) shall terminate at such time as the Class B Membership ceases.

5.7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the purchaser of a Lot, or if the sale is by way of an installment contract of sale, on the date the installment contract is executed by the parties thereto, or the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all monthly assessments shall be due and payable on the first day of each month. A monthly assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of \$10.00. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

5.8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.9. Effect of Non-Payment; Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees (including those of a paralegal and any fees incurred on appeal), court costs, and each and every expense incurred by the Association in enforcing its rights.

Gables at Sterling Village PUD Declaration  
E:\DKP\Castletown\Gables at Sterling declaration.wpd

5.10. Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

## VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- a. The Association shall accept all Owners as members of the Association.
- b. The Association shall accept title to all Common Areas conveyed to it by Declarant.
- c. The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass, Private Streets and other Common Area improvements. The Association shall also maintain all grasses, trees, and bushes on the exterior of any Living Unit if the same were installed by the Developer as part of the construction of the Development, even if located upon a Lot, but the Association shall have no obligation to perform any maintenance of any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. No Owner shall install any landscaping without the prior approval of the Association.

The Association shall provide exterior maintenance of the Living Units including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces. In accordance with the requirements of Section 7.10, each Owner shall paint, repair, and otherwise maintain the and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

In the event that the need for maintenance or repair of Common Areas or the exterior of a Living Unit (including exterior landscaping) as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the Officers may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

f. The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas and \*repair and maintain the exterior of Living Units, subject at all times to direction by the Officers, with such administrative functions and powers as shall be delegated to the Managing Agent by the Officers. The com-

pensation of the Managing Agent shall be such as shall be specified by the Officers. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

6.2. **Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and any Bylaws, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

a. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon as required by the provisions of this Declaration or if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article VII of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Officers, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and \*exterior repairs of Living Units or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas or Lots, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas and exterior repairs of Living Units upon Lots on such terms and conditions as the Officers shall deem appropriate.

ii. Such Insurance policies or bonds as the Officers may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Officers and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Officers may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable;

v. Fire, police and such other protection services as the Officers may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Officers may deem necessary.

c. The Officers may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Officers cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3. Association Rules. The Officers from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; (e) the use of Living Units for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Officers may also adopt additional Architectural Guidelines for the construction and/or maintenance of Living Units. Rules and Regulations and/or Architectural Guidelines adopted by the Officers may be enforced in accordance with the provisions of Section 7.16.

6.4. Limitation of Liability. No Manager or the Officers acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Officers, any committee or the Managing Agent.

6.5. Insurance. The Association shall secure and at all times maintain the following insurance coverage:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements, if any, comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Gables at Sterling Village Homeowners Association, Inc., for the use and benefit of the individual Members, Lot Owners and Mortgagees, as their interests may appear".

(b) A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000 for any one person injured; \$2,000,000 for all persons injured in any one accident; and \$500,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

(c) **EACH OWNER SHALL MAINTAIN CASUALTY, FIRE AND EXTENDED COVERAGE INSURANCE IN SUCH AMOUNTS AND ACCORDING TO SUCH TERMS AS THE OWNER DEEMS APPROPRIATE**, unless blanket coverage is provided in accordance with the provisions hereof. Nevertheless, the Association may elect, with the consent of not less than seventy-five percent (75%) of the Owners to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty, fire and extended coverage insurance in such form as the Association deems appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Living Units including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Living Units

shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners. In the event that such blanket coverage is obtained for all of the Living Units as provided herein, such coverage shall not be subject to cancellation without not less than thirty (30) days prior notice to each of the Owners and their Mortgagees.

The following additional provisions shall apply with respect to insurance:

(1) In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(2) All policies shall be written by a company holding a rating of "AA" or better from Best's Insurance Reports.

(3) The Association shall have the authority to adjust losses.

(4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

6.6. Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

## VII. USE RESTRICTIONS

7.1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. Limited Common Areas include yards which are immediately in front of and behind each Lot and Living Unit, together with a driveway from a Private Street to the garage of a Living Unit. The Limited Common Areas immediately in front of and behind each Lot and the driveway to a Living Unit shall be available for the private use of the Owners and occupants of the Living Unit to which they are appurtenant.

7.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit without the prior written consent of the Association and applicable governmental entities. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family residence. If a Living Unit is to be rented, it shall be on a month-to-month basis only, with not more than two (2) non-related people living in any one Living Unit and only in accordance with the terms of

Gables at Sterling Village PUD Declaration  
E:\DKP\Castletown\Gables at Sterling\declaration.wpd



a rental agreement approved as to form by the Association. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

7.3. Building Features and Materials.

(a) Building Location. Each building (including Living Unit) shall be located such that:

(i) The building shall be located solely within the outer boundaries of the Building Pad (exclusive of required setbacks) and oriented as shown on the Plat, except as to the common wall with the adjoining Living Unit(s), or as may be consented to by the Architectural Control Committee in accordance with the provisions of Article VIII.

(ii) For the purposes of this covenant, steps and open porches shall be considered as a part of a building, but the same may extend beyond the Building Pad if permitted by applicable building codes. Such steps and open porches, once constructed shall not be modified without the consent and prior approval of the Association.

(b) Garages. Garages must be fully enclosed and located within the Building Pad, accommodate a minimum of two cars, except for those units which are initially designed to accommodate only one car, and be equipped with an automatic garage door opener. Carports are not permitted within the Subdivision.

(c) Exterior Building Wall Materials. Stone, cultured stone, and stucco are permitted for the exteriors of Living Units. The use of any other materials for such buildings shall require the prior approval of the Architectural Control Committee.

(d) Roof, Soffit and Facia. Roof material shall be restricted to shingles or other materials approved by the Architectural Control Committee. Soffit and facia material shall be restricted to aluminum or other materials approved by the Architectural Control Committee. The use and design of roof, soffit and facia materials is subject to the approval of the Architectural Control Committee.

(e) Chimneys. Chimneys of approved exterior materials may not exceed the height required by appropriate governmental agencies. Exposed metal flues are not permitted unless approved by the Architectural Control Committee or are painted.

(f) Mailboxes. Mailboxes shall be provided by the United States Post Office but shall be maintained by the Association.

(g) Fences and Walls. Except as to fences installed by Declarant, fencing may be installed in rear yards only as approved by the Architectural Control Committee and shall be constructed of the same materials utilized by the Declarant for fences installed by it or as otherwise approved by the Architectural Control Committee. No fence shall be erected in such a fashion as shall restrict access or otherwise interfere with the Association's obligation to maintain Common Areas, Limited Common Areas or the exterior of Living Units. Project, perimeter fences are to be maintained by the Association. All fences on a Lot shall be maintained by the Association in the condition originally installed by Declarant or as otherwise approved by the Association. Owners shall not permit any structures or other items to be attached to or supported by fences.

(h) Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, or other materials approved by the Association.



(i) Solar Equipment. The use of solar panels and frames are not permitted unless the prior approval of the Architectural Control Committee is obtained, which approval may be withheld in the Committee's sole discretion. Any such solar panels are to be integrated into roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be screened from view.

(j) Antennas. All antennas are restricted to the attic or interior of the residence. Satellite dish antennas (of not less than two feet in diameter) shall be allowed provided they are screened from view and/or their location is approved by the Architectural Control Committee.

(k) Sheet Metal, Flashing and Vents. All sheet metal, flashing, vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper.

(l) Mechanical Equipment. All air conditioning, heating equipment, swamp coolers and soft water tanks must be screened from view and insulated for sound attenuation. Air conditioning units and swamp coolers are not permitted on roofs or through windows unless screened from view and approved by the Architectural Control Committee.

(m) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.

(n) Exterior Lighting. All exterior lighting to be installed by a Lot Owner is subject to the prior approval of the Architectural Control Committee.

(o) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot.

(p) Site Grading and Drainage. No Lot Owner shall modify site grading or storm drainage flows without the prior written consent of the Architectural Control Committee.

(q) City and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

(r) Metal Awnings. Metal awnings, metal "lean-tos", or metal patio covers shall not be permitted on any Lot, without the prior approval of the Architectural Control Committee. Shade structures of other materials shall be installed only with the prior written consent of the Architectural Control Committee.

(s) Size and Height of Living Unit Location. Each Living Unit shall be located and constructed within the exterior boundaries of the Building Pad.

(t) Recreational Equipment. Basketball hoops, standards, and swingsets shall not be permitted in front of any Living Unit or within the Common Areas. Other backyard toys, equipment, swingsets, birdhouses, fountains, yard art, and patio furniture shall be located only in backyards and shall be no greater than six (6) feet in height with the exception of a patio umbrella which shall be retractable. Lawn furniture shall be located only upon backyard patios. Wind chimes and wind socks are prohibited.

(u) Outdoor Carpets. Outdoor carpets used for porches or patios which are designed to appear as grass are prohibited.

(v) Screen Doors. Screen doors shall not be installed upon any exterior door of a Living Unit.

(w) Window Treatments. Window treatments for those portions of Living Units facing Private Streets shall be restricted to horizontal shutters. All other window treatments shall be restricted to two-inch horizontal blinds, horizontal shutters, or vertical blinds for sliding doors only. Windows may not be treated with mirror type tinting.

7.4. Landscaping. The Association shall have the right to designate the types of trees which are recommended and suggested for incorporation into landscape designs for all Lots.

7.5. Recreational Vehicles. No boats, trailers, large trucks and commercial vehicles belonging to Owners or other residents of the Property shall be parked within the Development. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, Private Street or other Common Areas, except that these restrictions shall not apply to emergency repairs to vehicles. Any motor or recreational vehicle must be kept in an enclosed garage.

7.6. Pets. No animals other than one household cat and/or household dog (of not more than thirty (30) pounds) shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. No exterior structure may be constructed or maintained by an Owner for the care, housing or confinement of any such pets unless the same is approved by the Architectural Control Committee. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Officers by resolution or as regulation may provide.

7.7. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- a. Vehicular and pedestrian access to and from and movement within the Development, and space for temporary vehicular parking.
- b. Recreational use by Owners and occupants of Living Units and their guests.
- c. Beautification of the Development.
- d. Privacy for the Owners and occupants of Living Units.
- e. Such other uses as shall be determined from time to time by the Officers for the benefit of members of the Association, following consultation with the Architectural Control Committee.

7.8. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better).

7.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as

to approval by the Architectural Control Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner; provided, however, the Association shall maintain all landscaping installed by the Declarant on a Lot. No Owner shall have the right to install any trees or perennial bushes on any Lot or the Common Areas. If the Owner elects to plant flowers on a Lot but only at locations prepared for such plantings, the Owner shall be solely responsible to maintain the same, including the removal of dead stock. Any pots used to hold flowers shall be of plastic or pottery only. Each Owner shall paint, repair, and otherwise maintain the and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems.

7.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units.

7.12. Right of Entry. During reasonable hours, any member of the Architectural Control Committee or any Manager, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration, the requirements of the Committee as specified in Article VIII, and the rules and regulations of the Association have been or are being complied with.

7.13. Signs and Flags. No signs or flags whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- a. Such signs as may be required be legal proceedings.
- b. Construction identification signs of a combined total face area of five hundred seventy-six (576) square inches or less for each Living Unit.
- c. A "For Sale" or "For Rent" sign, to the extent permitted by the Officers.
- d. State and/or National Flags erected on temporary poles for the period of national or State of Utah holidays only. No flag pole shall be attached to a Living Unit or fence.

7.14. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Control Committee. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection. Each Owner must at all times and at this expense provide garbage cans and plastic liners therefor, unless the Association elects to provide the same.

7.15. Party Wall Provisions.

7.15.1. General Rules of Law to Apply. Each wall which comprises a portion of a Living Unit and which is built as a part of the original construction upon the Property and placed on the boundary line between any Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 7.15, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.15.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

7.15.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.15.4. Weatherproofing. Notwithstanding any other provision of this Section 7.15, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.15.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 7.15 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

7.15.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 7.15, unless the parties can agree upon one arbitrator whose decision shall be binding, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

7.16. Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- a. Declarant, so long as it has any interest in any of the Property;
- b. Any Owner; or
- c. The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

7.17. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven (7) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant.

## VIII. ARCHITECTURAL CONTROL

8.1. Architectural Control Committee. The Officers of the Association shall appoint a three-member Committee, the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures (herein the "Committee"). The Committee need not be composed of Owners. If such a Committee is not appointed the Officers shall perform the duties required of the Committee.

8.2. Submission to Committee. Except for Living Units constructed by the Declarant, no Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall

be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Officers.

8.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project.

8.4. Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in triplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association, one set will be retained by the reviewing architect (if any) and the remaining set of plans will be returned to the property owner.

All plans and specifications shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5. Bond/Security Deposit. The Architectural Control Committee may require that an Owner post a bond, cash security deposit or irrevocable letter of credit in a form satisfactory to the Architectural Review Committee, in an amount not to exceed \$1,000.00, in favor of the Association, as a condition to approving any proposed work or improvement. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Architectural Review Committee.

The deposit is intended to assure the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements.

8.6. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within Gables at Sterling Village shall be submitted and approved by the Architectural Control Committee (prior to submittal to any required governmental agency) at the following address:

CASTLEWOOD-STERLING VILLAGE I, L.L.C.  
6925 South Union Park Ave., Suite 355  
Salt Lake City, Utah 84047

The Officers of the Gables at Sterling Village Homeowners Association have the authority to change the address for the submittal of plans and specifications.

8.7. Construction.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

(i) The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

(ii) The front, side and rear yards of each Lot shall be landscaped within a period of one (1) year following completion or occupancy of the Living Unit.



If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

(b) Owners and builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the development. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials of the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on a Lot. During the construction period, each construction site shall be kept neat and shall be promptly removed from public or private roads, open spaces and driveways.

Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Control Committee.

Construction crews shall not park on, or otherwise use, other Lots or any open space. All construction vehicles and machinery shall be parked only upon public streets or in areas designated by the Architectural Control Committee.

8.8. Liability for Damages. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

8.9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8.10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development (i) shall be architecturally compatible with respect to one another; and (ii) that on or before seven (7) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable all Common Areas of the Subdivision, all approximately in the locations shown on the Plat.

## IX. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

9.2. Abandonment, Termination, Etc.. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

(a) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;

(b) To partition or subdivide any Lot or the Common Areas;



(c) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

(d) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9.3. Notice of Substantial Damage or Destruction. The Association shall notify all holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$10,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction.

9.4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

9.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided in Section 1, Article V shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgage Lot.

9.7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration or the Articles of Organization of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.

9.8. Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

## X. MISCELLANEOUS

10.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered or if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

10.2. Amendment. Subject to the provisions of Section 2 of Article VIII of this Declaration any amendment hereto shall require (i) the affirmative vote of at least two-thirds (2/3) of all Class A membership

Gables at Sterling Village PUD Declaration  
E:\DKP\Casewood\Gables at Sterling declaration.wpd

votes, which Members present in person or represent by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by two Officers of the Association, and by the Declarant if the Class B Membership then exists. In such instrument two Officers of the Association shall certify that the vote required by this Section for amendment has occurred.

10.3. Consent in Lieu of Voting. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 10.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 10.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

10.4. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing, and must provide, inter alia, that:

(a) The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association, Bylaws, and any Rules and Regulations; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

10.5. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

10.6. Dissolution. Subject to the restrictions set forth in Article VIII of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used

for purposes similar to those provided for in the Articles of Organization or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.

10.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete all Common Areas improvements and amenities indicated on the Plat within two (2) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

10.8. Enforcement by City. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, Salt Lake County and/or South Jordan, Utah, shall have the right, but not the obligation, upon giving the Association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.10. Property Part of Development. The Property shall comprise Gables at Sterling Village, A Planned Unit Development.

10.11. Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.12. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

10.13. Lender's Agreement of Subordination. By its execution of this Declaration, FIRST UTAH BANK (hereinafter "Construction Lender"), agrees, covenants and declares that this Declaration shall be senior in priority to: (i) the Construction Deed of Trust made as of January 31, 2005, between CASTLEWOOD-STERLING VILLAGE I, L.L.C., as "Trustor," and FIRST UTAH BANK, as "Trustee" and Construction Lender as "Beneficiary" (hereinafter "Trust Deed"), which Trust Deed was recorded on February 2, 2005, as Entry No. 9289514, in Book 9090, beginning at page 5185 of the Official Records of Salt Lake County, (ii) Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing (hereinafter "Trust Deed 2"), which Trust Deed 2 was recorded on November 23, 2005, as Entry No. 9563298, in Book 9221, beginning at page 6774 of the Official Records of Salt Lake County, and that said Trust Deed and Trust Deed 2 shall be subordinate to and subject to this Declaration notwithstanding the fact that this Declaration is recorded later in time than the Trust Deed and Trust Deed 2.

EXECUTED the day and year first above written.

CASTLEWOOD-STERLING VILLAGE I, L.L.C., a  
Utah limited liability company

By:

Jeffrey A. Duke  
Its Manager

CONSTRUCTION LENDER:

FIRST UTAH BANK

By:

Its:

Nathan G. Anderson  
First President

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

On the 28 day of June, 2006, personally appeared before me Jeffrey A. Duke, who being by me duly sworn did say that he is the Manager of CASTLEWOOD-STERLING VILLAGE I, L.L.C., and that the within and foregoing instrument was signed in behalf of said limited liability company by authority of a resolution of its members or in accordance with the terms of its operating agreement and the said Jeffrey A. Duke duly acknowledged to me that said limited liability company executed the same.



Lisa Marie Tomlin  
NOTARY PUBLIC

STATE OF UTAH )

: ss

COUNTY OF SALT LAKE )

On the 28 day of June, 2006, personally appeared before me Nick Anderson, who being by me duly sworn did say that he is the Vice Pres. of FIRST UTAH BANK, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors or in accordance with the terms of its bylaws and said Notary duly acknowledged to me that said corporation executed the same.



Lisa Marie Tomlin  
NOTARY PUBLIC

Gables at Sterling Village PUD Declaration  
E:\DKP\Castlewood\Gables at Sterling declaration.wpd

Page 22

BK 9314 PG 5686

EXHIBIT A

LEGAL DESCRIPTION

Beginning at a boundary corner of Parcel 1 of the Sterling Village Parcel Plat as recorded in the Office of the Salt Lake County Recorder as Entry No. 6570033, in Book 97-2P at Page 31, same said point of beginning being S89°41'55"W along the Section Line 1229.70 feet and South 51.99 feet from the North Quarter Corner of Section 24, Township 3 South, Range 1 West, Salt Lake Base and Meridian; and running thence S75°27'00"W 34.50 feet; thence Southeasterly 15.71 feet along the arc of a 126.00 foot radius curve to the left chord bears S18°07'22"E 15.70 feet; thence S21°41'43"E 2.63 feet; thence S68°18'17"W 4.00 feet; thence Southwesterly 26.73 feet along the arc of a 22.00 foot radius curve to the right chord bears S13°06'27"W 25.11 feet; thence Southwesterly 89.27 feet along the arc of a 159.00 foot radius curve to the right chord bears S63°59'40"W 88.10 feet; thence S80°04'43"W 55.04 feet; thence 32.15 feet along the arc of a 114.00 foot radius curve to the left chord bears S71°59'59"W 32.04 feet; thence Northwesterly 26.31 feet along the arc of a 22.00 foot radius curve to the right chord bears N81°49'01"W 24.77 feet; thence S45°11'21"W 40.12 feet; thence Southeasterly 24.11 feet along the arc of an 18.00 foot radius curve to the right chord bears S09°11'13"E 22.35 feet; thence 39.46 feet along the arc of a 114.00 foot radius curve to the left, chord bears S19°15'53"W 39.26 feet; thence N75°12'46"W 103.15 feet; thence N75°12'05"W 147.81 feet; thence N03°36'28"E 214.55 feet; thence N00°18'05"W 405.73 feet; thence S82°07'32"E 485.32 feet; thence S07°31'24"E 104.77 feet; thence South 319.72 feet to the point of beginning.

EXHIBIT B  
PERCENTAGE INTERESTS

LOT NOS.	PERCENTAGE INTERESTS FOR EACH LOT	VOTES FOR EACH LOT
1 through 74	1.282%	1
75 through 78	1.283%	1
TOTALS	100.00%	78

Gables at Sterling Village PUD Declaration  
E:\DKP\Castletown\Gables at Sterling declaration.wpd

Page 24

BK 9314 PG 5688



## **ADDENDUM 2**

## Address Table

UNIT #	ADDRESS	BLDG	
41	10982 South Maple Forest Way	Bldg 9	
42	10978 South Maple Forest Way		repair balcony
43	10976 South Maple Forest Way		settling concrete (deck) roof leak
44	10972 South Maple Forest Way		plaster & concrete
45	10966 South Maple Forest Way	Bldg 10	repair concrete <i>column settled</i>
46	10962 South Maple Forest Way		
47	10958 South Maple Forest Way		repair concrete
48	10956 South Maple Forest Way		repair concrete
49	11007 South Birch Creek Road	Bldg 11	
50	11001 South Birch Creek Road		
51	10999 South Birch Creek Road		stone pillars & stucco
52	10993 South Birch Creek Road		stucco & trim
53	10991 South Birch Creek Road		
54	10988 South Birch Creek Road		
55	10983 South Birch Creek Road		drip edge
56	10981 South Birch Creek Road		
57	10977 South Birch Creek Road	Bldg 12	buckling stucco
58	10971 South Birch Creek Road		stucco over the garage
59	10967 South Birch Creek Road		clean overspray
60	10963 South Birch Creek Road		
61	10961 South Birch Creek Road		
62	10957 South Birch Creek Road		
63	11004 South Birch Creek Road	Bldg 13	void under concrete
64	11002 South Birch Creek Road		void under concrete
65	10998 South Birch Creek Road		
66	10992 South Birch Creek Road		void under concrete
67	10988 South Birch Creek Road	Bldg 14	void under concrete
68	10984 South Birch Creek Road		
69	10978 South Birch Creek Road		clean stucco on deck
70	10976 South Birch Creek Road		
71	10974 South Birch Creek Road		repair stone pillars by garage
72	10968 South Birch Creek Road		
73	10964 South Birch Creek Road	Bldg 15	cracked concrete
74	10958 South Birch Creek Road		cracked concrete
75	10956 South Birch Creek Road		
76	10954 South Birch Creek Road		
77	10948 South Birch Creek Road		
78	10946 South Birch Creek Road		repair concrete



5/28/2009 8:56 AM

CastleSterling01550

## Address Table

UNIT #	ADDRESS	BLDG	
41	10982 South Maple Forest Way	Bldg 9	
42	10978 South Maple Forest Way		repair balcony
43	10976 South Maple Forest Way		settling concrete (deck) roof leak
44	10972 South Maple Forest Way		plaster & concrete
45	10966 South Maple Forest Way	Bldg 10	repair concrete <i>column settled</i>
46	10962 South Maple Forest Way		
47	10958 South Maple Forest Way		repair concrete
48	10956 South Maple Forest Way		repair concrete
49	11007 South Birch Creek Road	Bldg 11	
50	11001 South Birch Creek Road		
51	10999 South Birch Creek Road		stone pillars & stucco
52	10993 South Birch Creek Road		stucco & trim
53	10991 South Birch Creek Road		
54	10988 South Birch Creek Road		
55	10983 South Birch Creek Road		drip edge
56	10981 South Birch Creek Road		
57	10977 South Birch Creek Road	Bldg 12	buckling stucco
58	10971 South Birch Creek Road		stucco over the garage
59	10967 South Birch Creek Road		clean overspray
60	10963 South Birch Creek Road		
61	10961 South Birch Creek Road		
62	10957 South Birch Creek Road		
63	11004 South Birch Creek Road	Bldg 13	void under concrete
64	11002 South Birch Creek Road		void under concrete
65	10998 South Birch Creek Road		
66	10992 South Birch Creek Road		void under concrete
67	10988 South Birch Creek Road	Bldg 14	void under concrete
68	10984 South Birch Creek Road		
69	10978 South Birch Creek Road		clean stucco on deck
70	10976 South Birch Creek Road		
71	10974 South Birch Creek Road		repair stone pillars by garage
72	10968 South Birch Creek Road		
73	10964 South Birch Creek Road	Bldg 15	cracked concrete
74	10958 South Birch Creek Road		cracked concrete
75	10956 South Birch Creek Road		
76	10954 South Birch Creek Road		
77	10948 South Birch Creek Road		
78	10946 South Birch Creek Road		repair concrete

5/28/2009 8:56 AM

CastleSterling01550

EXHIBIT 3.3  
 WIT: Lybert  
 DATE: 6/27/12  
 Jennifer A. Russell, RPR

Sterling Village HOA Punch List Items

*ff w/ Russell on 9/12/08*

8/25/2008

Item #	Address	Unit #	Description of Issue	Sale Date	Under Warranty	Action to be Taken
1	Maple Farms Lane		Dead Trees on Maple Farms Lane - All along open Space		no	landscaper addressed all issues in June 2008
2	10964 S. Maple Farms Lane	20	Dead Tree	09/15/06	no	landscaper addressed all issues in June 2008
3	10968 S. Maple Farms Lane	19	Cracked Pads - Post Busted	09/13/06		need concrete repair
4	10972 S. Maple Farms Lane	18	Cracked Pads - Post Busted	09/25/06		need concrete repair
5	10974 S. Maple Farms Lane	17	Cracked Pads - Post Busted	08/21/06		need concrete repair
6	10974 S. Maple Farms Lane	17	Rails not connected on Deck, Cracked Stucco, Stone Post Failing	08/21/06	no	responsibility of HOA
7	10978 S. Maple Farms Lane	16	Pergola not attached - Severe Discoloration. Ice Damming Problems	09/20/06	no	power wash the stucco
8	10982 S. Maple Farms Lane	15	Cracked Pad & Plaster	09/20/06		need concrete repair
9	10988 S. Maple Farms Lane	14	Settled Driveway, Stucco Discoloration	01/04/07		need concrete repair
10	10992 S. Maple Farms Lane	13	Settled Driveway, Concrete Splatter, Stucco Discolored	01/04/07		need concrete repair
11	10994 S. Maple Farms Lane	12	Separated Flashing - Unfinished Concrete	01/02/07		need concrete repair
12	11002 S. Maple Farms Lane	10	Spalding, Stucco Falling off	01/03/07	built during winter	need concrete repair
13	11006 S. Maple Farms Lane	9	Stucco Discoloration, Concrete splatter in front of mailboxes	01/02/07	no	power wash the stucco
14	Maple Forest Way		2 Dead Trees in Common Area South		no	landscaper addressed all issues in June 2008
15	11013 S. Maple Forest Way	21	Turn back to having Garage, No weekly Rental	08/04/06	no	issue for Darren Mansell
16	11002 S. Maple Forest Way	36	Concrete Scaling, Bad?	01/08/08		need concrete repair
17	10998 S. Maple Forest Way	37	Curbing in front of 10998	12/08/06		need concrete repair
18	11003 S. Maple Forest Way	23	Stucco by Deck	08/23/06	no	power wash the stucco
19	11001 S. Maple Forest Way	24	Stone Coming off	08/11/06	no	fixed by HOA
20	10997 S. Maple Forest Way	25	Settling Concrete, Concrete in walking?	03/19/07		need concrete repair
21	10983 S. Maple Forest Way	29	Stucco Cracked & Discolored, Patio Spalding	01/03/07		need concrete repair
22	10993 S. Maple Forest Way	26	Stucco Discoloration	04/03/07	no	power wash the stucco
23	10997 S. Maple Forest Way	25	Stucco	03/19/07	no	power wash the stucco
24	10988 S. Maple Forest Way	40	Stucco on Deck, Loose wires & T Bar on End of unit?	01/03/07	no	comcast to repair
25	10978 S. Maple Forest Way	42	Terrible Stucco - Complete Splatter	03/27/07		settling issue; need concrete repair
26	10976 S. Maple Forest Way	43	Settling concrete - Stone Falling off	02/27/07		need concrete repair
27	10977 - 73 S. Maple Forest Way	30-31	Plywood and Junk between units			need to clean up around the new drains
28	10973 S. Maple Forest Way	31	Stucco Discolored - Steps Spalled	03/19/07		need concrete repair
29	10972 S. Maple Forest Way	44	Plaster & Concrete	03/21/07		need concrete repair
30	10969 S. Maple Forest Way	32	Stone Pillars	02/07/07	no	maintenance issue for HOA
31	10963 S. Maple Forest Way	33	Spalding Concrete	02/01/07		need concrete repair
32	10966 S. Maple Forest Way	45	Crack in Stucco by Garage, Huge void under concrete	03/20/07		settling issue; need concrete repair
33	10958 S. Maple Forest Way	47	Huge Void	04/09/07		settling issue; need concrete repair
34	10956 S. Maple Forest Way	48	Rock Pillars, 1/2 driveway spalding	03/14/07		need concrete repair
35	10961 S. Maple Forest Way	34	Dead Tree, Flooding/ Drains look like Crap!	02/14/07		need to clean up around the new drains
36	11004 Birch Creek Road	63	Void under concrete, Dead Tree	04/30/07		need concrete repair
37	11002 Birch Creek Road	64	Broken Slabs, Voids under concrete	05/09/07		need concrete repair
38	10992 S. Birch Creek Road	66	Settled Slab, Huge Void	05/01/07		need concrete repair
39	10988 S. Birch Creek Road	67	Settled Slab, Gouges in Road	05/29/07		need concrete repair
40	10978 S. Birch Creek Road	69	Stucco on Deck	03/04/07		less than one year since sale closed
41	10974 S. Birch Creek Road	71	Stone on Pillars by Garage	01/04/08		less than one year since sale closed
42	10964 S. Birch Creek Road	73	Landscape by Utility boxes, grounding rod. Cracked Concrete	06/14/07	no	issue for utility company
43	10958 S. Birch Creek Road	74	Cracked Concrete	05/29/07		need concrete repair
44	10946 S. Birch Creek Road	78	Void under Steps	06/05/07		need concrete repair
45	10967 S. Birch Creek Road	59	Over spray on Front Door Soffit, Cracked Concrete	05/15/07		need concrete repair
46	10971 S. Birch Creek Road	58	Stucco above/over Garage. Blocking crooked? Frequent	04/12/07	no	maintenance issue for HOA
47	10977 S. Birch Creek Road	57	Buckling Stucco - Exposed Wires	05/07/07	no	comcast to repair
48	10983 S. Birch Creek Road	55	Drip Edge	05/03/07	no	bent flashing; maintenance for HOA

C:\Documents and Settings\dan\My Documents\Excel Files\Sterling Village (SV) HOA Punch List 8-25-08.xls

PLAINTIFF'S  
EXHIBIT

3.3

8889-103-008 04/09/04

CastleSterling01604

49	10993 S. Birch Creek Road	52	Balcony Stucco & Trim / Drip Edge - Stucco on Deck & Garage Paint	04/11/07	no	maintenance issue for HOA
50	10999 S. Birch Creek Road	51	Stone Pillars & Flaking Stucco	04/19/07	no	maintenance issue for HOA
61	Birch Park Drive		Missing Grass to fence line, Retaining wall Falling Down		no	maintenance issue for HOA
52	556 W. Birch Park Drive	8	Bad Flashing & Bad Concrete	07/02/07		need concrete repair
53	552 W. Birch Park Drive	7	Void under concrete	07/02/07		need concrete repair
54	548 W. Birch Park Drive	6	Void under concrete, cracked too, All back door paint	10/09/07		less than one year since sale closed
55	548 W. Birch Park Drive	5	Cracked Stucco above door - Void under utility box	07/02/07	no	maintenance issue for HOA
56	542 W. Birch Park Drive	4	Spalling Concrete	07/16/07		need concrete repair
57	538 W. Birch Park Drive	3	Cracked Plaster	07/05/07	no	maintenance issue for HOA
58	532 W. Birch Park Drive	1	Settled Driveway	07/17/07		need concrete repair
59	Project		Roads all Bad		no	maintenance issue for HOA
60	Project		Call Gutter something?		no	maintenance issue for HOA
61	Project		All units Downspouts Issues		no	maintenance issue for HOA
62	Project		All Back Door paint Peeling			paint some of the back doors; some are bad
<p>Walked the project on 8/28/08 with:  Jason Sucher # 472-4678; Jason Hawkins (HOA board member); Russell Harris, Jared Turnbow, Dan Lybbert</p>						<p>Issues to address: concrete, settling, painting  Consider power washing the stucco  Note: some units have not been cared for</p>

CastleSterling01605



# Warranty Items Report #1

Castwood Builders

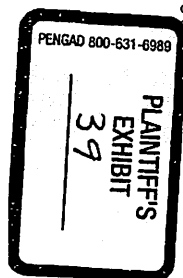
06/02/2009 at 12:54 PM

Project Name: Sterling Village Gables (8 Records)

Open Items: 1 (5 Records)

461	259352	Ryan & Maegan Rudd	10946 South Birch Creek Road	(801)570-6100	(801)942-3330	1	Garage floor has begun to flake and bubble	05/09/2008	08/01/2007	15-078
371	301526	Don J Colton	10976 South Birch Creek Road			1	Warranty repairs for 10976 South Birch Creek Road, South Jordan 1 We request that the cement steps to the front door be repaired. The cement is spalling. 2 We request that the paint job and trim around the outside back door that leads to the deck be redone. It appears the wood was not properly repaired and the paint is peeling badly. You can contact Rachel Colton at 801-230-7597 to get entry to the home. My number is 801-566-3000. Thank you, Don Colton	08/27/2008	09/04/2007	14-070
345	303572	S. Wall Properties	532 West Birch Park Drive	(801)232-7083	(801)943-7930	1	1 Upper stair rail middle broken has never been anchored properly	09/22/2008	07/16/2007	01-001
345	303574	S. Wall Properties	542 West Birch Park Drive	(801)959-8908		1	Front driveway is all flaking off and has been since last winter	09/22/2008	07/16/2007	01-004
254	310616	Susan Schaefer	10974 South Birch Creek Road	(435)817-0339	(801)566-5833	1	We have concrete at the edge of the driveway that is crumbling. And flaking concrete at our steps.  We have a leak from the master shower into the garage. We have a leak from the water shut off valve in the basement that has begun to puddle.  We need the concrete foundation ties cut off so that we can begin finishing the basement.  The paint on the back door is peeling away. There is a squeek in the floor that needs to be addressed.  And not that I think you can do anything about it, but the heat leaks into the master bath storage closet.  Please get back to me as soon as possible. I have given at least some of these problems to Jared in prior emails.  Our warranty will expire this month but all these things need to be addressed before it expires or we need a date.	12/22/2008	01/02/2008	14-071
434	294860	Mandy & Matthew Postma & Goodwin	10954 South Birch Creek Road	(801)502-7974		1	Our shower is still leaking in our master bathroom. When the service man came out, all he did was reseal the edge of the shower, but this hasn't solved any problems. The floor is still soggy at the base of the shower, and our wall has moldy stains on the baseboard. I believe there is a space between the bottom of the door and the shower. We have been trying to get this resolved since August of 2007. This should still be covered under warranty.	06/25/2008	06/06/2007	15-076
434	294860	Mandy & Matthew Postma & Goodwin	10954 South Birch Creek Road	(801)502-7974		2	The paint on our exterior door frames is chipping. The basement door frame, the main level deck door frame, the top level balcony door frame, and the front door frame has paint chipping. I believe the frames were only primed and not painted, or painted and not primed.	06/25/2008	06/06/2007	15-076
434	294860	Mandy & Matthew Postma & Goodwin	10954 South Birch Creek Road	(801)502-7974		3	We have 2 nail heads poking up underneath our linoleum in our master bathroom. I am concerned that these nails will eventually poke through our linoleum.	06/25/2008	06/06/2007	15-076

Confidential Information - Do Not Distribute  
Copyright (c) 2007 BuildTopia, Inc. All rights reserved.



GSVHOA000139

Sterling Village HOA Punch List Items						
Item #	Address	Unit #	Description of Issue	Sale Date	Under Warranty	Action to be taken
1	Maple Farms Lane		Dead trees on Maple Farm Lane-All along open space			
2	10964 S. Maple F	20	Dead trees on Maple Farm Lane-All along open space	9/15/2006		
3	10968 S. Maple F	19	Cracked Pads -Post busted	9/13/2006		
4	10972 S. Maple F	18	Cracked Pads -Post busted	9/25/2006		
5	10974 S. Maple F	17	Cracked Pads -Post busted	8/21/2006		
6	10974 S. Maple F	17	Rails not connected on Deck,Cracked Stucco,Stone,Post Falling	8/21/2006		
7	10978 S. Maple F	16	Pergola not attached-Severe Discoloration,Ice Damming problems	9/20/2006		
8	10982S. Maple F	15	Cracked Pads & Plaster	9/20/2006		
9	10988 S. Maple F	14	Settled Driveway, Stucco Discoloration	1/4/2007		
10	10992 S. Maple F	13	Settled Driveway, Concrete Splatter, Stucco Discolored	1/4/2007		
11	10994 S. Maple F	12	Seperated Flashing-Unfinished Concerte	1/2/2007		
12	11002 S. Maple F	10	Spalding, Stucco falling off	1/3/2007		
13	11006 S. Maple F	9	Stucco Discoloration splatter in front of mail boxes	1/2/2007		
14	Maple Forest Way		2 Dead Trees in Common Area South			
15	11013 S. Maple F	21	Turn back to having Garage, No weekly rental	8/4/2006		
16	11002 S. Maple F	36	Concrete scaling, Bad?	1/8/2006		
17	10998 S. Maple F	37	Curbing in front of 10998	12/8/2006		
18	11003 S. Maple F	23	Stucco by Deck	8/23/2006		
19	11001 S. Maple F	24	Stone Coming off	8/11/2006		
20	10997 S. Maple F	25	Settling Concrete	3/19/2007		
21	10983 S. Maple F	29	Stucco Cracked & Discolored, Patio Spalding	1/3/2007		
22	10993 S. Maples	26	Stucco Discoloration splatter in front of mail boxes	4/3/2007		
23	10997 S. Maple F	25	Stucco	3/19/2007		
24	10988 S. Maple F	40	Stucco on Deck, Losse wires & T Bar on end of unit?	1/3/2007		
25	10978 S. Maple F	42	Terrible Stucco-Complete Splatter	3/27/2007		
26	10976 S. Maple F	43	Settling concrete-Stone falling off	2/27/2007		
27	10977-79 S. Map	30-31	Plywood and Junk between units			
28	10973 S. Maple F	31	Stucco Discolored-Steps Spalled	3/19/2007		
29	10972 S. Maple F	44	Plaster & Concrete	3/21/2007		
30	10969 S. Maple F	32	Stone Pillars	2/7/2007		
31	10963 S. Maple F	33	Spalding Concrete	2/1/2007		
	10976 S. Maple F	43	Pillars Settling and Deck Separating from Building	????		
32	10966 S. Maple F	45	Crack in Stucco by Garage, Huge void under concrete	3/20/2007		
33	10958 S. Maple F	47	Huge void	4/9/2007		
34	10956 S. Maple F	48	Rock Pillar,1/2 driveway spalding	3/14/2007		
35	10961 S. Maple F	34	Dead Tree, Flooding Drains	2/14/2007		
36	11004 Birch Cree	63	Void under concrete, Dead tree	4/30/2007		
37	11002 Birch Cree	64	Broken Slabs, Voids under concrete	5/9/2007		





38	10992 S. Birch Cr	66	Settled Slab, Hugh Void	5/1/2007		
39	10988 S. Birch Cr	67	Settled Slab, Gouges in road	5/29/2007		
40	10978 S. Birch Cr	69	Stucco on Deck	10/4/2007		
41	10974 S. Birch Cr	71	Stone on Pillars by Garage	1/4/2008		
42	10964 S. Birch Cr	73	Landscape by Utility boxes, grounding rod, Cracked Concrete	6/14/2007		
43	10958 S. Birch Cr	74	Cracked concrete	5/29/2007		
44	10946 S. Birch Cr	78	Void under steps and Sinking Concrete in Garage	6/5/2007		
45	10967 S. Birch Cr	59	Over spray on Front Door Soffit, Cracked Concrete	5/15/2007		
46	10971 S. Birch Cr	58	Stucco above/over Garage, Blocking cracked? Frequent throughout	4/12/2007		
47	10977 S. Birch Cr	57	Buckling Stucco-Exposed Wires	5/7/2007		
48	10983 S. Birch Cr	55	Drip Edge	5/3/2007		
49	10993 S. Birch Cr	52	Balcony Stucco & Trim/Drip Edge-Stucco on Deck & Garage Paint	4/11/2007		
50	10999 S. Birch Cr	51	Stone Pillars & Flaking Stucco	4/19/2007		
51	Birch Park Drive		Missing Grass to fence line, Retaining wall falling down			
	11006 S. Maple E	9	Pillars Settling and Deck Separating from Building			
52	556 W. Birch Par	8	Bad Flashing & Bad Concrete	7/2/2007		
53	552 W. Birch Par	7	Void under concrete	7/2/2007		
54	548 W. Birch Par	6	Void under concrete, cracked to. All back door paint	10/9/2007		
55	546 W. Birch Park	5	Cracked Stucco above door-Vod under utility box	7/2/2007		
56	542 W. Birch Park	4	Spalding Concrete	7/16/2007		
57	538 W. Birch Park	3	Cracked Plaster	7/5/2007		
58	532 W. Birch Park	1	Settled Driveway	7/17/2007		
59	Project		Roads all bad			
61	Project		All units Down spouts issues			
62	Project		All back door paint Peeling			
*** Please make special note that this list is NOT fully comprehensive and should not be construed as such.						
There are numerous Concrete and Stucco issues that are similar to the items highlighted here but may not be included on this list.						

## **ADDENDUM 3**



### CONSTRUCTION CONTRACT

**Contractor:** **CORPORATE:** P.O. Box 1519  
Clackamas, OR 97015  
503-723-7500  
FAX: 503-723-7504

**UTAH:** 32 West 200 South #309  
Salt Lake City, UT 84101  
877-723-7577  
FAX: 503-723-7504

**OR #:** 168655  
**WA#:** SEANGGC941C1  
**UT#:** 7632489-5501

**Owner:** Gables at Sterling Village  
C/O: Ted McBride

**Contact: Name:** Ted McBride

**Telephone #:** \_\_\_\_\_

**Owner's Address:** 10998 S Maple Forest Way  
South Jordan, Utah 84

Address Where  
Work to be  
Performed if  
Different than  
Owner's Address:

**Description of Work  
to be Performed by  
Contractor:** See attached scope and cost sheet.

**Exclusions:** Permits, Architectural and Engineering services, mold remediation, crawl space repairs, attic repairs, roofing repairs, Interior, foundation repairs, and Dry rot repairs unless stated in the bid. Proposal is based on SOR from Eric Hoff dated 10/2/2015. This proposal supersedes preliminary proposal dated 3/21/2013.

**Contract Price:** See attached Job Scope and Cost Breakdown sheet

**Deposit:** N/A.

**Payment Terms:** Due upon receipt

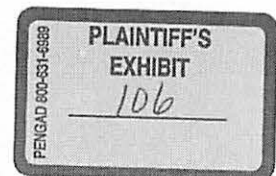
"Contractor"  
GORES CONSTRUCTION INC.  
By: Sean Gores  
Its: President Date: 10/4/15

#### ACCEPTANCE BY OWNER:

Owner shall have 30 days from the date set forth below Contractor's signature to accept this proposal. Once Owner executes this Construction Contract and delivers an original thereof to Contractor, a binding contract between Contractor and Owner will exist.

The Conditions of Contract set forth on pages 3 and 4 attached hereto are a part of this Construction Contract and are incorporated herein by this reference.

Owner: \_\_\_\_\_ Date: \_\_\_\_\_  
Owner: \_\_\_\_\_ Date: \_\_\_\_\_





## Job Scope & Cost Breakdown

### JOB SCOPE AND COST BREAKDOWN

Because of the nature of the Repair Work, the full scope, procedures and details of certain aspects must be developed and defined as the Repair Work proceeds. Accordingly, the Repair Work is broken down into two categories, which will be invoiced and accounted for separately.

The first category is Stipulated Sum Work (Hard cost). The scope of this aspect of Repair Work can be reasonably defined, and can be priced based on an agreed upon total amount. This Repair Work will be invoiced on a percentage completion basis.

The second category is Time and Material ("T&M") Work. The scope of this Repair Work cannot be reasonably defined until complete tear-off and further repairs and investigation occur. **Labor for T&M Work will be invoiced based on a rate of \$68.00 per man hour (for Gores Construction labor). Management for all T&M Work will be billed at \$78.00 per man hour. Materials and subcontractor costs for T&M Work will be invoiced at cost plus a 20% fee.**

Provided below is a breakdown of the job scope and cost breakdown for the Repair Work, for both Stipulated Sum Work and T&M Work. Total budget figures have been provided for the T&M Work. These budget figures are based upon a review of the site, review of expert reports, and experience on similar projects.

#### **\$356,255.00 General Conditions:**

#### **Stipulated Sum Work**

- Provide scaffolding, pump jacks, and weather protection as required.
- Provide temporary toilet facilities as required.
- Provide disposal dumpsters as required.
- Includes daily project clean up.
- Provide storage containers as required.
- Provide man lift service as required.
- Provide fencing around mobilization area.
- Provide permits as required.
- Includes administrative and management fees.
- Does not include Engineering or Architectural services.

#### **\$2,078,482.00 Stucco/Stone Repairs:**

#### **Stipulated Sum Work**

- Remove and dispose/recycle all existing stucco on front elevation.
- Remove and dispose of all synthetic stone on all elevations in order to correct missing weep provisions and flashings.
- Once all water damaged sheathing and framing has been repaired on front elevation, install a 1-coat stucco system with all required weep provisions and flashings to match architectural design as intended on original plans.
- Install new synthetic stone on all elevations as per manufacturer's installation guidelines and per current code.
- Remove stucco at side elevation at foundation grade in order to install properly sloped flashings.
- Remove stucco at rear elevation non-waterproof decks in order to flash ledger boards.
- Repaired removed stucco as required to conceal repairs.

#### **Sealant:**

- Sealant shall be compatible with all surrounding materials.
- Apply recommended primer per sealant manufacturer guidelines.
- Sealant shall be backed with appropriately sized closed cell backer rod.

#### **Flashing Repairs:**

- Install sheet metal Z-flashing at all non-waterproof deck ledgers.
- Install sheet metal head flashing above all windows and doors.
- All sheet metal flashing shall be fabricated and installed per SMACNA recommendations, properly supported by substrates, bed in sealant, and terminated with appropriately sized end dams.

Contractor's Initials \_\_\_\_\_

CONFIDENTIAL

Owner's Initials \_\_\_\_\_

Page 2

<b>\$654,400.00</b>	<b>Window/Door Repairs:</b>	<b>T&amp;M Work</b>
	<ul style="list-style-type: none"> <li>• Cut a 3" perimeter of the existing stucco around all windows and doors on right, left, and rear elevations in order to flash rough openings as required and to install missing sealant joints.</li> <li>• Remove all windows and doors in order to flash rough openings as required.</li> <li>• Flash rough openings with flashing tape per AAMA 2400 specifications.</li> <li>• Repair caulking on the interior sides of the window frames to interior finishes.</li> <li>• Reset all original windows and doors.</li> <li>• Once all rough openings has been flashed, then repaired removed stucco as required to conceal all repairs.</li> </ul>	
<b>\$345,520.00</b>	<b>Deck Repairs:</b>	<b>T&amp;M Work</b>
	<ul style="list-style-type: none"> <li>• Remove and dispose of all existing front elevation waterproof decking.</li> <li>• Remove existing deck membrane and sheathing.</li> <li>• Remove and store existing railings.</li> <li>• Modify deck framing to achieve a positive slope away from house walls.</li> <li>• Install new 1 1/8" deck sheathing.</li> <li>• Install all required perimeter flashings.</li> <li>• Install a Tremco 360 NF waterproof membrane.</li> <li>• Reset original railings.</li> <li>• Install Z-metal flashings at all rear elevation non-waterproof decks.</li> </ul>	
<b>\$30,995.00</b>	<b>Roof Repairs:</b>	<b>T&amp;M Work</b>
	<ul style="list-style-type: none"> <li>• Protect roof system in order to conduct repairs to exterior walls.</li> <li>• Install diverter flashings at gutter to wall terminations.</li> <li>• Repair roof fasteners.</li> </ul>	
<b>\$57,000.00</b>	<b>Interior Repairs:</b>	<b>T&amp;M Work</b>
	<ul style="list-style-type: none"> <li>• Repair construction related damage such as nail pops, sheetrock, and trim.</li> </ul>	
<b>\$168,975.00</b>	<b>Allowances:</b>	<b>T&amp;M Work</b>
	<ul style="list-style-type: none"> <li>• 10% sheathing replacement: \$23,778.00</li> <li>• 5% framing replacement: \$35,658.00</li> <li>• 5% insulation replacement: \$5,943.00</li> <li>• 30% window replacement: \$103,596.00</li> </ul>	
<b><u>\$3,691,975.00</u></b>	<b><u>Sub Total</u></b>	
<b>\$553,744.00</b>	<b>15% Profit &amp; Overhead</b>	
<b>\$369,163.00</b>	<b>10% Project Contingencies for unforeseen conductions</b>	
<b><u>\$4,614,534.00</u></b>		

Contractor's Initials \_\_\_\_\_

**CONFIDENTIAL**

Owner's Initials \_\_\_\_\_  
Page 3

## CONDITIONS OF CONTRACT

1. **WARRANTY.** Gores Construction Inc. warrants that all materials furnished by it under this Construction Contract (this "Contract") will be of good quality, and free from defects unless otherwise specified and, if installed by Gores Construction Inc., will be installed or applied in a good and workmanlike manner. Gores Construction Inc. shall repair or replace any part of its Work which is found to be defective within one year after installation provided that Owner has complied in full with all payment terms and other conditions of this Contract. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Gores Construction Inc.'s warranty excludes remedy for damage or defect caused by abuse, modifications by others, improper or inadequate maintenance, or normal wear and tear under normal usage. Gores Construction, Inc. warrants its workmanship and materials only when it installs an entire envelope area. Under no circumstances (including without limitations to its own alleged negligence) shall Gores Construction Inc. be liable or responsible for water intrusion or problems of any nature in areas where its work ties into our interfaces with existing conditions or work performed by others. However, this limitation shall not apply in the event any damage results solely from intentional misconduct or gross negligence by Contractor. Gores Construction Inc. will not be liable for any unforeseen conditions within building walls (behind sheathing and framing). Any damage caused to electrical wires, A/C, fire protection systems or plumbing lines within the wall assembly during the course of our work will not be paid for by Gores Construction Inc. Repairs to unforeseen conditions will be billed as additional T&M Work.

2. **TIME.** Gores Construction Inc. shall be allowed reasonable time in which to make delivery of materials and to commence and complete its performance. Gores Construction Inc. shall not be liable for loss or damage due to delay or non delivery resulting from the acts or omissions of the Owner, architect or engineers, transportation delays, materials shortages, civil disorders, labor difficulties, vendor allocations, fire, flood, accidents, acts of God, or any other cause beyond Gores Construction Inc.'s reasonable control. Owner shall pay storage costs and additional expenses resulting from delay caused or requested by Owner. Payment for materials of which shipment or delivery is delayed due to Owner's actions or requests shall be due upon invoice and notification that Gores Construction Inc. is prepared to ship such materials.

3. **ACCESS AND CHANGES TO THE WORK.** All Work shall be performed during Gores Construction Inc.'s regular working hours. Gores Construction Inc. shall be entitled to equitable adjustment in the Price of the Work for all additional costs incurred due to unanticipated project delays, conditions or acceleration. Any and all changes shall be reduced to writing, signed by Gores Construction Inc. and Owner. No change or modification of this Contract shall be binding upon Gores Construction Inc. unless accepted by Gores Construction Inc. in writing. Owner shall prepare all work areas so that Gores Construction Inc. can proceed unhindered with its Work and, notwithstanding any project schedule, Gores Construction Inc. shall not be required to commence its Work until sufficient areas are prepared to allow Gores Construction Inc. to complete its Work continuously and uninterrupted.

4. **FACILITIES.** Owner shall furnish all temporary site facilities necessary for Gores Construction Inc.'s performance, including hoisting, electrical power and water, at no cost to Gores Construction Inc.

5. **TAXES AND FEES.** Unless otherwise specified, quoted prices do not include taxes, duties, fees or transportation surcharges which are, or may be, levied upon the materials or the services on behalf of any taxing authority by reason of transfer or delivery to Owner. Any such costs incurred by Gores Construction Inc. shall be invoiced and paid by Owner.

6. **INSURANCE.** Gores Construction Inc. will maintain its standard liability insurance coverage, including workers' compensation as required by law. Owner shall maintain property insurance.

7. **PAYMENT TERMS.** Progress payments shall be invoiced for Work performed and for materials and equipment delivered to the site or to off-site storage. Progress payments shall be determined upon the basis of the Work completed and without retention. Final payment of the entire Price shall be due upon completion of the Work. Invoices are payable upon receipt, and Owner shall not back charge or withhold payment from Gores Construction Inc. for any charges, costs or expenses without Gores Construction Inc.'s specific written consent. Invoices not paid within ten (10) days after receipt are delinquent and shall bear interest at the rate of one and one-half percent (1½%) per month or the maximum amount allowed by law, whichever is less, until paid. In addition, Owner shall pay Gores Construction Inc.'s reasonable costs incurred in collection of any delinquent amounts, including attorney fees and costs of preparing and filing liens, regardless of whether suit or action is instituted. No defect in any part of Gores Construction Inc.'s performance shall delay or excuse Owner's obligation to make full, prompt payment for all Work completed in conformance with this Contract. Gores Construction Inc. may suspend or terminate its performance under this Contract if any payment is delinquent.

8. **ERRORS.** Gores Construction Inc. assumes no responsibility for the suitability, adequacy or legality of the design, materials specifications, or quantity takeoffs when Owner provides any or all design plans, specifications or takeoffs. Products are as listed irrespective of building code requirements. Errors in the extension of prices quoted in the proposal or contained in any invoice are subject to correction by Gores Construction Inc.

9. **NOTICE OF CLAIMS.** As a condition precedent to any obligation of Gores Construction Inc. with respect to Gores Construction Inc.'s failure to meet any requirement of this Contract, Owner shall provide Gores Construction Inc. of such failure, in writing, and shall allow Gores Construction Inc. reasonable time to cure or correct any deficiency or defect in its Work. Gores Construction Inc. shall provide Owner with written notice of any claim on account of changes, extras, delays, acceleration, or other impacts on its performance within a reasonable time and in a reasonable manner.

10. **DAMAGES.** Owner shall make no demand for liquidated damages or actual damages for delays against Gores Construction Inc. in any sum in excess of the Contract Price unless specifically provided otherwise in this Contract and in no event shall Gores Construction Inc. be liable to Owner for delay damages in excess of claims for delay damages actually paid by Owner to others on account of unexcused delays caused solely by Gores Construction Inc. Gores Construction Inc. will not be held liable for any property damage caused during the repair process such as concrete cracks, nail pops, or roof tile damage except as caused by Gores Construction's negligence, breach of contract or improper conduct. If original windows and doors were not removed by Gores Construction Inc. during the repair process, then Gores Construction is not liable for any and all window and door leaks, damage, or warranty repairs.

11. **MEDIATION.** Should any dispute arise between them, Owner and Gores Construction Inc. will submit the dispute to a mediator, agreed to by both parties, as soon as such dispute arises, and in any event prior to the commencement of arbitration or litigation except that Gores Construction Inc. may take any claim for payment directly to court for adjudication. Mediation shall occur in the city where the project is located, and both parties agree to exercise their best efforts in good faith to resolve all disputes in mediation and to share equally the fees and costs of the mediator.

12. **ARBITRATION.** If mediation fails to resolve any dispute, Gores Construction Inc. and Owner shall submit to arbitration all complaints, disputes and/or controversies that may arise out of or in connection with Work under this Contract, excepting Owner's failure to make payment

Contractor's Initials \_\_\_\_\_

CONFIDENTIAL

Owner's Initials \_\_\_\_\_

Page 4

which Gores Construction Inc. may take to court for adjudication. Such complaints, disputes and/or controversies shall be settled exclusively by arbitration under the laws of the State of Oregon and in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (the "Rules"). Owner and Gores Construction Inc. may choose to arbitrate with the American Arbitration Association or a private arbitration service in accordance with the Rules. Owner and Gores Construction Inc. accept jurisdiction of the courts of the State of Oregon for the purposes of commencing, conducting and enforcing such arbitration proceedings and agree to accept notice in writing by registered letter, addressed to the party, of intention to proceed with arbitration, and of any other step in connection with or for enforcement thereof, with the same effect as though personally served in the State of Oregon. Any such arbitration shall occur in Portland, Oregon. In disputes where the aggregate claims of neither party exceed \$100,000, the dispute will be decided by one arbitrator. In the event either party makes claims exceeding \$100,000, each party shall select one arbitrator and the two arbitrators so selected shall then select a third arbitrator. The decision of the arbitrator(s) shall be final and binding on the parties.

13. **MISCELLANEOUS.** Nothing in this Contract shall operate to void or waive Gores Construction Inc.'s right to file any lien or other statutory claim in the event that any payment to Gores Construction Inc. is not timely made. Where there is conflict between the provisions of this Contract and the provisions of any other agreement between Owner and others, or Owner and Gores Construction Inc., the terms of this Contractor shall govern.

Siding, stone, stucco, and brick installation is based on wood framed structures only. If other materials are used in the framing of structure, then Gores Construction Inc. and Owner will execute a change order reflecting the cost of installing the selected type of siding.

14. **OWNER'S DUTY TO NOTIFY CONTRACTOR PRIOR TO COURT ACTION OR ARBITRATION.** Oregon and Washington Law contains important requirements owners must follow before owners may start a court action or arbitration against any contractor, subcontractor or supplier (materials or equipment) for construction defects.

- The owner must deliver a written notice of any conditions it alleges are defective to the contractor.
- The owner must provide the contractor and its subcontractors and suppliers the opportunity to make an offer to repair or pay for the defects. The owner is not obligated to accept any offer made by the contractor, subcontractor or supplier.

There are strict deadlines and procedures that must be followed under Oregon and Washington Law. Failure to meet those deadlines or follow those procedures will affect Owner's ability to commence arbitration.

Contractor's Initials \_\_\_\_\_

**CONFIDENTIAL**

Owner's Initials \_\_\_\_\_  
Page 5

Contractor's Initials \_\_\_\_\_

**CONFIDENTIAL**

Owner's Initials \_\_\_\_\_  
Page 6



## **ADDENDUM 4**

**Gables at Sterling Village HOA**

**Maple Forest Way**

Castlewood-Strling Village I LLC/

Castlewood Builders LLC

Defense Scope, Defense Cost  
Cost of Repair Estimate

*July 14, 2014*

*Prepared for:*

**MC Consultants, Inc.**

2055 Corte del Nogal

Carlsbad, CA 92011

T 760-930-9966

F 760-930-9974

Gables at Sterling Village HOA  
Defense Scope/Defense Cost  
Cost of Repair Estimate  
Summary

No.	Description	Notes	Qty	Un	Unit Price	Total
	Concrete Driveways		88.00	loc	1,253.63	110,319.44
	Concrete Entry Stairs		29.00	loc	938.22	27,208.29
	Stone Clad Wood Framed Column		6.00	loc	393.03	2,358.18
	Stucco Repair @ Wood Trellis		9.00	loc	375.32	3,377.88
	Minor Roof Tune-Up					
	4-plex		7.00	bldgs	855.40	5,987.80
	6-plex		7.00	bldgs	1,283.10	8,981.70
	8-plex		1.00	bldgs	1,710.80	1,710.80
	Minor Stucco Repair					
	4-plex		7.00	bldgs	1,468.80	10,281.60
	6-plex		7.00	bldgs	2,203.20	15,422.40
	8-plex		1.00	bldgs	2,937.60	2,937.60
	Window Weeps Clogged		78.00	loc	8.70	678.60
	Deck Repairs					
	Note: MC did not inspect decks. MC will use Plaintiff costs until MC can determine decks that are @ issue.		1.00	ls	345,150.00	345,150.00
	<b>Project Subtotal</b>					<b>534,414.29</b>
	General Conditions		12.50%			66,801.79
	<b>Project Subtotal</b>					<b>601,216.08</b>
	Contractors Overhead & Profit		20.00%			120,243.22
	<b>Project Subtotal</b>					<b>721,459.30</b>
	Insurance		2.50%			18,036.48
	<b>Project Subtotal</b>					<b>739,495.78</b>
	Contingency		10.00%			73,949.58
	<b>Project Subtotal</b>					<b>813,445.36</b>
	Design & Consultant Fees		8.00%			65,075.63
	Permits & Fees		1.50%			12,201.68
	<b>Project Total</b>					<b>890,722.66</b>



Gables at Sterling Village HOA  
Defense Scope/Defense  
Cost of Repair Estimate  
Detail

No.	Item Description	Notes	Crew	Hrs	Qty.	Un	Labor	Mat.	Equip./ Other	Subc.	Labor	Mat.	Equip./ Other	Subc.	Total
<b>Concrete Driveways</b>															
Price Based on 10' x 10' Section															
	Protect adjacent surfaces		SW1	1hr	1.00	loc	26.09	10.50	5.50		26.09	10.50	5.50	0.00	42.09
	Saw cut along (E) tool joints	Crew = 1mn @ \$45.00/hr + materials & Equipment.	subc.	1hr	30.00	lf	1.50	0.12	0.35		45.00	3.60	10.50	0.00	59.10
	Remove & dispose of concrete		SW2	4hrs	100.00	sf	1.82		0.35		182.00	0.00	35.00	0.00	217.00
	Concrete disposal	15cy Roll-Off @ \$225.00	rental		2.00	cy			17.50		0.00	0.00	35.00	0.00	35.00
	Excavate & recompact 2 ft of (E) soils	Bare equip @ \$15.00/hr	SW2	4hrs	7.50	cy	24.24		8.00		181.80	0.00	60.00	0.00	241.80
	Import soils as need during compaction	Bare equip @ \$15.00/hr	SW2	1hr	2.00	cy	22.73		7.50		45.46	0.00	15.00	0.00	60.46
	Pour & finish new concrete		SW5	5hrs	100.00	sf	2.83	2.15	0.35		283.00	215.00	35.00	0.00	533.00
	Clean up		SW1	2hrs	1.00	loc	52.18	5.50	7.50		52.18	5.50	7.50	0.00	65.18
	Subtotal				100.00	sf	12.54				815.53	234.60	203.50	0.00	1,253.63
<b>Concrete Entry Stairs</b>															
Price Based on 8' x 8' Section															
	Protect adjacent surfaces		SW1	1hr	1.00	loc	26.09	10.50	5.50		26.09	10.50	5.50	0.00	42.09
	Saw cut along (E) tool joints	Crew = 1mn @ \$45.00/hr + materials & Equipment.	subc.	40min	18.00	lf	1.67	0.12	0.35		30.06	2.16	6.30	0.00	38.52
	Remove & dispose of concrete		SW2	3hrs	64.00	sf	2.13		0.45		136.32	0.00	28.80	0.00	165.12
	Concrete disposal	15cy Roll-Off @ \$225.00	rental		1.30	cy			17.50		0.00	0.00	22.75	0.00	22.75
	Excavate & recompact 2 ft of (E) soils	Bare equip @ \$15.00/hr	SW2	3hrs	5.20	cy	26.22		8.00		136.34	0.00	41.60	0.00	177.94
	Import soils as need during compaction	Bare equip @ \$15.00/hr	SW2	40min	1.30	cy	23.31		7.50		30.30	0.00	9.75	0.00	40.05
	Pour & finish new concrete		SW5	4hrs	64.00	sf	3.54	2.15	0.35		226.56	137.60	22.40	0.00	386.56
	Clean up		SW1	2hrs	1.00	loc	52.18	5.50	7.50		52.18	5.50	7.50	0.00	65.18
	Subtotal				64.00	sf	14.66				637.86	155.76	144.60	0.00	938.22
<b>Stone Clad Wood Framed Column</b>															
	Protect adjacent surfaces		D1	30min	1.00	loc	13.05	7.50	2.50		13.05	7.50	2.50	0.00	23.05
	Remove faux stone finish (Stone faux is 1'x1'x3'high). Remove 12" stucco brown coat @ base of column.		D1	1.5hrs	1.00	loc	39.14		10.50		39.14	0.00	10.50	0.00	49.64
	Allow for misc framing repairs as reqrd.		RC2	40min	1.00	loc	21.23	10.50	5.50		21.23	10.50	5.50	0.00	37.23
	Install flashing @ base of col, scratch & brown coat.	Plstr crew = 1mn @ \$38.75/hr + materials & Equipment.	subc.	1hr	1.00	loc	38.75	11.85	7.50		38.75	11.85	7.50	0.00	58.10
	Install new faux stone	Plstr crew = 1mn @ \$38.75/hr + materials & Equipment.	subc.	3hrs	12.00	sf	9.69	3.97	2.00		116.28	47.64	24.00	0.00	187.92
	Clean up		D1	1hr	1.00	loc	26.09	5.50	5.50		26.09	5.50	5.50	0.00	37.09



Gables at Sterling Village HOA  
Defense Scope/Defense  
Cost of Repair Estimate  
Detail

No.	Item Description	Notes	Crew	Hrs	Qty.	Un	Labor	Mat.	Equip./ Other	Subc.	Labor	Mat.	Equip./ Other	Subc.	Total
	Subtotal										254.54	82.99	55.50	0.00	393.03
	<b>Stucco Repair @ Wood Trellis</b>														
	Protect adjacent surfaces		D1	30min	1.00	loc	13.05	7.50	2.50		13.05	7.50	2.50	0.00	23.05
	Remove stucco @ beam	4x12 stucco clad	D2	1.2hrs	8.00	If	6.81		1.10		54.48	0.00	8.80	0.00	63.28
	Remove stucco @ post	4x4 stucco clad	D2	40min	6.00	If	5.04		1.00		30.24	0.00	6.00	0.00	36.24
	Flash top of beam w/ SAM		RC2	40min	8.00	If	2.65	0.65	0.45		21.20	5.20	3.60	0.00	30.00
	Lath & stucco beam	Plstr crew = 1mn @ \$38.75/hr + materials & Equipment.	subc.	2hrs	8.00	If	9.69	3.10	2.10		77.52	24.80	16.80	0.00	119.12
	Lath & stucco post	Plstr crew = 1mn @ \$38.75/hr + materials & Equipment.	subc.	1.2hrs	6.00	If	7.75	1.89	1.45		46.50	11.34	8.70	0.00	66.54
	Clean up		D1	1hr	1.00	loc	26.09	5.50	5.50		26.09	5.50	5.50	0.00	37.09
	Subtotal										269.08	54.34	51.90	0.00	375.32
	<b>Minor Roof Tune-Up</b>														
	4-plex	Rfg crew = 4mn @ \$146.85/hr + materials & Equipment.	subc.	1hr/un	4.00	un	146.85	49.50	17.50		587.40	198.00	70.00	0.00	855.40
	6-plex	Rfg crew = 4mn @ \$146.85/hr + materials & Equipment.	subc.	1hr/un	6.00	un	146.85	49.50	17.50		881.10	297.00	105.00	0.00	1,283.10
	8-plex	Rfg crew = 4mn @ \$146.85/hr + materials & Equipment.	subc.	1hr/un	8.00	un	146.85	49.50	17.50		1,174.80	396.00	140.00	0.00	1,710.80
	<b>Minor Stucco Repair</b>														
	4-plex	Plstr crew = 4mn @ \$128.10/hr + materials & Equipment.	subc.	2hrs/un	4.00	un	256.20	75.50	35.50		1,024.80	302.00	142.00	0.00	1,468.80
	6-plex	Plstr crew = 4mn @ \$128.10/hr + materials & Equipment.	subc.	2hrs/un	6.00	un	256.20	75.50	35.50		1,537.20	453.00	213.00	0.00	2,203.20
	8-plex	Plstr crew = 4mn @ \$128.10/hr + materials & Equipment.	subc.	2hrs/un	8.00	un	256.20	75.50	35.50		2,049.60	604.00	284.00	0.00	2,937.60
	<b>Window Weeps Clogged</b>														
	Remove debris from window weeps	one unit	D1	20min	1.00	un	8.70				8.70	0.00	0.00	0.00	8.70
	<b>Deck Repairs</b>														
	Note: MC did not inspect decks. MC will use Plaintiff costs until MC can determine decks that are @ issue.				1.00	is				345,150.00	0.00	0.00	0.00	345,150.00	345,150.00



Gables at Sterling Village HOA  
Labor Rates

Code	Unit	Rate	Description									Asst.			Average
			Laborer			Carpenter			Conc. Fin.			Project Mngr	Project Mngr	Supt.	
Cost Unburdened (1)			App	Jou	For.	App	Jou	For.	App	Jou	For.				
Mark up	10%		10.54	14.20	17.75	11.92	17.34	21.85	13.65	16.66	20.95	18.93	32.60	27.53	
Health Care		/Hr	11.59	15.62	19.53	13.11	19.07	24.04	15.02	18.33	23.05	20.82	35.86	30.28	27.37
Vacation		/Hr													
Education		/Hr													
Pension		/Hr													
SUTA	1.80%	%	0.21	0.28	0.35	0.24	0.34	0.43	0.27	0.33	0.41	0.37	0.65	0.55	0.49
FUTA	0.80%	%	0.09	0.12	0.16	0.10	0.15	0.19	0.12	0.15	0.18	0.17	0.29	0.24	0.22
HI	1.45%	%	0.17	0.23	0.28	0.19	0.28	0.35	0.22	0.27	0.33	0.30	0.52	0.44	0.40
SDI	6.20%	%	0.72	0.97	1.21	0.81	1.18	1.49	0.93	1.14	1.43	1.29	2.22	1.88	1.70
FICA	7.65%	%	0.89	1.19	1.49	1.00	1.46	1.84	1.15	1.40	1.76	1.59	2.74	2.32	2.09
Workmans Comp (2)	13.13%	%	4.53	6.11	2.56	5.13	7.46	3.16	5.87	7.17	3.03	2.73	4.71	3.98	6.27
Vehicle (3)	4.22	/Hr			4.22			4.22			4.22	4.22	4.22	4.22	2.81
Liability Insurance	10.00%	%	1.16	1.56	1.95	1.31	1.91	2.40	1.50	1.83	2.30	2.08	3.59	3.03	2.74
Burdened \$/Hr.			19.36	26.09	31.76	21.90	31.85	38.12	25.08	30.60	36.72	33.59	54.79	46.93	44.09
Percent Overhead			40%	40%	39%	40%	40%	37%	40%	40%	37%	38%	35%	35%	51.27%
Demolition															Crew Cost per Hour
D 1				1											\$26.09
D 2			1	1											\$45.45
D 3			1	1	1										\$77.20
D 4				1			1								\$57.94
D 5				1						1					\$56.69
D 6			1	2			1								\$103.39
D 7			2	2											\$90.89
D 8			2	2	1										\$122.65
Site Work															
SW 1				1											\$26.09
SW 2			1	1											\$45.45
SW 3			1	1	1										\$77.20
SW 4				1			1								\$57.94
SW 5				1						1					\$56.69
SW 6									1	1	1				\$92.40
SW 7				1					1	2	1				\$149.09
SW 8						1	2								\$85.60
SW 9			1	1						1					\$76.05
SW 10				1			1								\$57.94
SW 11			2	2	1										\$122.65
Concrete															
C 1										1					\$30.60
C 2									1	1					\$55.68
C 3									1	1	1				\$92.40
C 4			1	1					1	2	1				\$168.45
C 5				1			2			3					\$181.61
C 6			1	1		1	1		1	3					\$216.09
C 7			1	1					2	4	1				\$254.74
Carpentry															
Rough Carpentry															
RC 1						1									\$21.90
RC 2							1								\$31.85
RC 3						1	1								\$53.75
RC 4						1	1	1							\$91.87
RC 5						2	2	1							\$145.62
RC 6						3	3	1							\$199.37
RC 7				1		2	2								\$133.59
RC 8				2		2	2	1							\$197.79
Finish Carpentry															
FC 1						1									\$21.90
FC 2							1								\$31.85
FC 3						1	1								\$53.75
FC 4						1	1	1							\$91.87
FC 5						2	2								\$107.50



Gables at Sterling Village HOA  
Labor Rates

Code	Unit	Rate	Description									Asst.		Supt.	Average
			Laborer			Carpenter			Conc. Fin.			Project	Project		
			App	Jou	For.	App	Jou	For.	App	Jou	For.	Mngr	Mngr		
FC 6						2	2	1							\$145.62

Gables at Sterling Village HOA  
Wage Rates

Utah Economic Data Viewer		
www.jobs.utah.gov		
Salt Lake Metro - Wage & Occupational Openings Report		
Occupation Title	Hourly Median Wage	Hourly Inexperienced Wage
Construction Laborers	14.20	10.54
Supervisors of Construction and Extraction Workers	27.53	20.43
Carpenters	17.34	11.92
Construction Managers	39.86	29.21
Construction and Building Inspectors	27.11	20.63
Operating Engineers and Other Construction Equipment Operators	23.83	19.47
Painters, Construction and Maintenance	16.92	12.32
Helpers, Construction Trades, All Other	14.31	12.34
Earth Drillers, Except Oil and Gas	24.96	20.31
Cost Estimators	31.38	20.27
Reinforcing Iron and Rebar Workers	17.63	15.25
Civil Engineers	36.91	27.26
Electricians	23.26	16.87
Cement Masons and Concrete Finishers	16.66	13.65
Paving, Surfacing, and Tamping Equipment Operators	17.92	13.95
Helpers--Carpenters	13.82	10.70
Brickmasons and Blockmasons	22.02	18.57
Drywall and Ceiling Tile Installers	16.09	13.07
Architects, Except Landscape and Naval	36.35	20.47

## **ADDENDUM 5**



# RIDGE ROCK

6611 S Cottonwood St  
Murray, UT 84107

www.ridgerockinc.com  
ph: 801-747-1055  
fax 801-266-3903

## Estimate

9976

Estimator: J

Name / Address

Vial Fotheringham LLP  
Douglas C. Shumway  
602 E. 300 S.  
Salt Lake City, UT 84102

Job Location

10998 S. Maple Forest Way  
South Jordan, UT  
Douglas - 801-355-9594

Terms	Date	P.O. No.	Project Name
-------	------	----------	--------------

11/21/2012

Description	Total
-------------	-------

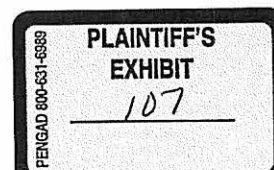
Revised Bid..... 12/3/12

Based on approx. 37,951 Sq Ft on 16 triple driveways, 31 double driveways, and 47 walkways. Break up current concrete driveways and walkways. Over-excavate and compact the soil in the upper 2 feet below the concrete walkways and driveways to 95% of the modified proctor. Price includes testing. Re-pour all concrete driveways and walkways. Includes grading adjacent to the buildings per the International Building Code requirements.

436,436.50

Based on 37,951 Sq Ft. Areas where we encounter construction debris, topsoil, or any unsuitable soil, will be over-excavated to firm native soil, and will be replaced with imported granular fill compacted to 95% of the modified proctor. Price: \$25 per cubic yard. Area to be determined by Owner before excavation begins and will result in a change order per our unit price.

### Total







# RIDGE ROCK

6611 S Cottonwood St  
Murray, UT 84107

www.ridgerockinc.com  
ph: 801-747-1055  
fax 801-266-3903

## Estimate

9976

Estimator: J

Name / Address

Vial Fotheringham LLP  
Douglas C. Shumway  
602 E. 300 S.  
Salt Lake City, UT 84102

Job Location

10998 S. Maple Forest Way  
South Jordan, UT  
Douglas - 801-355-9594

Terms	Date	P.O. No.	Project Name
-------	------	----------	--------------

11/21/2012

Description	Total
-------------	-------

Disclaimer: Any increase in price for any materials (including freight and taxes), must be paid for by the buyer.

EXCLUSIONS (Unless noted above): Traffic Control, Towing, Removal of water or construction debris, Bonds, Fees, Permits, Surveying, Engineering, Sawcutting, Sterilant or Insurance in excess of our current policy (Insurance certificate will be provided on request). Note: Any delays caused by these exclusions will automatically add time to the contract period and will result in a change order.

PERSONAL GUARANTEE: Ridge Rock, Inc. (RRI) will provide materials & services as described. Any changes may require a change in the contract price. Buyer hereby agrees to terms of any change orders submitted by RRI. The price for the work shall be as per actual quantities and unit prices as listed above. All quantities shall be field verified. Signer personally guarantees payment to RRI in full within ten (10) days following the date of RRI's invoices, without retention regardless of the final completion date of the work. In the event that payment is not made to RRI as provided herein, RRI shall be entitled to all of it's costs, including attorney's fees and lien fees, in connection with the enforcement of it's rights under this contract, whether or not legal proceedings are instituted. In addition, RRI shall be entitled to interest on all past due accounts under this contract, which interest shall accrue at the rate of 1-1/2% per month from the date payment is due until payment is received by RRI.

Signed \_\_\_\_\_

### Total

\$436,436.50

# CONCRETE































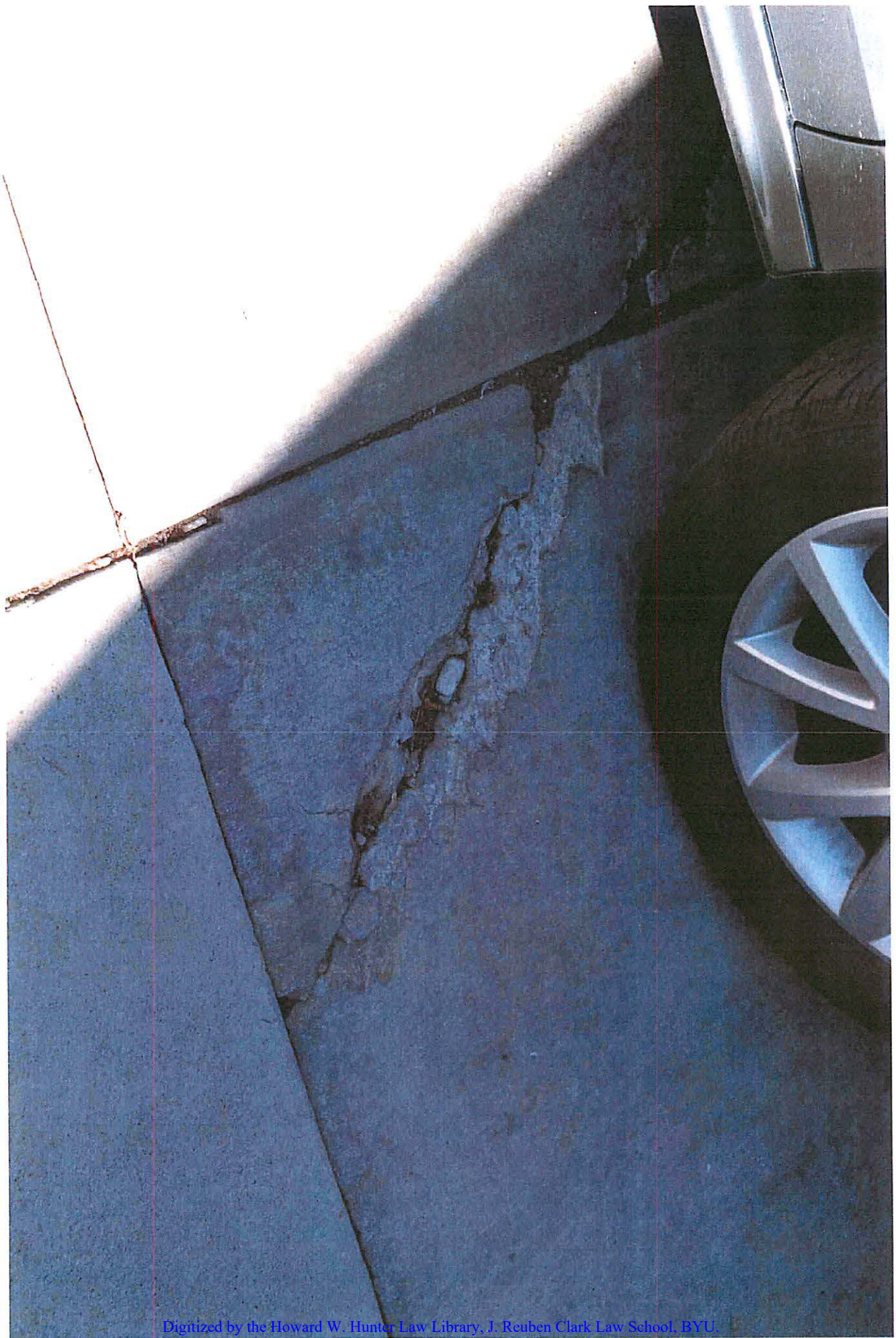












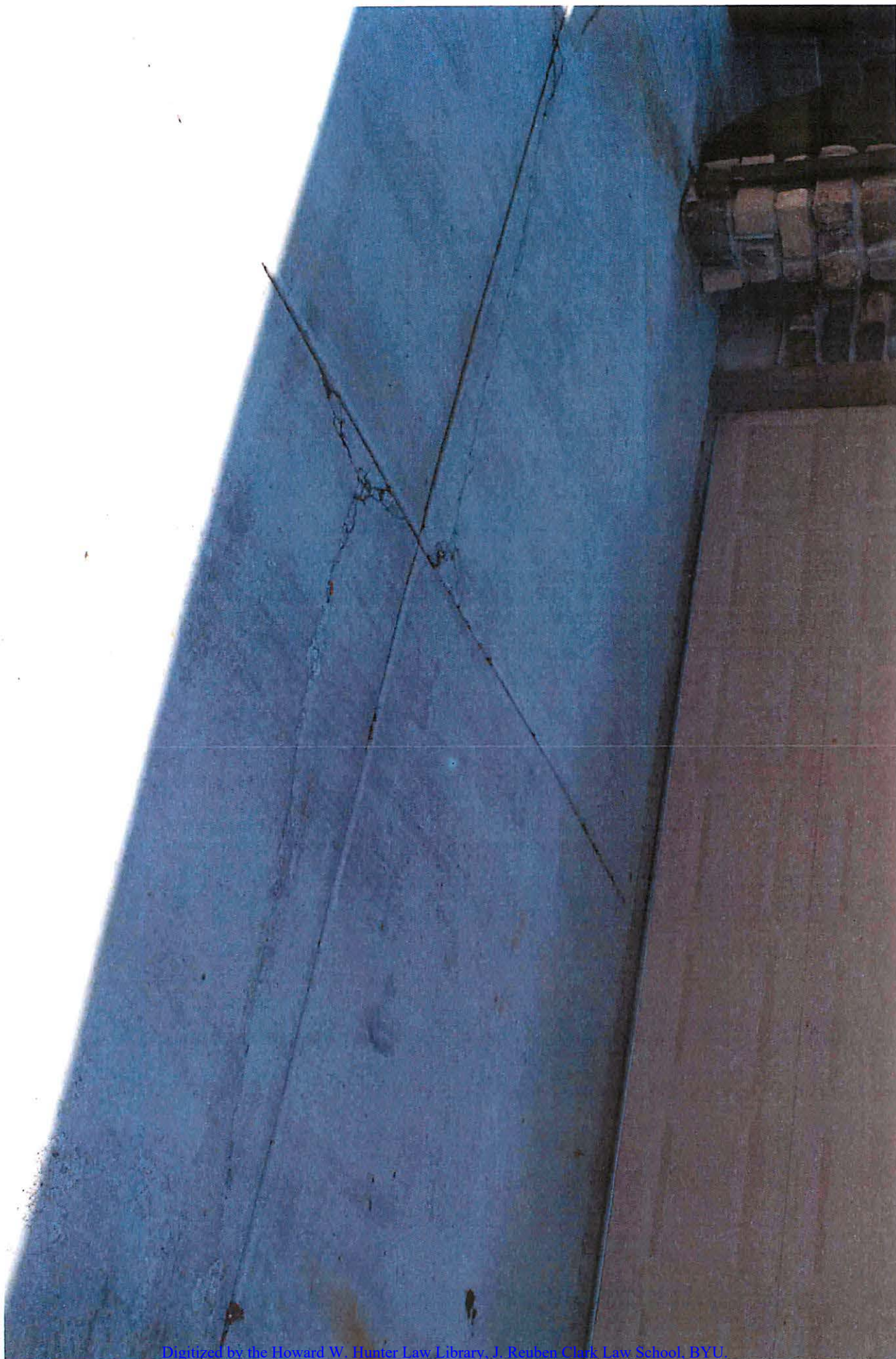




































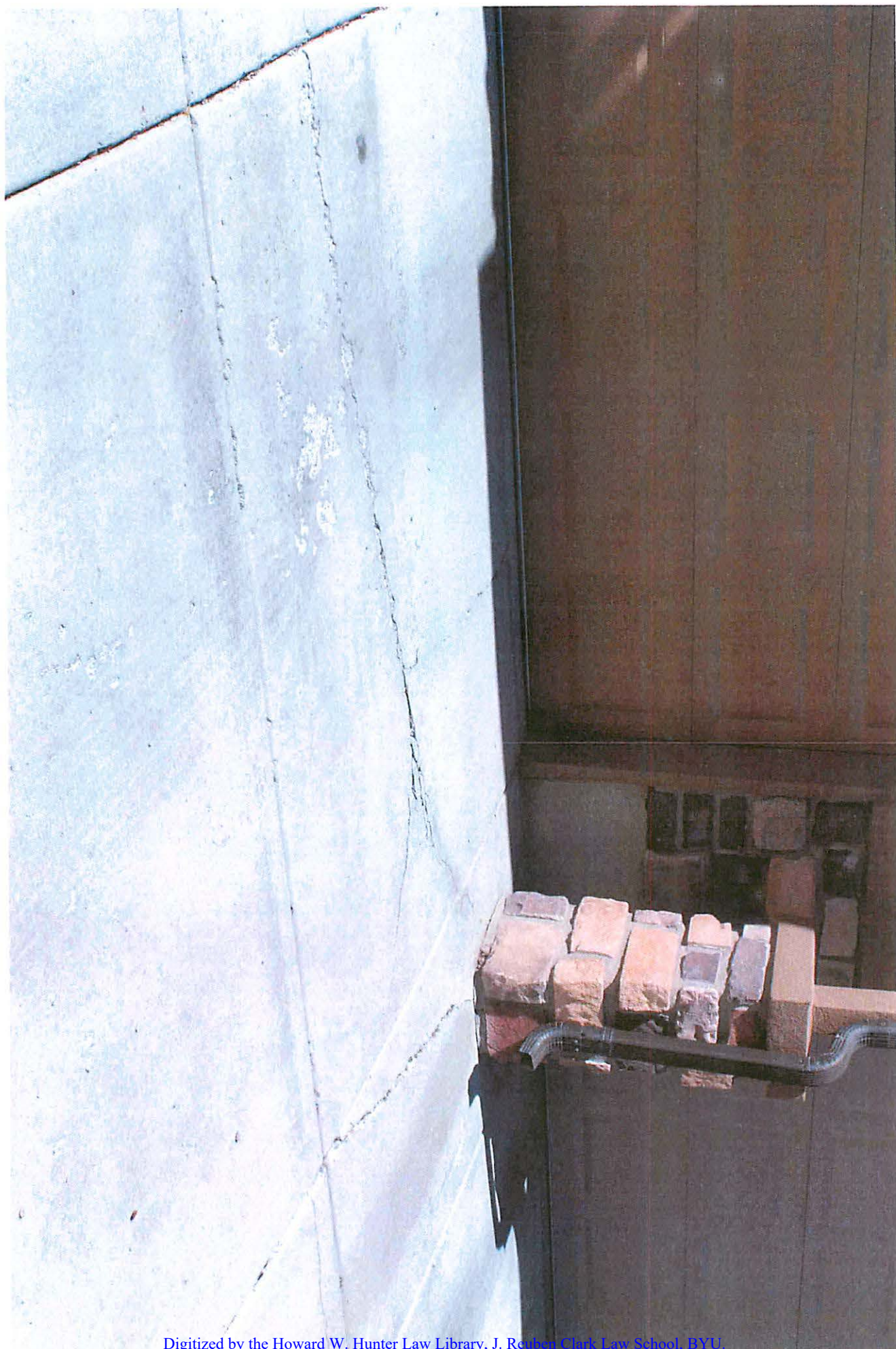












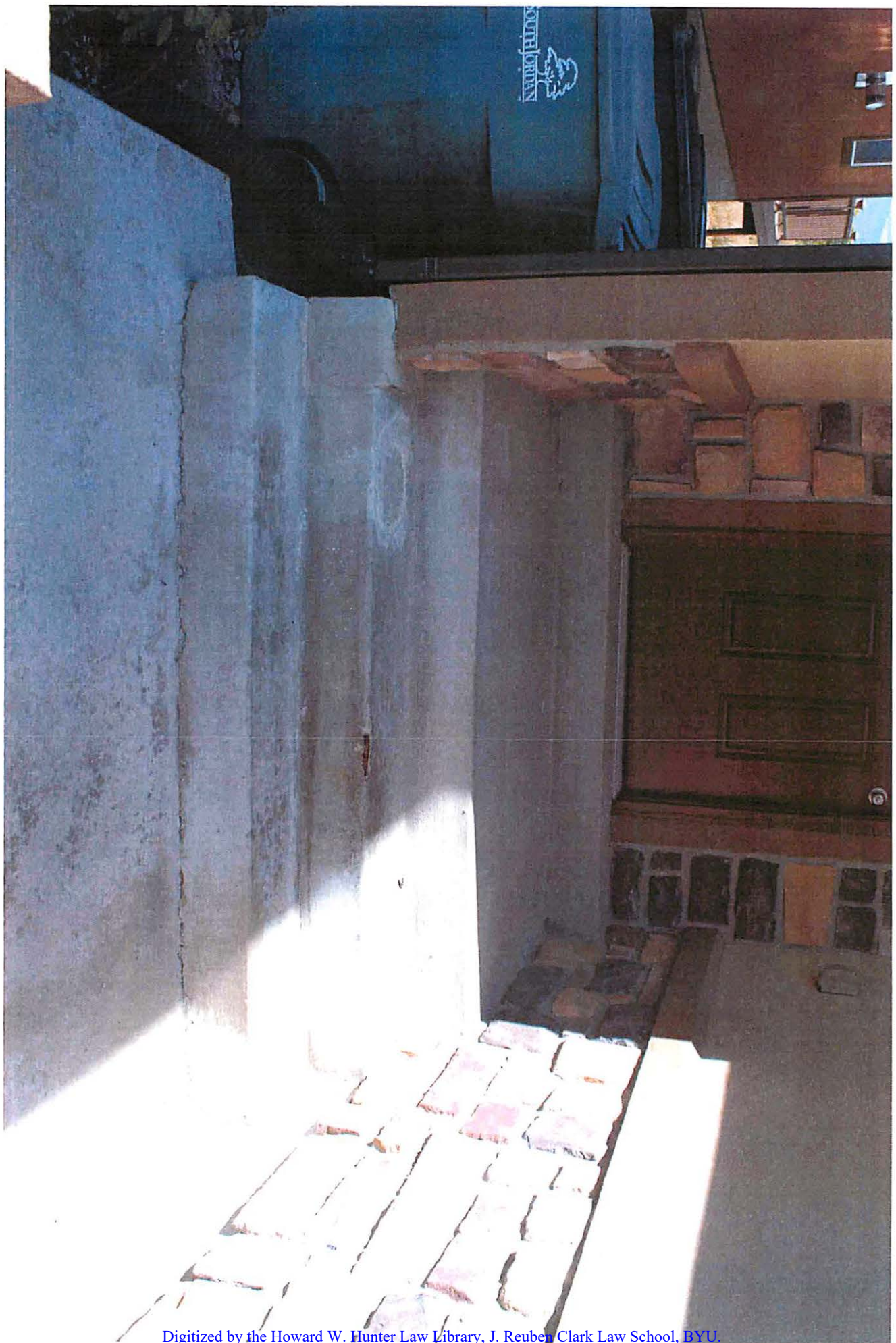




































































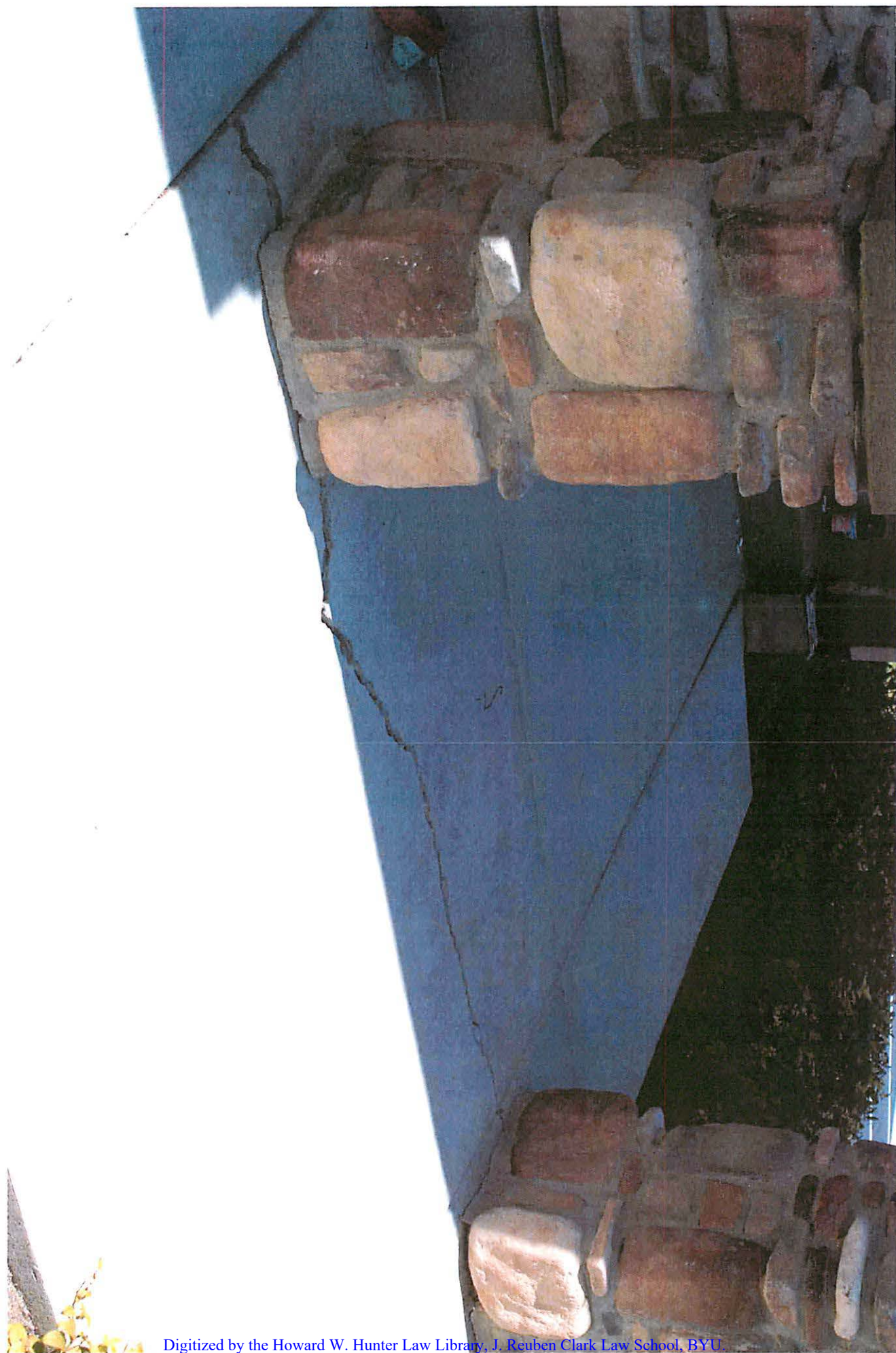








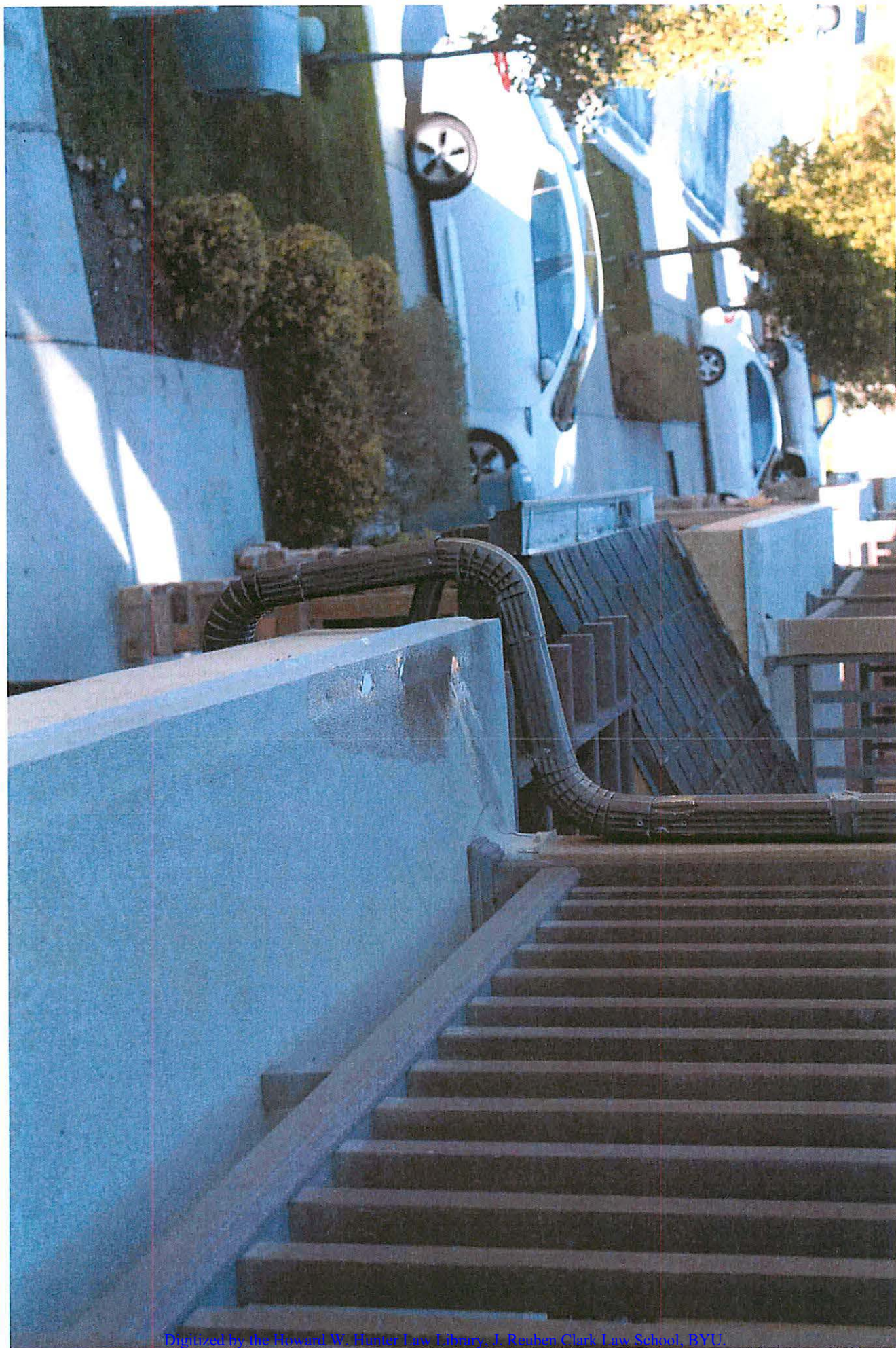






# DECKS

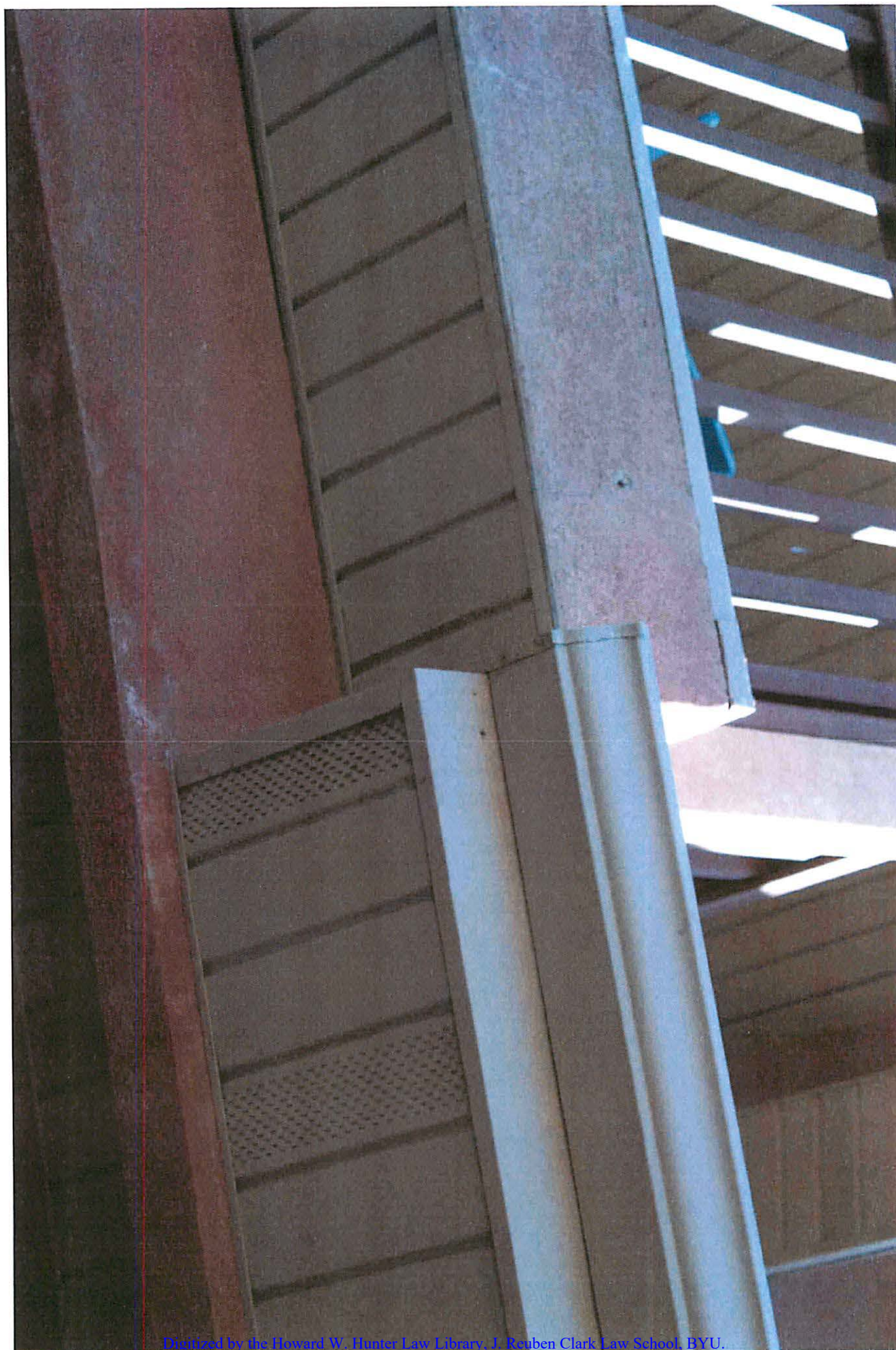
















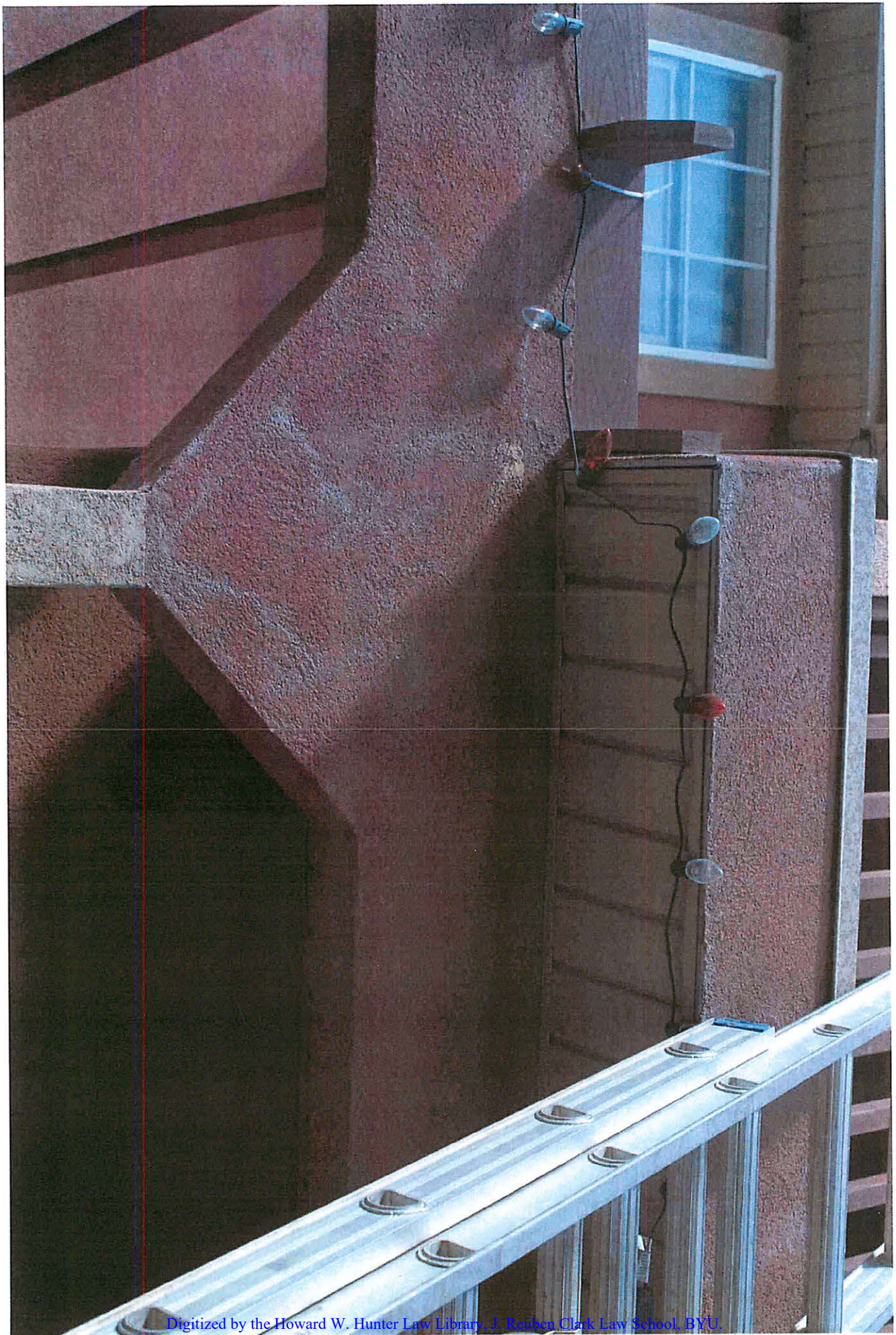












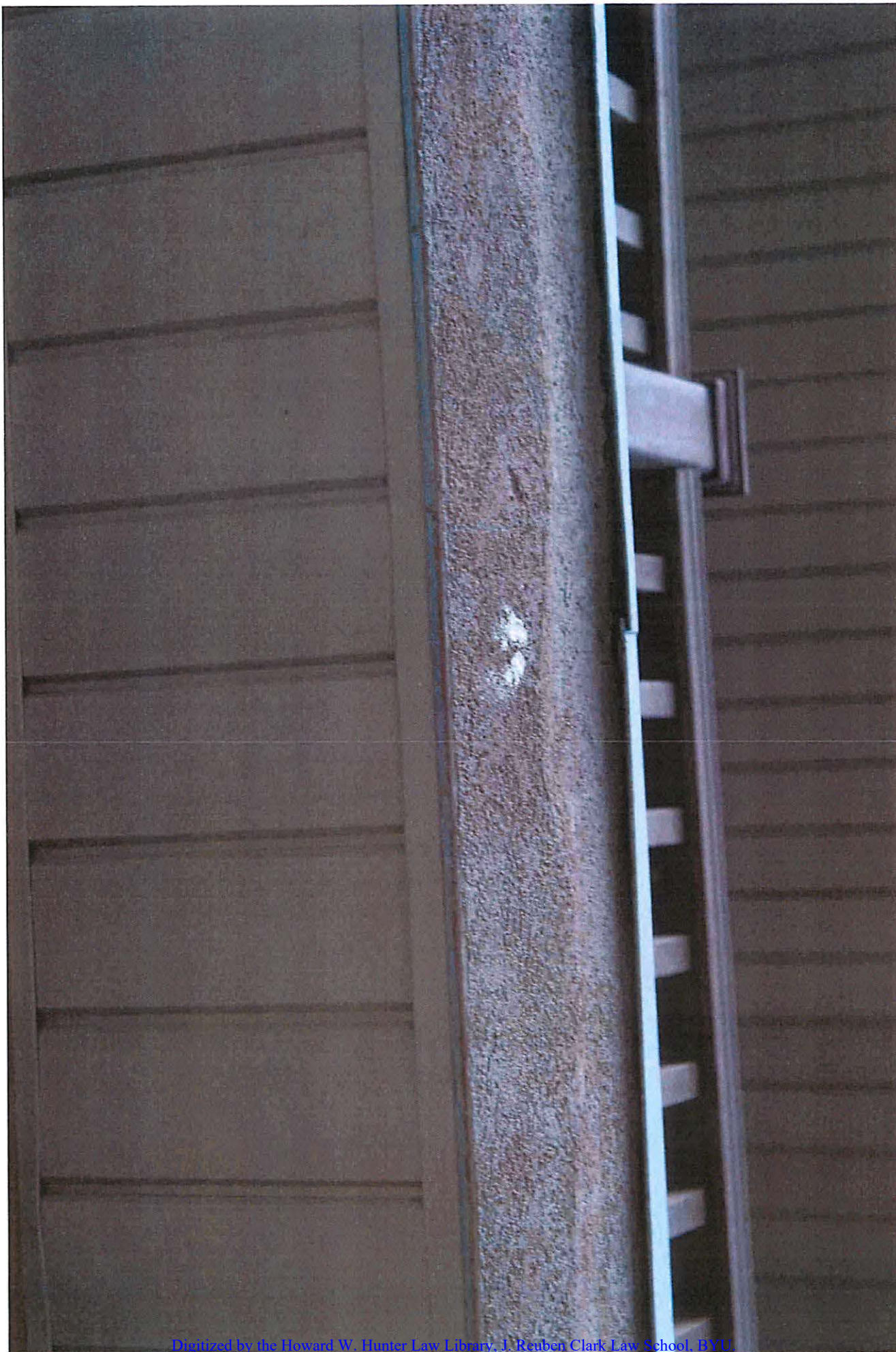












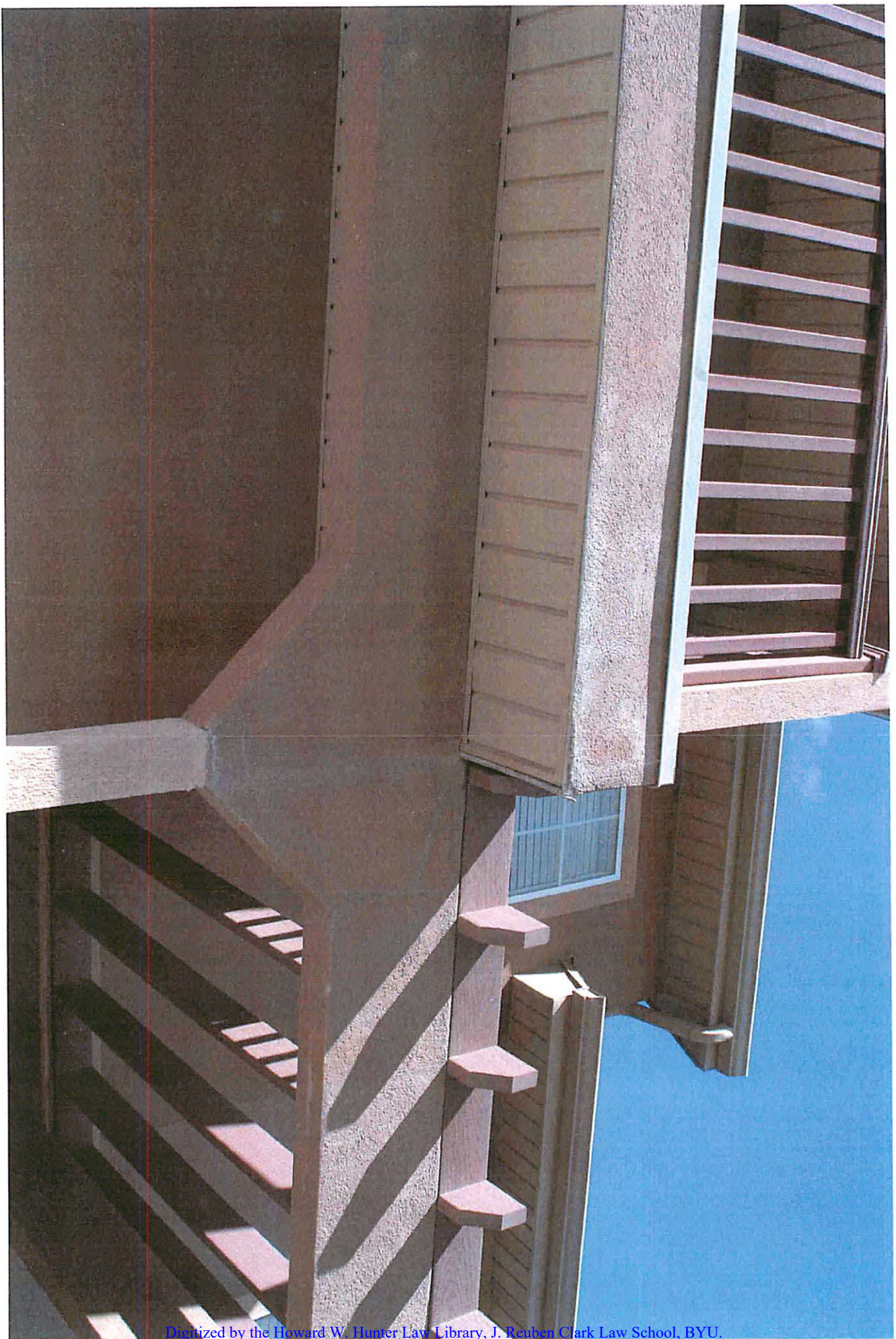








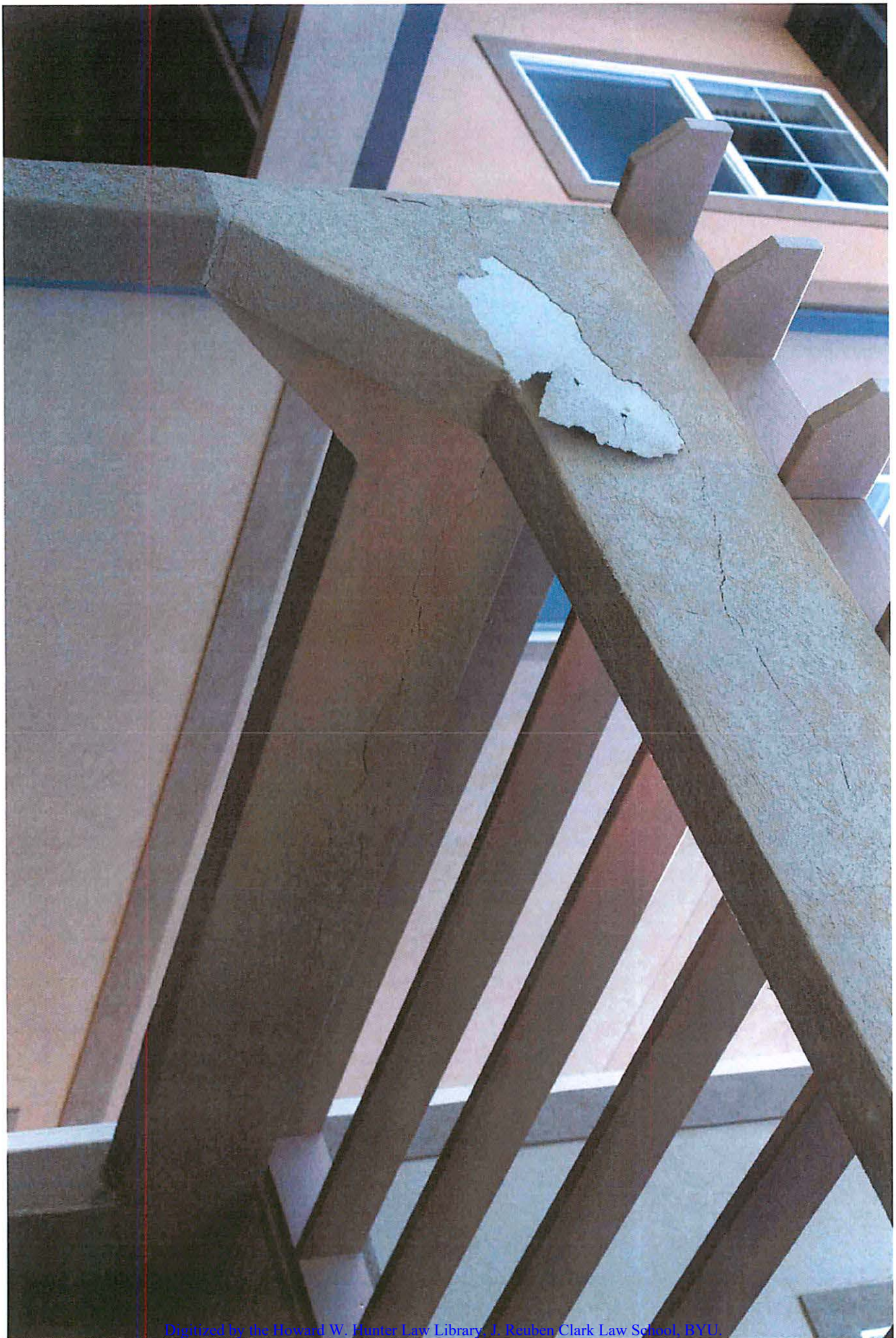




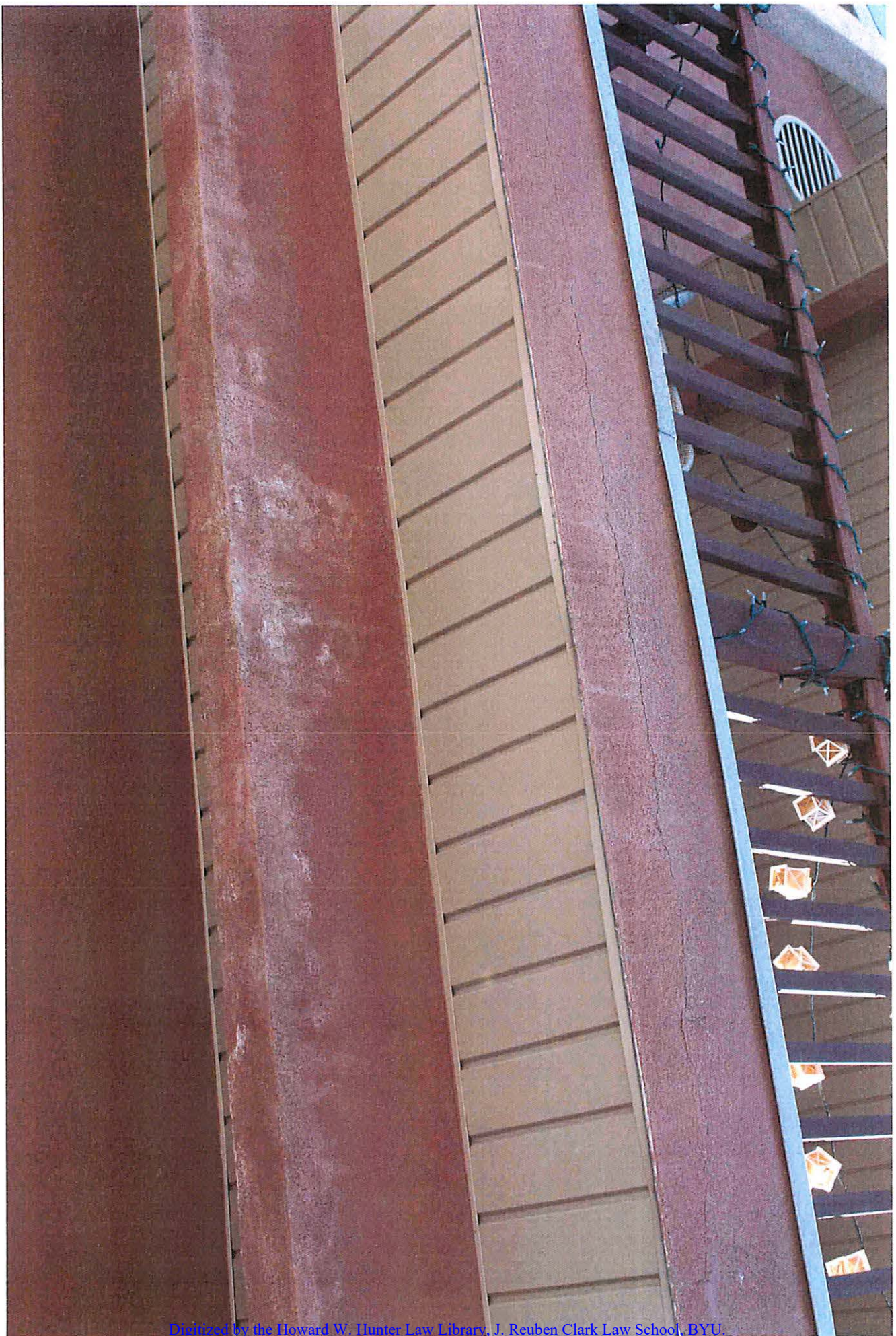




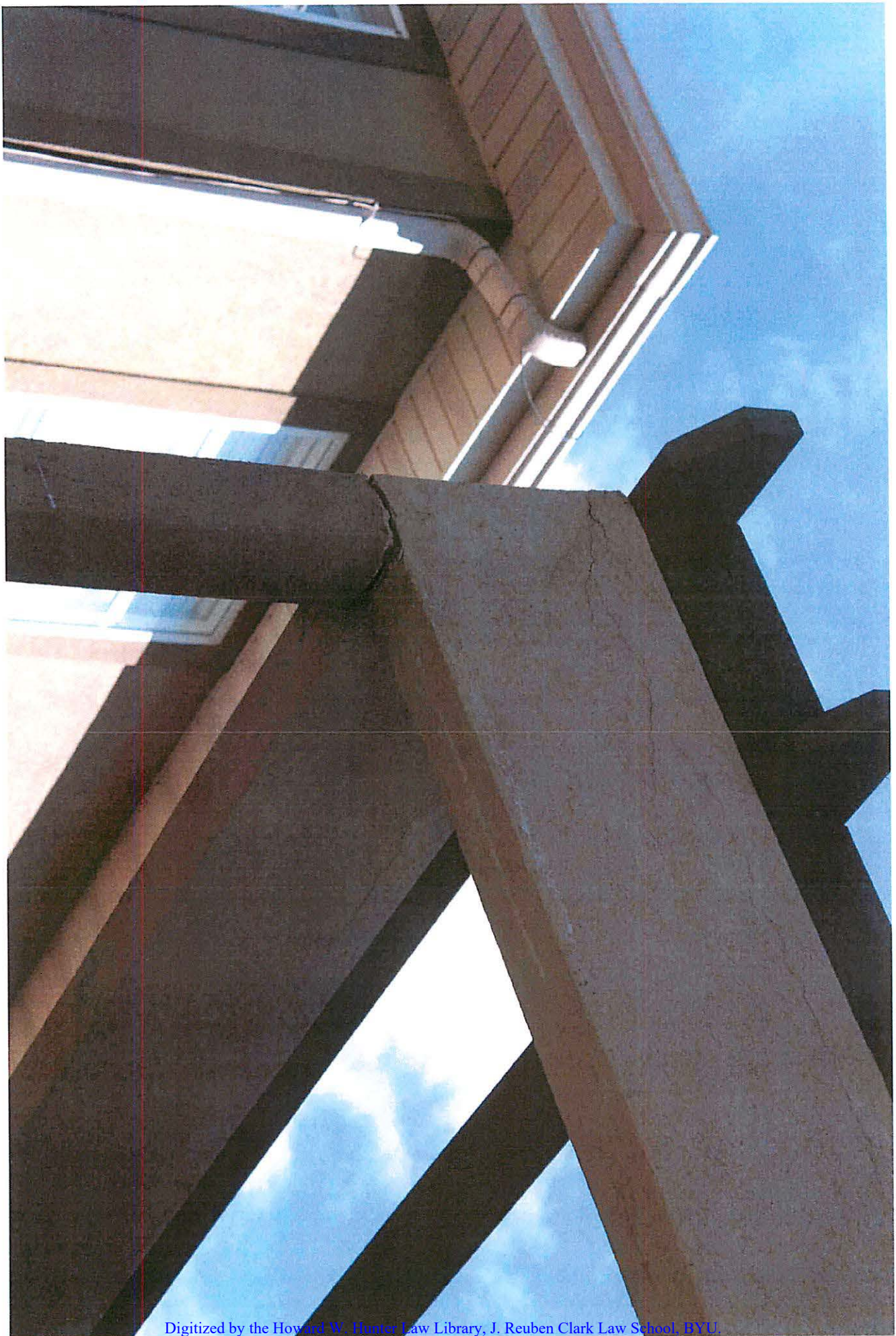












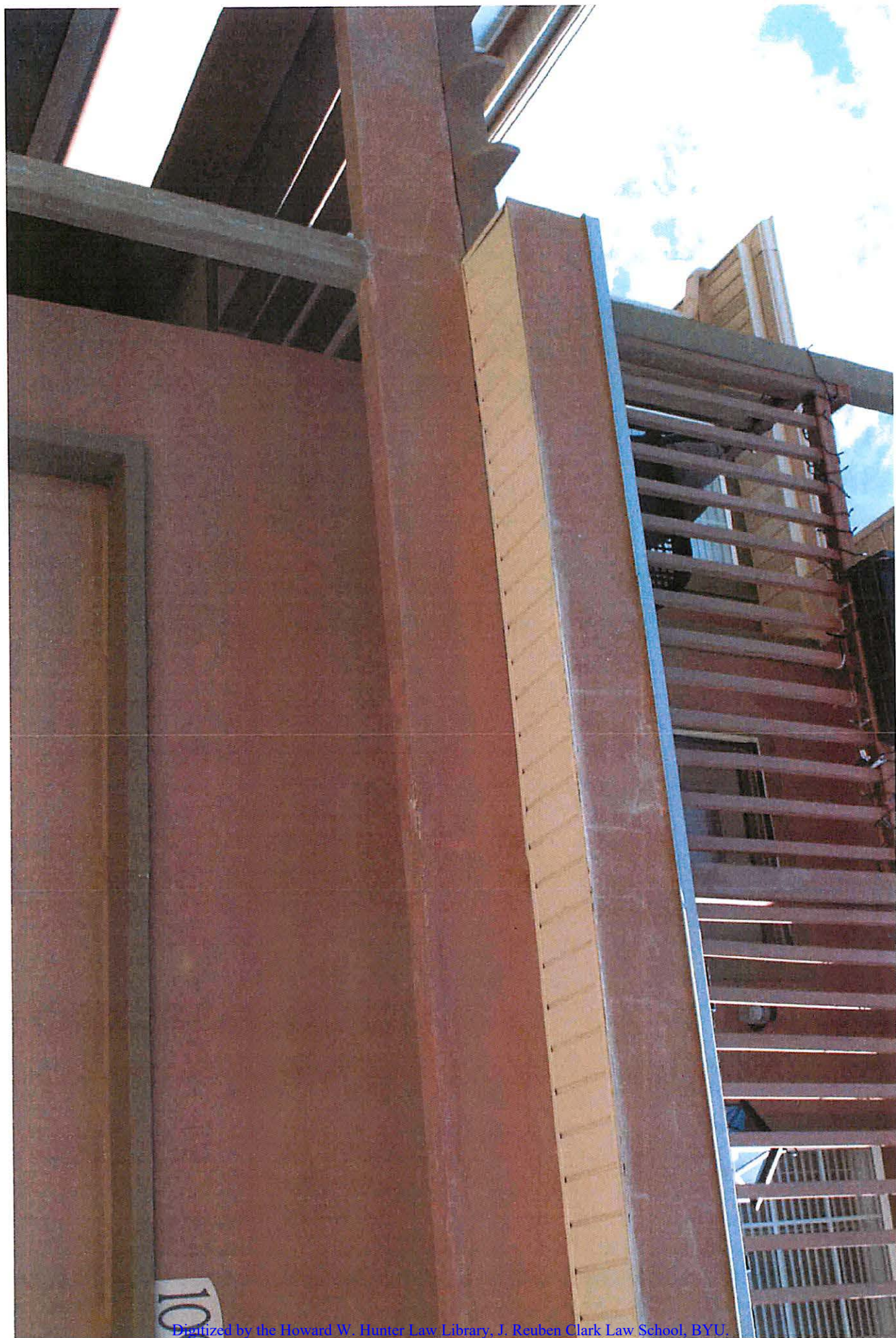


















# TEMPORARILY REPAIRED DECKS















DATE:	Friday, November 09, 2012
FIELD TECH:	Matt Woodruff
PROJECT:	Gables at Sterling Village
PROJECT #:	12141

(ASTM D2922-01 & D3017-01)

[illegible]

Sample collected from test location 3 & 4. About 3 - 4" of loose gravels were above the clay and were removed prior to test.



DATE:	Friday, November 09, 2012
FIELD TECH:	Matt Woodruff
PROJECT:	Gables at Sterling Village
PROJECT #:	12141

**(ASTM D2922-01 & D3017-01)**

**GAUGE MODEL:** 3430      **CN#:** 61584      **CALIBRATED:** 1/11/12      **DUE:** 1/11/13      **BY:** Qal-Tek

[illegible]

Sample collected from test location 3 & 4. About 3 - 4" of loose gravels were above the clay and were removed prior to test.





Photo 13 Settlement below driveway (ST-2 location).  
11-9-12.



Photo 14 Settlement below walkway (ST-3 location).  
11-9-12.



Photo 15 Settlement below walkway (ST-3 location).  
11-9-12.



Photo 16 Settlement below walkway (ST-1 location).  
11-9-12.



Photo 17 Settlement below walkway (ST-1 location).  
11-9-12.



Photo 18 Settlement below walkway (ST-1 location).  
11-9-12.

GSVHOA005207





Photo 7 Cracks in the driveway (location not tested). 11-7-12.



Photo 8 Settlement below walkway (ST-2 location). 11-9-12.



Photo 9 Settlement below walkway (ST-2 location). 11-9-12.

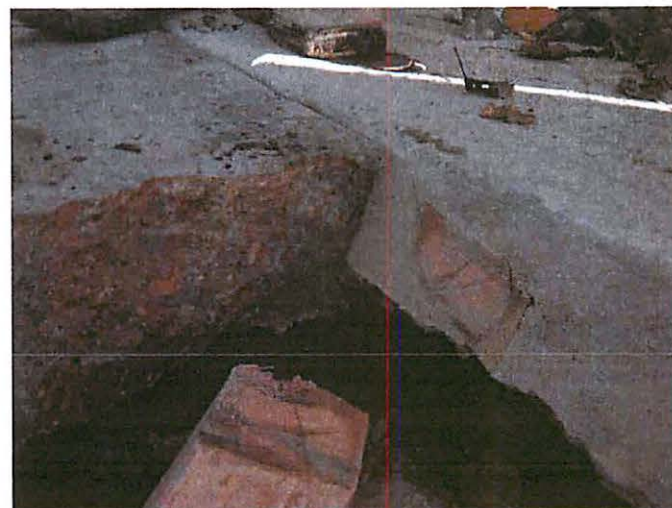


Photo 10 Wood in concrete pad (ST-2 location). 11-9-12.



Photo 11 Settlement below walkway (ST-2 location). 11-9-12.



Photo 12 Settlement below walkway and driveway (ST-2 location). 11-9-12.

GSVHOA005206





Photo 1 Crack in the walkway (ST-1 location). 11-7-12.



Photo 2 Settled walkway (ST-3 location). 11-7-12.



Photo 3 Settlement below walkway (ST-2 location). 11-7-12.



Photo 4 Cracks in walkway and driveway (ST-4 location). 11-7-12.



Photo 5 Cracks in the driveway (location not tested). 11-7-12.



Photo 6 Cracks in the driveway (location not tested). 11-7-12.

GSVHOA005205



## SITE MAP WITH TEST LOCATIONS



 Approximate Test Location



**WILDING  
ENGINEERING, INC**

14721 SOUTH HERITAGE CREST WAY  
BLUEFFDALE, UTAH 84065  
(801)553-8112

PROJECT NAME

GABLES AT STERLING VILLAGE

DATE

11/19/12

SCALE

NTS

DRAWN

CPB

CHECKED

MEC

PROJECT #

12141

SHEET

FILE NAME:

G:\Data\12141...\dwg\Site Map.dwg

GSVHOA005204

A-2







# APPENDIX



minimum depth of 2 feet and replaced with properly placed and compacted granular structural fill. Lifts shall not exceed 8" in thickness and shall be compacted to at least 95% of the modified proctor prior to placement of concrete.

2. In areas where construction debris, topsoil, and/or unsuitable soils are encountered at the 2 foot depth or deeper, we recommend that these soils be removed and replaced with imported granular fill compacted to at least 95% of the modified proctor, prior to placement of concrete.
3. We recommend that all grading adjacent to the buildings be adjusted to ensure that surface water will flow away from the building per the International Building Code requirements.



We appreciate the opportunity of providing this service for you and look forward to assisting with the reconstruction. We can provide material testing, surveying, geotechnical, civil and structural engineering, including retaining wall design. If you have any questions concerning this report or require additional information or services please contact us at 801-553-8112.



Compaction Testing was performed at each location to determine the compaction level of these soils. A summary of test results is below:

Location	Address	Proctor	Range of compaction	Result
ST-1	11013 S. Maple Forest Way	A	84.7% - 92.3%	FAIL
ST-2	10962 S. Maple Forest Way	A	87.0% - 89.8%	FAIL
ST-3	10988 S. Birch Creek Road	A	80.9% - 84.0%	FAIL
ST-4	10954 S. Birch Creek Road	B	97.1%	PASS

The compaction results for locations ST-1, ST-2, and ST-3 confirm that the soils were not properly prepared prior to concrete location. Although adequate compaction of the underlying soils was found at location ST-4, the absence of any Granular Base per the AMEC geotechnical report indicates that this test location also did not comply with the requirements for concrete flatwork. It is possible that this location did not require any fill and therefore was placed on undisturbed native soils. However, it is our opinion that a compacted granular base layer would have provided adequate support under this concrete slab and no damage would have occurred at this location.

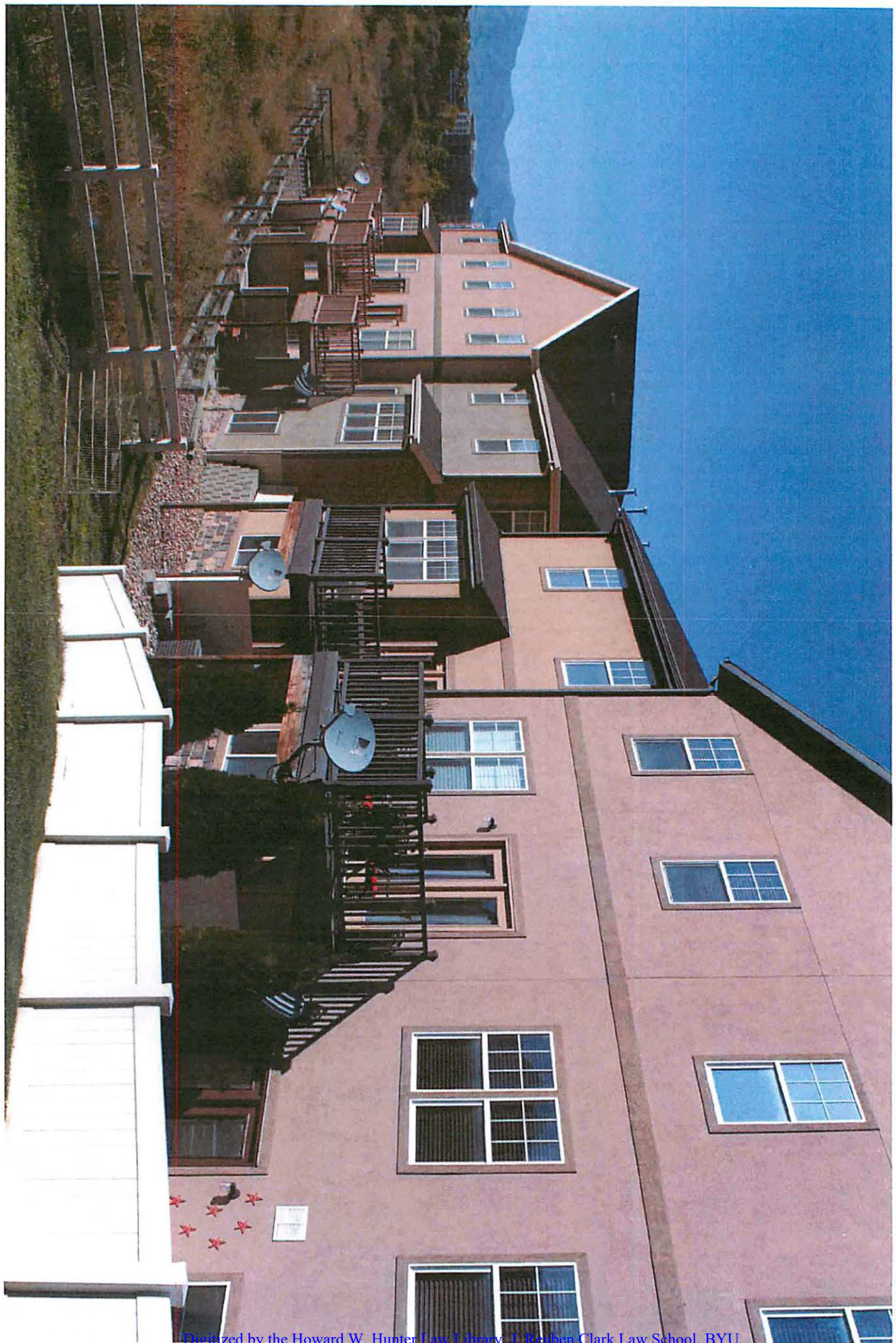
It is our understanding that the same contractor was used throughout the site for concrete flatwork preparation and placement and those methods would have been relatively consistent throughout. Therefore, it is our opinion that the results of our analysis at the four test locations are representative of the entire project.

3. During our field testing, we observed voids under the concrete slabs at locations ST-1, ST-2, and ST-3 that ranged from 4 to 10 inches thick. This is a further indication that these soils were not 'properly prepared' per the AMEC report prior to the placement of the concrete. We also observed construction debris was in one of the concrete slabs (see photos in appendix, photo 10).
4. During our field investigation, it was also noted that several landscaped areas are not graded per the International Building Code requirements. In these areas, the landscaping is sloped toward the building. As surface drainage flows towards buildings, this can contribute to groundwater and settlement problems in the future. This observation appears to be unrelated to the soils under the slabs, but could be problematic for the buildings themselves in the future.

## 5. **RECOMMENDATIONS**

1. It is our opinion that the results of our analysis at the four test locations are representative of the entire project. Therefore, we recommend that all concrete driveways and walkways connecting driveways to the front porches for the units that front Maple Forest Way and Birch Creek Road be removed. This is estimated to be 37,951 square feet of concrete flatwork. A tabulation table quantifying the square footage for each address is included in the appendix of this report. The soils under the concrete slabs shall then be over excavated to a

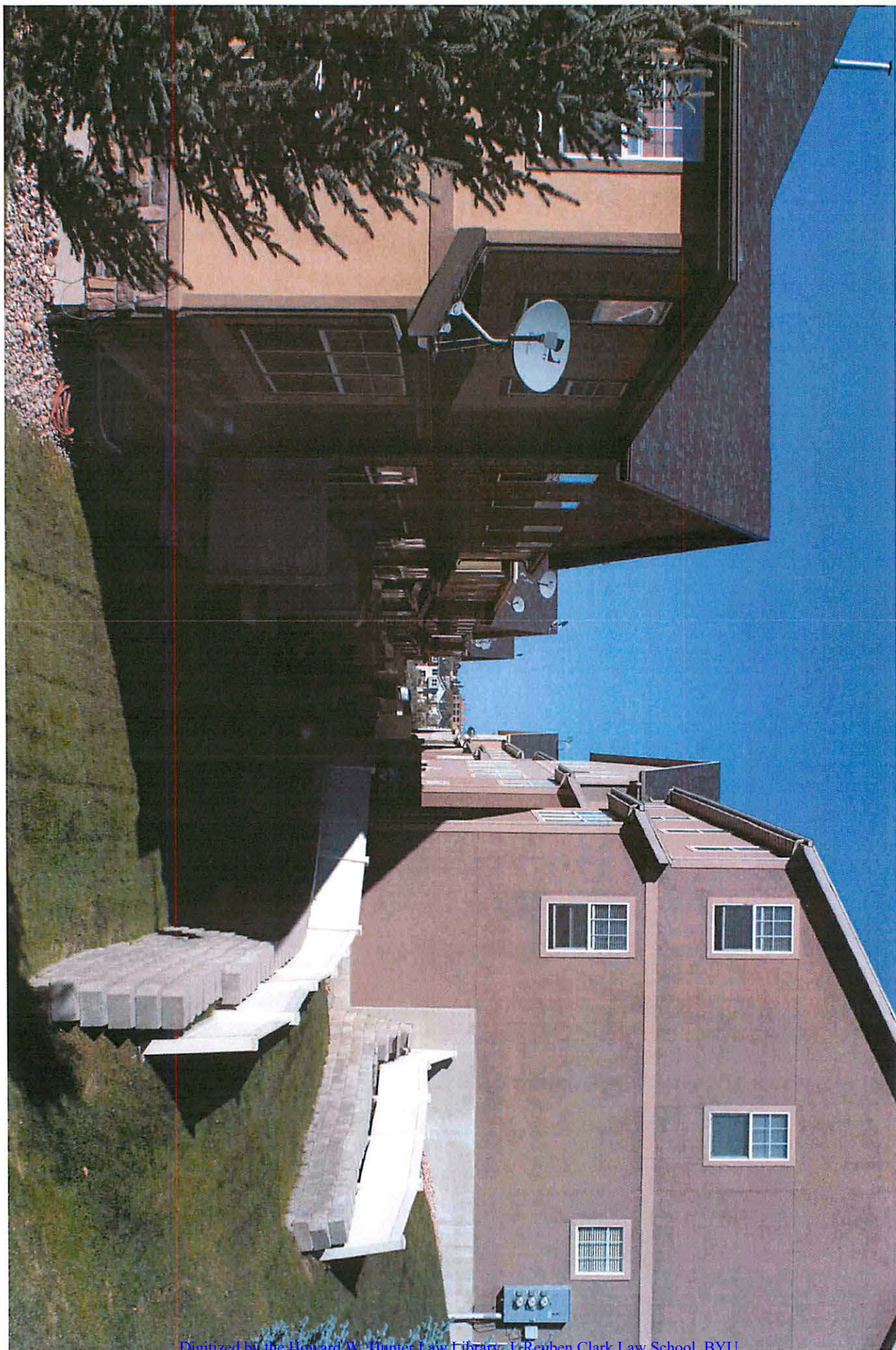




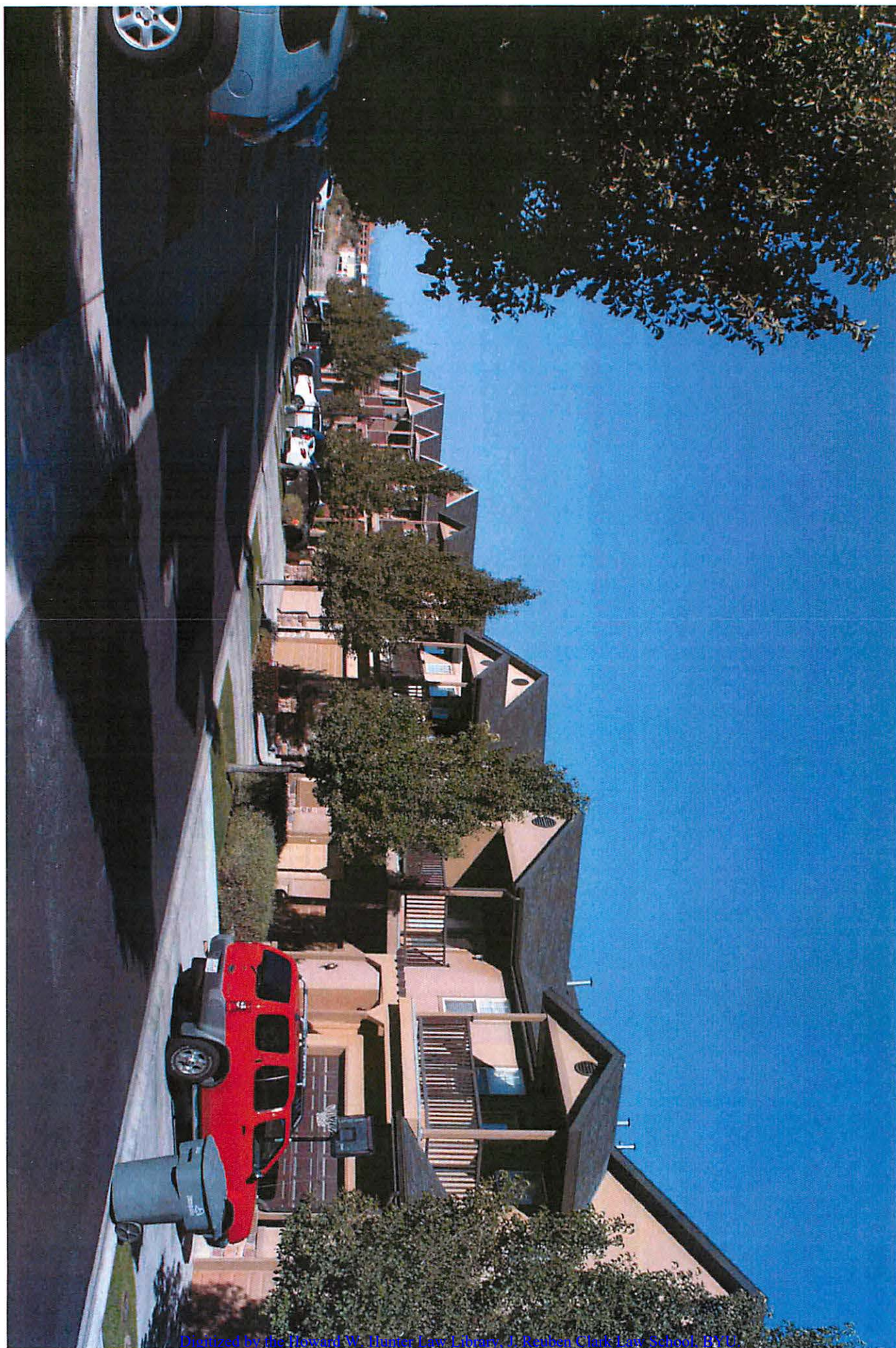




















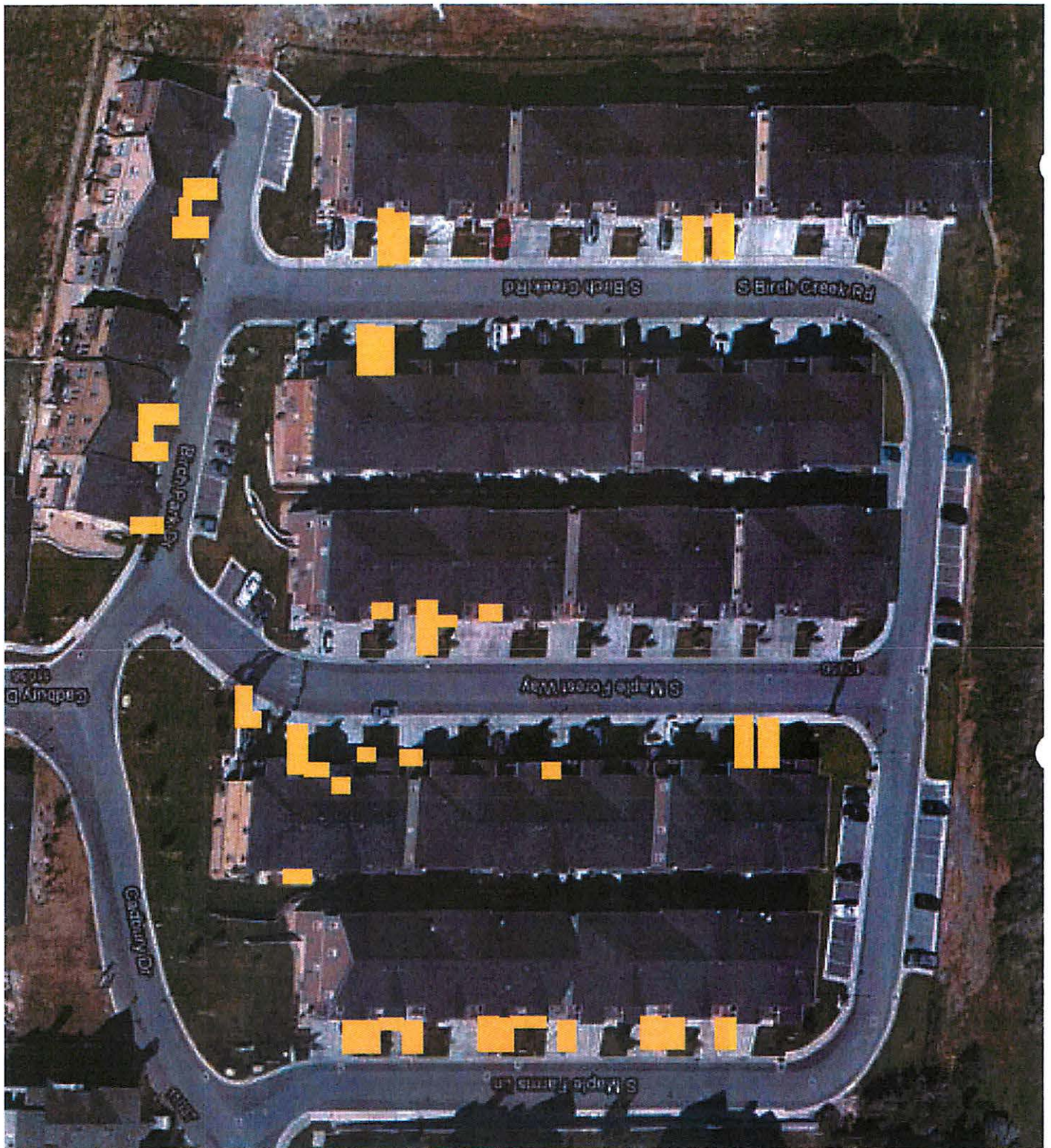
PENGAD 800-631-6868

PLAINTIFFS  
EXHIBIT  
121









PENGAD 800-631-6639  
PLAINTIFFS  
EXHIBIT  
103

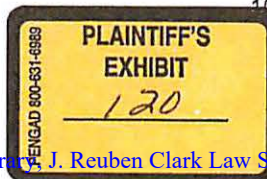


# SITE MAP

# THE GABLES AT STERLING VILLAGE



<b>1</b> 542 538 536 532	<b>2</b> 556 552 548 546	<b>3</b> 10988 10992 10994 10998 11002 11006	<b>4</b> 10964 10968 10972 10978 10978 10982	<b>5</b> 11013 11009 11003 11001	<b>6</b> 10997 10993 10989 10987 10983 10977	<b>7</b> 10973 10969 10963 10961	<b>8</b> 10988 10992 10996 10998 11002 11006
<b>9</b> 10972 10976 10978 10982	<b>10</b> 10956 10958 10962 10966	<b>11</b> 11007 11001 10999 10993 10991 10987 10983 10981	<b>12</b> 10977 10971 10967 10963 11061 11057	<b>13</b> 10992 10998 11002 11004	<b>14</b> 10968 10974 10976 10978 10984 10988	<b>15</b> 10946 10948 10954 10956 10968 10964	



GSVHOA004237



	Maple Farms			
	10987	Landing		
	10992	Landing		
	10998	Driveway, walkway, landing		
	11002	Landing		
	1003	Landing		
	11009	Driveway, walkway, steps		
	11013	Partial Driveway, walkway		
	Birch park			
	532	Driveway		
	536	Driveway		
	538	Driveway, walkway		
	548	Driveway, walkway		
	552	Driveway, walkway		
	Birch Creek			
	11001	Garage floor	56,504	S.C.
		<b>Total</b>	<b>89,310.50</b>	

**Total Driveways Repaired: 22 / 78**

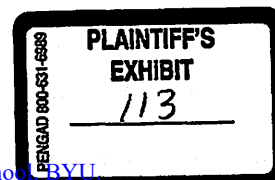
**Total Walkways Repaired: 15 / 78**

**Total Landings Repaired: 9 / 78**



## Concrete Repairs @ Sterling Village

Date	Unit #	Reference	Cost (\$)	Contractor
11/3/10	10988 10957 10966	Lift and Column Support	2,100	Interwest
11/3/10	10946 10988 11004 10957 10966 10961	Lifting and Void Fill	1,125	Interwest
11/3/10	10946 10988 10961	Crack and Seal	195	Interwest
11/3/10	10988	Driveway Sections Patch	475	Interwest
11/3/10	10967	Crack and Seal	39	Interwest
5/16/13	10974	Replace Concrete	4,400	Savage Construction (S.C.)
5/16/13	10998	Concrete Replacement	5,760	S.C.
7/22/13		Concrete Work	6,293	S.C.
5/19/13	11074	Driveway install	505	S.C.
5/19/13	11072	Driveway Install	787.50	S.C.
5/19/13	11001	Driveway Install	1,223	S.C.
5/19/13	10999	Driveway Install	1,307	S.C.
5/19/13	10963	Driveway Install	1,001	S.C.
5/19/13	10961	Driveway Install	1,386	S.C.
6/13/14		Replace driveway, Walkway	6,210	S.C.
7/2015	Maple Farms 10968 10982 10988 10992 10994 10998 11002	Driveway Walkway Driveway and walkway Driveway Driveway Driveway Driveway, G. Floor, walkway		S.C.







5718 Axel Park Rd  
West Jordan, UT 84081

# Bid & Work Contract

www.ridgerockinc.com  
ph: 801-747-1055  
fax 801-266-3903

9976

Date

10/6/2015

Name / Address

Vial Fotheringham LLP  
Douglas C. Shumway  
602 E. 300 S.  
Salt Lake City, UT 84102

Estimator: Jeff

Job Location

10998 S. Maple Forest Way  
South Jordan, UT

P.O. No.

Invoices will be **DUE ON RECEIPT** unless arrangements are made prior to the work being scheduled. Please contact your estimator or the office if you would like to make those arrangements.

Description	Unit Qty	Per Unit	Total
-------------	----------	----------	-------

Disclaimer: Any increase in price for any materials (including freight and taxes), must be paid for by the buyer.

0.00

EXCLUSIONS (Unless noted above): Traffic Control, Towing, Removal of water or construction debris, Bonds, Fees, Permits, Surveying, Engineering, Sawcutting, Sterilant or Insurance in excess of our current policy (Insurance certificate will be provided on request). Note: Any delays caused by these exclusions will automatically add time to the contract period and will result in a change order.

PERSONAL GUARANTEE: Ridge Rock, Inc. (RRI) will provide materials & services as described. Any changes may require a change in the contract price. Buyer hereby agrees to terms of any change orders submitted by RRI. The price for the work shall be as per actual quantities and unit prices as listed above. All quantities shall be field verified. Signer personally guarantees payment to RRI in full within ten (10) days following the date of RRI's invoices, without retention regardless of the final completion date of the work. In the event that payment is not made to RRI as provided herein, RRI shall be entitled to all of it's costs, including attorney's fees and lien fees, in connection with the enforcement of it's rights under this contract, whether or not legal proceedings are instituted. In addition, RRI shall be entitled to interest on all past due accounts under this contract, which interest shall accrue at the rate of 1-1/2% per month from the date payment is due until payment is received by RRI.

Signed \_\_\_\_\_

~~~~~ CHANGE ORDER ~~~~~

October 6, 2015

> Decreased quantity of GC from 37,951 to 23,112. Decreased price of GC from \$436,436.50 to \$221,875.20. Changed description of GC. (-\$214,561.30)

> Added 4,932 Concrete. (+\$56,718.00)

> Added 2,019 Concrete. (+\$23,218.50)

> Changed description of GC. (+)

> Added 1 Contract. (+)

Total change to estimate -\$134,624.80

\$301,811.70





5718 Axel Park Rd  
West Jordan, UT 84081

# Bid & Work Contract

www.ridgerockinc.com  
ph: 801-747-1055  
fax 801-266-3903

9976

Date

10/6/2015

Name / Address

Vial Fotheringham LLP  
Douglas C. Shumway  
602 E. 300 S.  
Salt Lake City, UT 84102

Estimator: Jeff

Job Location

10998 S. Maple Forest Way  
South Jordan, UT

P.O. No.

**Invoices will be DUE ON RECEIPT unless arrangements are made prior to the work being scheduled. Please contact your estimator or the office if you would like to make those arrangements.**

| Description | Unit Qty | Per Unit | Total |
|-------------|----------|----------|-------|
|-------------|----------|----------|-------|

EXCLUSIONS (Unless noted above): Traffic Control, Barricades, Towing, Removal of water or construction debris, Bonds, Fees, Permits, Surveying, Samples, Cores, Engineering, Sawcutting, Sterilant, Prime Coat or Insurance in excess of our current policy (Insurance certificate will be provided on request). Note: Any delays caused by these exclusions will automatically add time to the contract period and will result in a change order.

PERSONAL GUARANTEE: Ridge Rock, Inc. (RRI) will provide materials & services as described above. Changes may require a change in the contract price. Buyer hereby agrees to terms of any change orders submitted by RRI. The price for the work shall be as per actual quantities and unit prices as listed above. All quantities shall be field verified. Signer personally guarantees payment to RRI in full within ten (10) days following the date of invoices, without retention regardless of the final completion date of the work. In the event that payment is not made as provided herein, RRI shall be entitled to all of it's costs, including attorney's fees and lien fees, in connection with the enforcement of it's rights under this contract, whether or not legal proceedings are instituted. In addition, RRI shall be entitled to interest on all past due accounts at the rate of 1-1/2% per month from the date payment is due until payment is made.

Customer

Estimator





5718 Axel Park Rd  
West Jordan, UT 84081

www.ridgerockinc.com  
ph: 801-747-1055  
fax 801-266-3903

# Bid & Work Contract

9976

Date 10/6/2015

Name / Address

Vial Fotheringham LLP  
Douglas C. Shumway  
602 E. 300 S.  
Salt Lake City, UT 84102

Estimator: Jeff

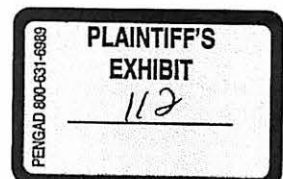
Job Location

10998 S. Maple Forest Way  
South Jordan, UT

P.O. No.

Invoices will be DUE ON RECEIPT unless arrangements are made prior to the work being scheduled. Please contact your estimator or the office if you would like to make those arrangements.

| Description                                                                                                                                                                                                                                                                                                                                                                                                                                        | Unit Qty | Per Unit | Total      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------|------------|
| Revised Bid... 10/5/2015                                                                                                                                                                                                                                                                                                                                                                                                                           |          |          |            |
| Concrete Driveways:<br>Based on approx. 23,112 SF of driveways. Includes removing damaged concrete, over-excavate and compact the soil in the upper 2 feet below the concrete driveways to 95% of the modified proctor. Installing 4" of 4000 PSI concrete. Per the International Building Code requirements.                                                                                                                                      | 23,112   | 9.60     | 221,875.20 |
| Concrete Sidewalks:<br>Based on approx. 4,932 SF of sidewalk. Includes removing damaged concrete, over-excavate and compact the soil in the upper 2 feet below the concrete driveways to 95% of the modified proctor. Installing 4" of 4000 PSI concrete. Per the International Building Code requirements.                                                                                                                                        | 4,932    | 11.50    | 56,718.00  |
| Redo Concrete Driveways and Sidewalk:<br>Previously poured with gaps under concrete. (See Pictures)<br>Based on approx. 2,019 SF of driveways. Includes removing damaged concrete, over-excavate and compact the soil in the upper 2 feet below the concrete driveways to 95% of the modified proctor. Installing 4" of 4000 PSI concrete. Per the International Building Code requirements.                                                       | 2,019    | 11.50    | 23,218.50  |
| Note: (Any area that needs removed past the 2' required)<br>Based on 37,951 Sq Ft. Areas where we encounter construction debris, topsoil, or any unsuitable soil, will be over-excavated to firm native soil, and will be replaced with imported granular fill compacted to 95% of the modified proctor. Price: \$25 per cubic yard. Area to be determined by Owner before excavation begins and will result in a change order per our unit price. |          |          |            |





Tabulation Table

| Address                | Total footage (ft <sup>2</sup> ) |
|------------------------|----------------------------------|
| 11013 Maple Forest Way | 901                              |
| 11009 Maple Forest Way | 582                              |
| 11003 Maple Forest Way | 582                              |
| 11001 Maple Forest Way | 750                              |
| 11006 Maple Forest Way | 656                              |
| 11002 Maple Forest Way | 700                              |
| 10998 Maple Forest Way | 546                              |
| 10996 Maple Forest Way | 500                              |
| 10992 Maple Forest Way | 672                              |
| 10988 Maple Forest Way | 656                              |
| 10997 Maple Forest Way | 679                              |
| 10993 Maple Forest Way | 649                              |
| 10989 Maple Forest Way | 456                              |
| 10987 Maple Forest Way | 471                              |
| 10983 Maple Forest Way | 610                              |
| 10977 Maple Forest Way | 656                              |
| 10982 Maple Forest Way | 649                              |
| 10978 Maple Forest Way | 594                              |
| 10976 Maple Forest Way | 558                              |
| 10972 Maple Forest Way | 672                              |
| 10966 Maple Forest Way | 602                              |
| 10973 Maple Forest Way | 648                              |
| 10969 Maple Forest Way | 480                              |
| 10963 Maple Forest Way | 555                              |
| 10961 Maple Forest Way | 672                              |
| 10962 Maple Forest Way | 538                              |
| 10958 Maple Forest Way | 562                              |
| 10956 Maple Forest Way | 648                              |
| <b>Total</b>           | <b>17,244</b>                    |

| Address                | Total footage (ft <sup>2</sup> ) |
|------------------------|----------------------------------|
| 10946 Birch Creek Road | 1090                             |
| 10948 Birch Creek Road | 878                              |
| 10954 Birch Creek Road | 676                              |
| 10956 Birch Creek Road | 648                              |
| 10958 Birch Creek Road | 669                              |
| 10964 Birch Creek Road | 720                              |
| 10957 Birch Creek Road | 716                              |
| 10961 Birch Creek Road | 632                              |
| 10963 Birch Creek Road | 645                              |
| 10967 Birch Creek Road | 618                              |
| 10971 Birch Creek Road | 750                              |
| 10977 Birch Creek Road | 750                              |
| 10968 Birch Creek Road | 696                              |
| 10974 Birch Creek Road | 680                              |
| 10976 Birch Creek Road | 570                              |
| 10978 Birch Creek Road | 630                              |
| 10981 Birch Creek Road | 702                              |
| 10983 Birch Creek Road | 696                              |
| 10987 Birch Creek Road | 716                              |
| 10984 Birch Creek Road | 648                              |
| 10988 Birch Creek Road | 624                              |
| 10992 Birch Creek Road | 620                              |
| 10991 Birch Creek Road | 619                              |
| 10993 Birch Creek Road | 646                              |
| 10999 Birch Creek Road | 718                              |
| 11001 Birch Creek Road | 724                              |
| 11007 Birch Creek Road | 736                              |
| 10998 Birch Creek Road | 660                              |
| 11002 Birch Creek Road | 600                              |
| 11004 Birch Creek Road | 630                              |
| <b>Total</b>           | <b>20,707</b>                    |



GSVHOA005218



# GRAIN SIZE ANALYSIS-- MECHANICAL

Project: Gables at Sterling Village Sample No: \_\_\_\_\_  
 Location of Project: 10954 S Birch Creek Road Depth of Sample: \_\_\_\_\_  
 Location of Sample: \_\_\_\_\_ Date of Testing: November 14, 2012  
 Description of Soil: Clayey Gravel with Sand Intended Use: \_\_\_\_\_  
 Tested by: J. A. Wright

## Soil Sample Size

|                           |         |
|---------------------------|---------|
| Dry mass of total sample  | 15496.6 |
| Dry mass passing #4 sieve | 9010.7  |
| Dry mass actually sieved  | 610.9   |

Test Method: AASHTO T11/T27

## Percent Content

|         |     |       |
|---------|-----|-------|
| Gravel: | 42  |       |
| Sand:   | 32  |       |
| Fines:  | 26  |       |
|         | 100 | Total |

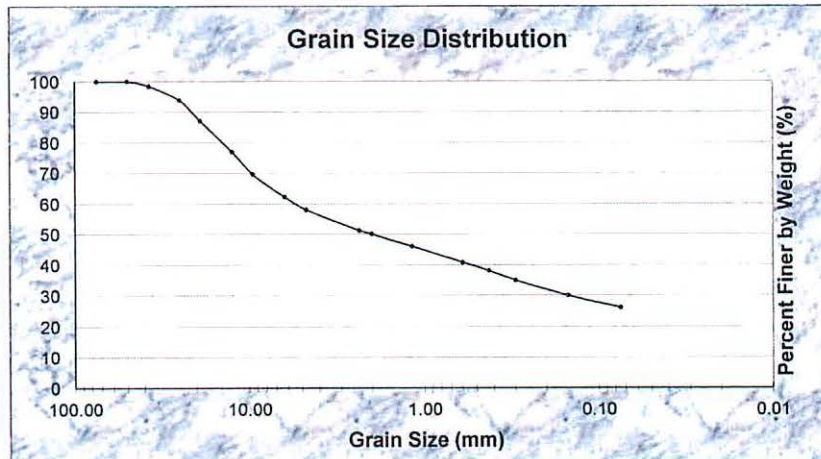


Table - U.S. Standard Sieve Analysis

| Sieve No. | Diam. (mm) | Cumul. Wt retained | Individual Wt. Retained | Adjusted Wt. Retained | % retained | % passing | Specifications |
|-----------|------------|--------------------|-------------------------|-----------------------|------------|-----------|----------------|
| 3.00      | 75.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 2.00      | 50.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 1.50      | 37.50      | 235.0              | 235.0                   | 235.0                 | 2          | 98        |                |
| 1.00      | 25.00      | 943.5              | 708.5                   | 708.5                 | 6          | 94        |                |
| 0.75      | 19.000     | 1992.8             | 1049.3                  | 1049.3                | 13         | 87        |                |
| 0.50      | 12.500     | 3559.9             | 1567.1                  | 1567.1                | 23         | 77        |                |
| 0.38      | 9.500      | 4700.9             | 1141.0                  | 1141.0                | 30         | 70        |                |
| 0.25      | 6.250      | 5835.6             | 1134.7                  | 1134.7                | 38         | 62        |                |
| 4         | 4.750      | 6485.9             | 650.3                   | 650.3                 | 42         | 58        |                |
| 8         | 2.360      | 7547.9             | 72.0                    | 1062.0                | 49         | 51        |                |
| 10        | 2.000      | 7724.9             | 12.0                    | 177.0                 | 50         | 50        |                |
| 16        | 1.180      | 8350.4             | 42.4                    | 625.4                 | 54         | 46        |                |
| 30        | 0.600      | 9151.3             | 54.3                    | 801.0                 | 59         | 41        |                |
| 40        | 0.425      | 9574.6             | 28.7                    | 423.3                 | 62         | 38        |                |
| 50        | 0.300      | 10061.4            | 33.0                    | 486.8                 | 65         | 35        |                |
| 100       | 0.150      | 10834.3            | 52.4                    | 772.9                 | 70         | 30        |                |
| 200       | 0.075      | 11442.1            | 41.2                    | 607.7                 | 74         | 26        |                |

NOTE: % passing = 100 - % retained

Grain Size Analysis Meets Specifications: ☐ Yes ☐ No

## Rock Quality

Rock Contains 50% Fractured Faces: ☐ Yes ☐ No

Rock Properties:



GSVHOA005217



## SAMPLE ANALYSIS RESULTS - PROCTOR #B

**TESTED FOR:** Gables at Sterling Village

**PROJECT NO.:** 12141

**DATE:** November 16, 2012

**PROJECT:** Gables at Sterling Village

**LOCATION:** 10954 S Birch Creek Road

**REFERENCE:.**

Visual Classification: Clayey Gravel with Sand  
 Sample Location: 10954 S Birch Creek Road  
 Method of Compaction: ASTM D 1557 Method C  
 Rammer: Mechanical  
 Preperation Method: Moist

| <u>Test Results</u>       | <u>Rock Correction</u> | <u>No Rock Correction</u> |
|---------------------------|------------------------|---------------------------|
| Maximum Dry Density:      | 137.5 pcf              | 134.5 pcf                 |
| Optimum Moisture Content: | 6.0 %                  | 7 %                       |
| Oversize Fraction         | 13.0 %                 |                           |

### Other Tests

Atterberg Limits (ASTM D4318)

LL: 24      PL: 15      PI: 9

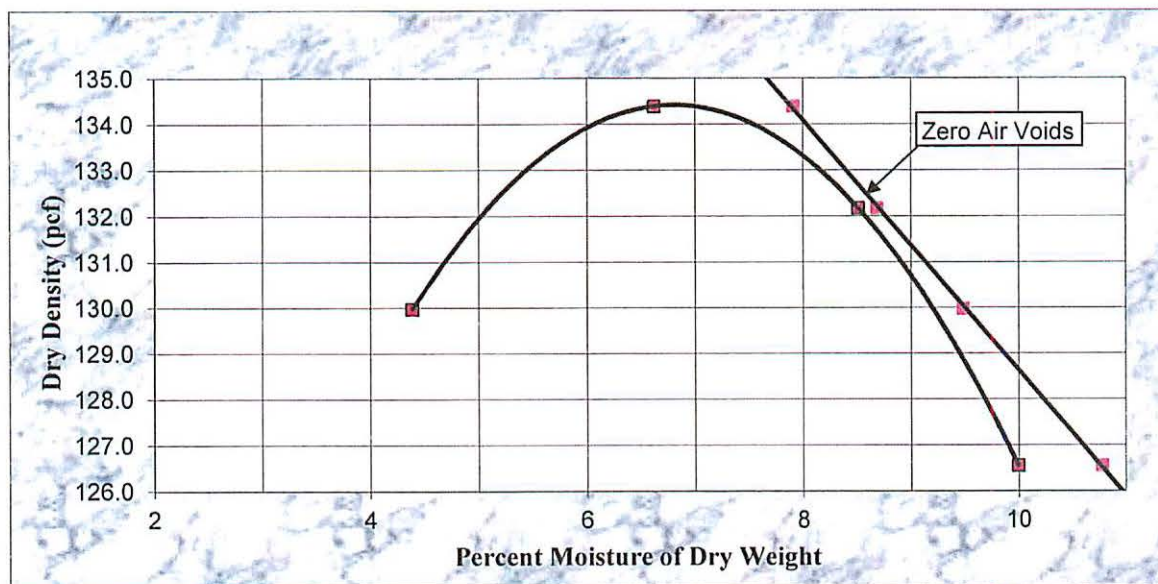
Specific Gravity: 2.6 (estimate)

Grain Size Analys (ASTM C136/D1140)

Gravel: 42

Sand: 32

Fines: 26



GSVHOA005216



# GRAIN SIZE ANALYSIS-- MECHANICAL

Project: Gables at Sterling Village Sample No: \_\_\_\_\_  
 Location of Project: 10988 S Birch Creek Road Depth of Sample: \_\_\_\_\_  
 Location of Sample: \_\_\_\_\_ Date of Testing: November 14, 2012  
 Description of Soil: Sandy Lean Clay with Gravel Intended Use: \_\_\_\_\_  
 Tested by: J. A. Wright

## Soil Sample Size

|                           |         |
|---------------------------|---------|
| Dry mass of total sample  | 12092.1 |
| Dry mass passing #4 sieve | 9945.9  |
| Dry mass actually sieved  | 655.9   |

Test Method: AASHTO T11/T27

## Percent Content

Gravel: 18  
 Sand: 23  
 Fines: 59  
100 Total

## Atterberg Limits

LL: 29  
 PL: 18  
 PI: 11

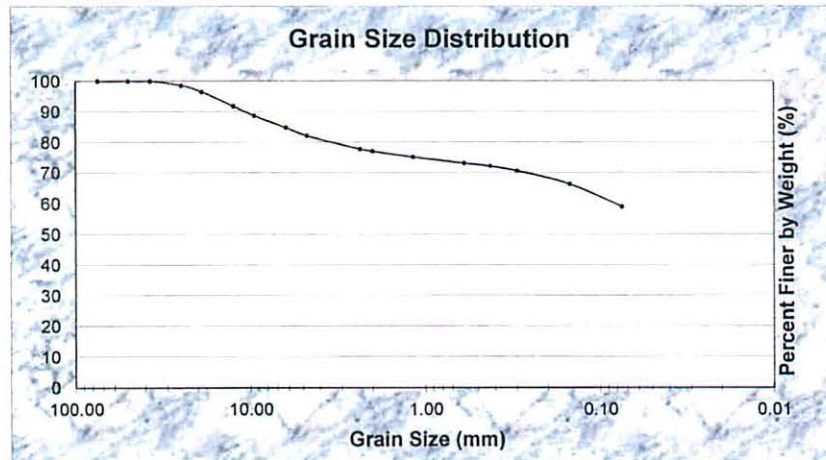


Table - U.S. Standard Sieve Analysis

| Sieve No. | Diam. (mm) | Cumul. Wt retained | Individual Wt. Retained | Adjusted Wt. Retained | % retained | % passing | Specifications |
|-----------|------------|--------------------|-------------------------|-----------------------|------------|-----------|----------------|
| 3.00      | 75.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 2.00      | 50.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 1.50      | 37.50      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 1.00      | 25.00      | 170.7              | 170.7                   | 170.7                 | 1          | 99        |                |
| 0.75      | 19.000     | 415.1              | 244.4                   | 244.4                 | 3          | 97        |                |
| 0.50      | 12.500     | 984.6              | 569.5                   | 569.5                 | 8          | 92        |                |
| 0.38      | 9.500      | 1358.7             | 374.1                   | 374.1                 | 11         | 89        |                |
| 0.25      | 6.250      | 1826.3             | 467.6                   | 467.6                 | 15         | 85        |                |
| 4         | 4.750      | 2146.2             | 319.9                   | 319.9                 | 18         | 82        |                |
| 8         | 2.360      | 2686.1             | 35.6                    | 539.9                 | 22         | 78        |                |
| 10        | 2.000      | 2766.4             | 5.3                     | 80.4                  | 23         | 77        |                |
| 16        | 1.180      | 2998.4             | 15.3                    | 232.0                 | 25         | 75        |                |
| 30        | 0.600      | 3242.6             | 16.1                    | 244.1                 | 27         | 73        |                |
| 40        | 0.425      | 3360.9             | 7.8                     | 118.3                 | 28         | 72        |                |
| 50        | 0.300      | 3544.4             | 12.1                    | 183.5                 | 29         | 71        |                |
| 100       | 0.150      | 4070.6             | 34.7                    | 526.2                 | 34         | 66        |                |
| 200       | 0.075      | 4951.6             | 58.1                    | 881.1                 | 41         | 59        |                |

NOTE: % passing = 100 - % retained

Grain Size Analysis Meets Specifications: ☐ Yes ☐ No

## Rock Quality

Rock Contains 50% Fractured Faces: ☐ Yes ☐ No

Rock Properties:



GSVHOA005215



# GRAIN SIZE ANALYSIS-- MECHANICAL

Project: Gables at Sterling Village Sample No: \_\_\_\_\_  
 Location of Project: 10962 S Maple Forest Way Depth of Sample: \_\_\_\_\_  
 Source of Sample: \_\_\_\_\_ Date of Testing: November 14, 2012  
 Description of Soil: Sandy Lean Clay Sampled from: \_\_\_\_\_

Tested by: J. A. Wright

## Soil Sample Size

|                  |        |
|------------------|--------|
| Wt of wet sample | 2045.5 |
| Wt of dry sample | 1741.8 |

Test Method: AASHTO T11/T27

## Percent Content

Gravel: 9  
 Sand: 24  
 Fines: 67  
 Total 100

## Atterberg Limits

LL: 26  
 PL: 25  
 PI: 11

Table - U.S. Standard Sieve Analysis

| Sieve No. | Diam. (mm) | Wt retained | % retained | % passing | Specifications |
|-----------|------------|-------------|------------|-----------|----------------|
| 3.00      | 75.00      | 0.0         | 0          | 100       |                |
| 2.00      | 50.00      | 0.0         | 0          | 100       |                |
| 1.50      | 37.50      | 0.0         | 0          | 100       |                |
| 1.00      | 25.00      | 0.0         | 0          | 100       |                |
| 0.75      | 19.000     | 21.7        | 1          | 99        |                |
| 0.50      | 12.500     | 63.2        | 4          | 96        |                |
| 0.38      | 9.500      | 89.3        | 5          | 95        |                |
| 0.25      | 6.250      | 133.8       | 8          | 92        |                |
| 4         | 4.750      | 158.4       | 9          | 91        |                |
| 8         | 2.360      | 222.0       | 13         | 87        |                |
| 10        | 2.000      | 231.2       | 13         | 87        |                |
| 16        | 1.180      | 261.1       | 15         | 85        |                |
| 30        | 0.600      | 292.8       | 17         | 83        |                |
| 40        | 0.425      | 309.4       | 18         | 82        |                |
| 50        | 0.300      | 344.4       | 20         | 80        |                |
| 100       | 0.150      | 443.2       | 25         | 75        |                |
| 200       | 0.075      | 577.6       | 33         | 67        |                |

NOTE: % passing = 100 - % retained

Grain Size Analysis Meets Specifications: ☐ Yes ☐ No

## Rock Quality

Fractured Faces Meets Specification: ☐ Yes ☐ No

Minimum of 1 fractured face: \_\_\_\_\_

3 fractured faces or more: \_\_\_\_\_



GSVHOA005214





## **BUILDING ENVELOPE CONDITION ASSESSMENT REPORT**

FOR:

**Gables at Sterling Village Townhomes  
Maple Forest Way  
South Jordan, UT 84095**

**Issued: 21 November 2012**

WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004221



# APPENDUM 6



3D.19 Building 3

Severe settlement and cracking.



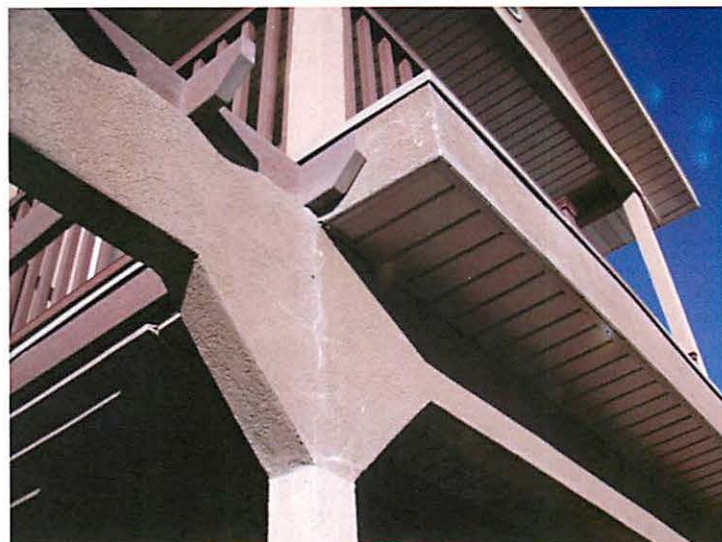
3D.20 Building 3

Moisture damage from runoff above.



3D.21 Building 3

Moisture damage to stucco at deck.

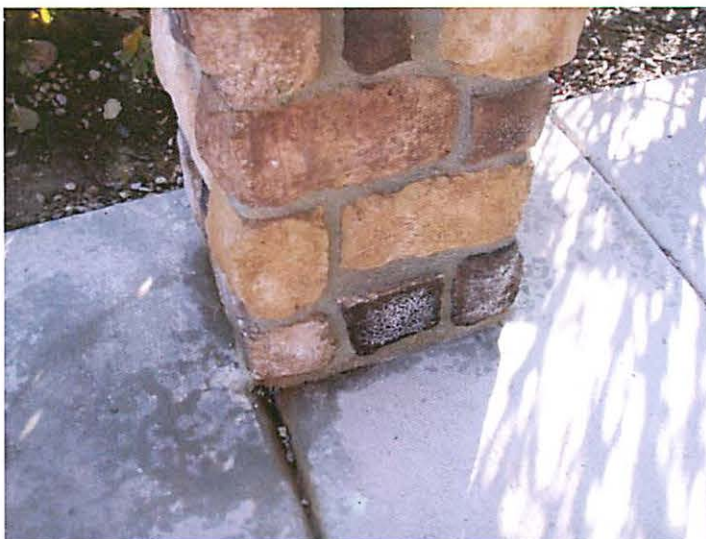




The Gables at Sterling Village Townhomes - Building 1

1D.04 Building 1

Efflorescence on stone, omitted weeps.



1D.05 Building 1

Settlement in sidewalk in front of driveway.



1D.06 Building 1

Settlement in driveway of adjacent unit, east end.





5B.25 Building 5

Efflorescence was noted below the deck. This condition indicates water infiltration.

\* This condition occurs on all buildings.



5B.26 Building 5

There are areas of cracked concrete hardscape.

\* This condition occurs on all buildings.



5B.27 Building 5

There are areas of cracked concrete hardscape.

\* This condition occurs on all buildings.





5A.01 Building 5

Unit 11001

Cracks in concrete flatwork.



5A.02 Building 5

Unit 11009

Cracks present in stucco cladding.



5A.03 Building 5

Unit 11013

Cracks in concrete flatwork.





The Gables at Sterling Village Townhomes - Building 7

7D.01 Building 7

Unit 10961

Settling in concrete drive.



7D.02 Building 7

Unit 10961

1-1/2 to 2 inch gap between deck soffit and beam due to settlement.



7D.03 Building 7

Unit 10961

Omitted flashing between stone and stucco; damaged stucco.



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004596



The Gables at Sterling Village Townhomes - Building 6

6D.07 Building 6

Unit 10983

Settlement gap at underside of deck.



6D.08 Building 6

Improper clearance, settlement at column.



6D.09 Building 6

Concrete settlement cracks.





9D.13 Building 9

Unit 10972

Settling of concrete at entry.



9D.14 Building 9

Unit 10972

Incomplete door threshold, exposed wood.



9D.15 Building 9: Unit 10972: Multiple settlement cracks in driveway slabs.





The Gables at Sterling Village Townhomes - Building 8

8D.07 Building 8

Settlement and damage at flashing.



8D.08 Building 8

Reverse lap in flashing at foundation.



8D.09 Building 8

Omitted control joint in stucco between units.





- 12D.32 Outer corner of deck has sloped due to settled column.



- 12D.33 Cracks and driveway settlement occurring at drive.



- 12D.34 Spalling and settling at entry stairs and garage wall.





## The Gables at Sterling Village Townhomes - Building 12

## 12D.02 Building 12

Improper stone, stucco, and wood clearance.



## 12D.03 Building 12

Reverse lap in flashing; improper stucco clearance.



## 12D.04 Building 12

Settlement cracks; improper stone clearance; omitted flashing.



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004830



The Gables at Sterling Village Townhomes - Building 13

13B.19 Building 13

There are areas of cracked concrete hardscape.

\* This condition occurs on all buildings.



13B.20 Building 13

There are areas of cracked concrete hardscape.

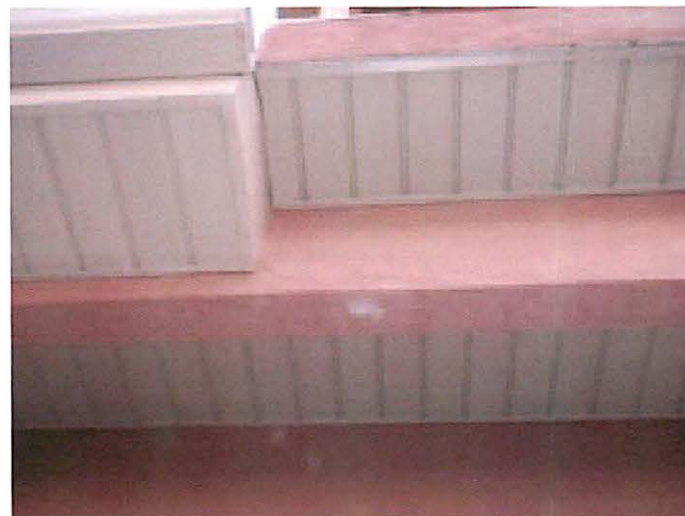
\* This condition occurs on all buildings.



13B.21 Building 13

Invasive Opening 13A.1

We opened a portion of stucco below the second floor deck.





The Gables at Sterling Village Townhomes - Building 13

13A.01 Building 13

Unit 10998

Stucco cracks at base of deck  
demising wall.



13A.02 Building 13

Unit 10998

Cracks in concrete flatwork.



13A.03 Building 13

Unit 10998

Cracks in concrete flatwork.



WESTERN ARCHITECTURAL

SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004868



14A.01 Building 14

Unit 10988

Concrete stairs are separating from building.



14A.02 Building 14

Unit 10988

Concrete stairs are separating from building.



14A.03 Building 14

Unit 10968

Concrete stairs are separating from building.





The Gables at Sterling Village Townhomes - Building 13

13D.07 Building 13

Damaged pipe stack; corroded fasteners.



13D.08 Building 13:

Unit 10998:

Settlement cracks in driveway near garage. Subsidence has increased since 2009 photos (see photo 13A.02).



WESTERN ARCHITECTURAL

SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111

P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004883



14A.07 Building 14

Unit 10988

Soil subsidence below entry stairs.



14A.08 Building 14

Unit 10988

Cracks in concrete flatwork.



14A.09 Building 14

Unit 10974

Cracks in concrete flatwork.





The Gables at Sterling Village Townhomes - Building 14

14A.04 Building 14

Unit 10988

Riser measurement.



14A.05 Building 14

Unit 10988

Riser measurement.



14A.06 Building 14

Unit 10988

Concrete stairs are separating from building.





# GRAIN SIZE ANALYSIS-- MECHANICAL

Project: Gables at Sterling Village Sample No: \_\_\_\_\_  
 Location of Project: 11013 S Maple Forest Way Depth of Sample: \_\_\_\_\_  
 Location of Sample: \_\_\_\_\_ Date of Testing: November 13, 2012  
 Description of Soil: Silty Clayey Sand Intended Use: \_\_\_\_\_  
 Tested by: J. A. Wright

## Soil Sample Size

|                           |        |
|---------------------------|--------|
| Dry mass of total sample  | 9012.7 |
| Dry mass passing #4 sieve | 7818.1 |
| Dry mass actually sieved  | 440.1  |

Test Method: AASHTO T11/T27

## Percent Content

|         |     |       |
|---------|-----|-------|
| Gravel: | 13  |       |
| Sand:   | 41  |       |
| Fines:  | 46  |       |
|         | 100 | Total |

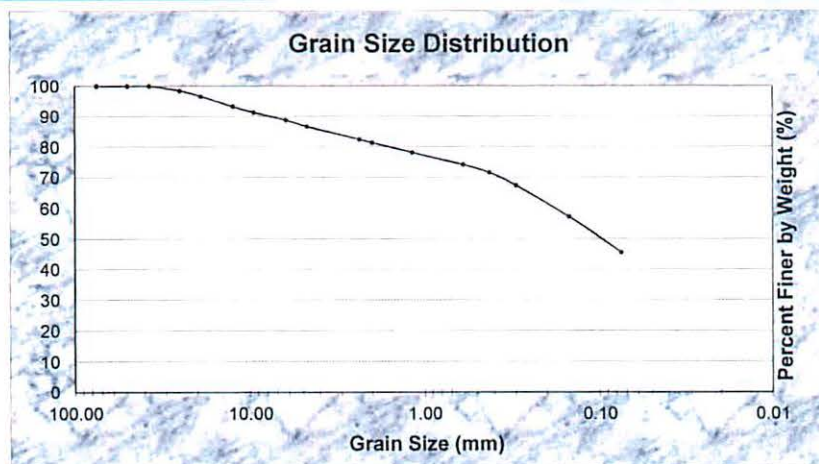


Table - U.S. Standard Sieve Analysis

| Sieve No. | Diam. (mm) | Cumul. Wt retained | Individual Wt. Retained | Adjusted Wt. Retained | % retained | % passing | Specifications |
|-----------|------------|--------------------|-------------------------|-----------------------|------------|-----------|----------------|
| 3.00      | 75.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 2.00      | 50.00      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 1.50      | 37.50      | 0.0                | 0.0                     | 0.0                   | 0          | 100       |                |
| 1.00      | 25.00      | 137.8              | 137.8                   | 137.8                 | 2          | 98        |                |
| 0.75      | 19.000     | 301.9              | 164.1                   | 164.1                 | 3          | 97        |                |
| 0.50      | 12.500     | 603.9              | 302.0                   | 302.0                 | 7          | 93        |                |
| 0.38      | 9.500      | 777.5              | 173.6                   | 173.6                 | 9          | 91        |                |
| 0.25      | 6.250      | 1002.6             | 225.1                   | 225.1                 | 11         | 89        |                |
| 4         | 4.750      | 1194.6             | 192.0                   | 192.0                 | 13         | 87        |                |
| 8         | 2.360      | 1576.6             | 21.5                    | 382.0                 | 17         | 83        |                |
| 10        | 2.000      | 1669.0             | 5.2                     | 92.4                  | 19         | 81        |                |
| 16        | 1.180      | 1960.3             | 16.4                    | 291.4                 | 22         | 78        |                |
| 30        | 0.600      | 2319.2             | 20.2                    | 358.9                 | 26         | 74        |                |
| 40        | 0.425      | 2551.9             | 13.1                    | 232.7                 | 28         | 72        |                |
| 50        | 0.300      | 2935.7             | 21.6                    | 383.7                 | 33         | 67        |                |
| 100       | 0.150      | 3852.4             | 51.6                    | 916.7                 | 43         | 57        |                |
| 200       | 0.075      | 4904.1             | 59.2                    | 1051.7                | 54         | 46        |                |

NOTE: % passing = 100 - % retained

Grain Size Analysis Meets Specifications: ☐ Yes ☐ No

## Rock Quality

Rock Contains 50% Fractured Faces: ☐ Yes ☐ No

Rock Properties:



GSVHOA005213



## SAMPLE ANALYSIS RESULTS - PROCTOR #A

**TESTED FOR:** Gables at Sterling Village

**PROJECT NO.:** 12141

**DATE:** November 13, 2012

**PROJECT:** Gables at Sterling Village

**LOCATION:** 11013 S Maple Forest Way

**REFERENCE:.**

Visual Classification: Silty Clayey Sand  
 Sample Location: 11013 S Maple Forest Way  
 Method of Compaction: ASTM D 1557 Method C  
 Rammer: Mechanical  
 Preperation Method: Moist

**Test Results**

**Rock Correction**

**No Rock Correction**

Maximum Dry Density: 120.0 pcf  
 Optimum Moisture Content: 12.5 %  
 Oversize Fraction: 3.0 %

119 pcf  
 13 %

**Other Tests**

Atterberg Limits (ASTM D4318)

LL: 25 PL: 20 PI: 5

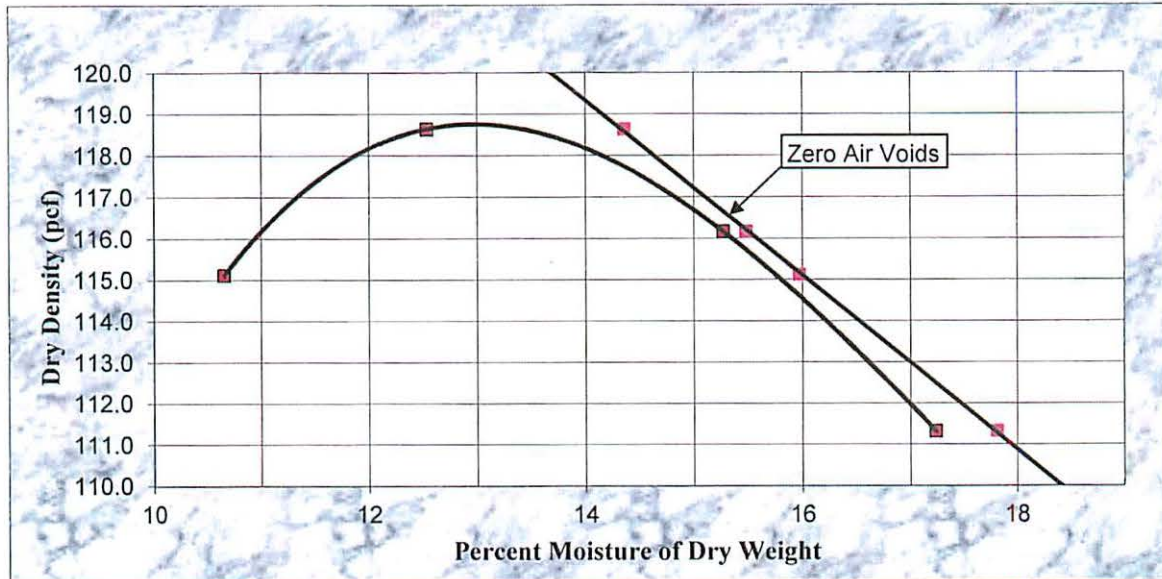
Specific Gravity: 2.62 (estimate)

Grain Size Analys (ASTM C136/D1140)

Gravel: 13

Sand: 41

Fines: 46



**WILDING  
ENGINEERING, INC**

14721 SOUTH HERITAGE CREST WAY  
 BLUFF DALE, UTAH 84065  
 (801) 553-8112

GSVHOA005212



|             |                            |
|-------------|----------------------------|
| DATE:       | Friday, November 09, 2012  |
| FIELD TECH: | Matt Woodruff              |
| PROJECT:    | Gables at Sterling Village |
| PROJECT #:  | 12141                      |

(ASTM D2922-01 & D3017-01)

[illegible]

Sample collected from test location 3 & 4. About 3 - 4" of loose gravels were above the clay and were removed prior to test.



|             |                            |
|-------------|----------------------------|
| DATE:       | Friday, November 09, 2012  |
| FIELD TECH: | Matt Woodruff              |
| PROJECT:    | Gables at Sterling Village |
| PROJECT #:  | 12141                      |

(ASTM D2922-01 & D3017-01)

LAB #: n/a

TARGET COMPACTION (%): 95.0%      STANDARD COUNTS: DS= 2579      MS= 659

GAUGE MODEL: 3430 CN#: 61584 CALIBRATED: 1/11/12 DUE: 1/11/13 BY: Qal-Tek

[illegible]

Sample collected from test location 3 & 4. About 3 - 4" of loose gravels were above the clay and were removed prior to test.





**IMG\_2116**  
11006 Maple Farms Ln



**IMG\_2117**  
11006 Maple Farms Ln



**IMG\_2118**  
548 Birch Park Dr

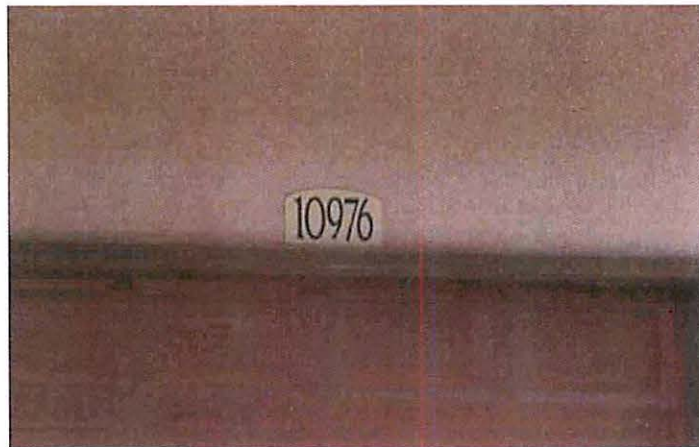


**IMG\_2119**  
548 Birch Park Dr





**IMG\_2110**  
10964 Maple Farms Ln



**IMG\_2111**  
10976 Maple Farms Ln



**IMG\_2112**  
10976 Maple Farms Ln



**IMG\_2113**  
10988 Maple Farms Ln



**IMG\_2114**  
10988 Maple Farms Ln



**IMG\_2115**  
10988 Maple Farms Ln





**IMG\_2104**  
10964 Maple Farms Ln



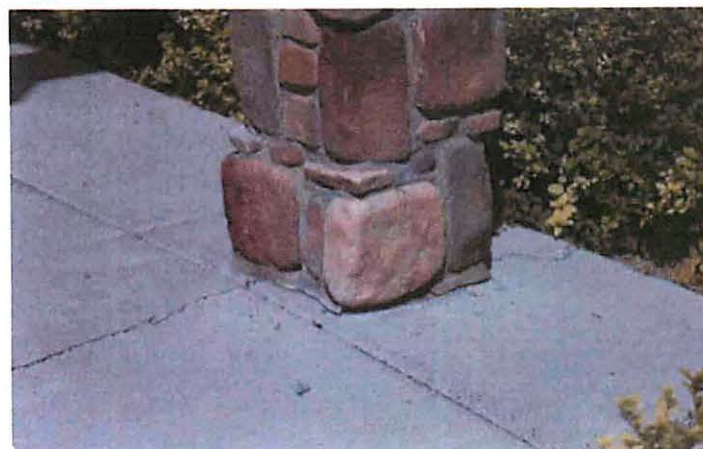
**IMG\_2105**  
10964 Maple Farms Ln



**IMG\_2106**  
10964 Maple Farms Ln



**IMG\_2107**  
10964 Maple Farms Ln



**IMG\_2108**  
10964 Maple Farms Ln



**IMG\_2109**  
10964 Maple Farms Ln





**IMG\_2098**  
10974 Maple Farms Ln



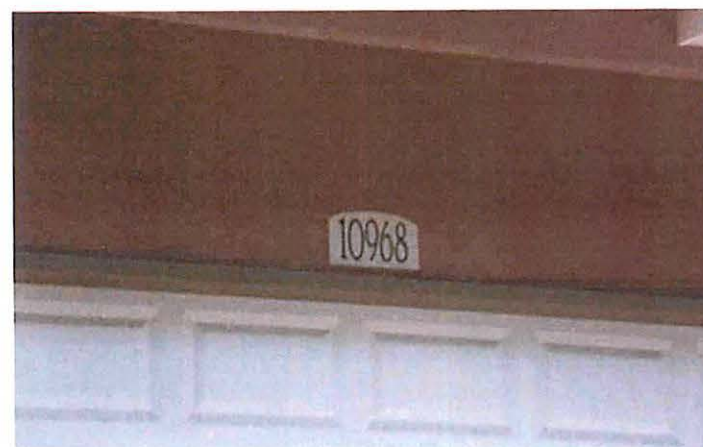
**IMG\_2099**  
10974 Maple Farms Ln



**IMG\_2100**  
10974 Maple Farms Ln



**IMG\_2101**  
10974 Maple Farms Ln



**IMG\_2102**  
10968 Maple Farms Ln



**IMG\_2103**  
10968 Maple Farms Ln





**IMG\_2092**  
10988 Maple Farms Ln



**IMG\_2093**  
10978 Maple Farms Ln



**IMG\_2094**  
10978 Maple Farms Ln



**IMG\_2095**  
10978 Maple Farms Ln



**IMG\_2096**  
10974 Maple Farms Ln



**IMG\_2097**  
10974 Maple Farms Ln





**IMG\_2086**  
11006 Maple Farms Ln



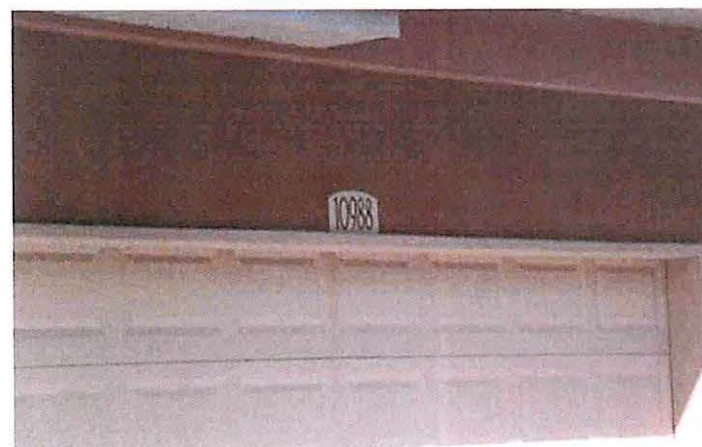
**IMG\_2087**  
11006 Maple Farms Ln



**IMG\_2088**  
10992 Maple Farms Ln



**IMG\_2089**  
10992 Maple Farms Ln



**IMG\_2090**  
10988 Maple Farms Ln



**IMG\_2091**  
10988 Maple Farms Ln





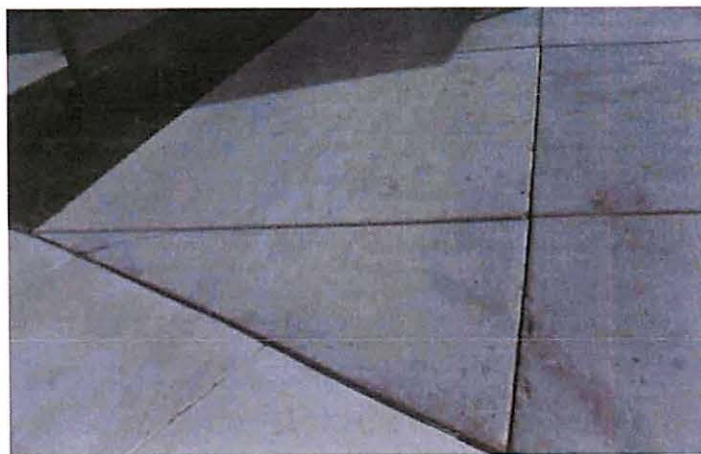
**IMG\_2080**  
11003 Maple Forest Way



**IMG\_2081**  
11013 Maple Forest Way



**IMG\_2082**  
11013 Maple Forest Way



**IMG\_2083**  
11013 Maple Forest Way



**IMG\_2084**  
11013 Maple Forest Way



**IMG\_2085**  
11006 Maple Farms Ln





**IMG\_2074**  
11001 Maple Forest Way



**IMG\_2075**  
11001 Maple Forest Way



**IMG\_2076**  
11001 Maple Forest Way



**IMG\_2077**  
11001 Maple Forest Way



**IMG\_2078**  
11001 Maple Forest Way



**IMG\_2079**  
11003 Maple Forest Way





**IMG\_2068**  
10993 Maple Forest Way



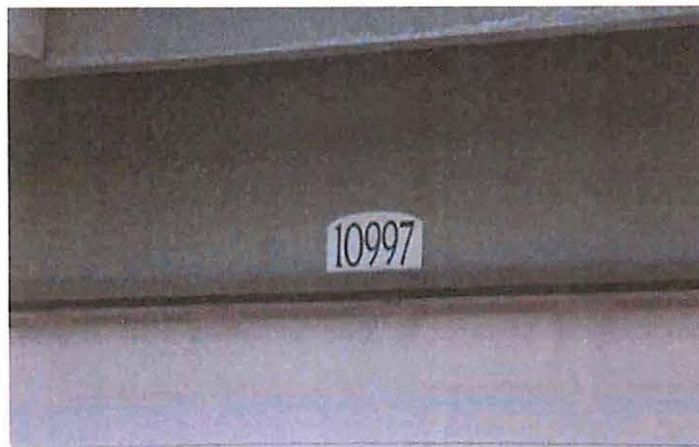
**IMG\_2069**  
10993 Maple Forest Way



**IMG\_2070**  
10993 Maple Forest Way



**IMG\_2071**  
10993 Maple Forest Way



**IMG\_2072**  
10997 Maple Forest Way



**IMG\_2073**  
10997 Maple Forest Way





**IMG\_2062**  
10988 Maple Forest Way



**IMG\_2063**  
10988 Maple Forest Way



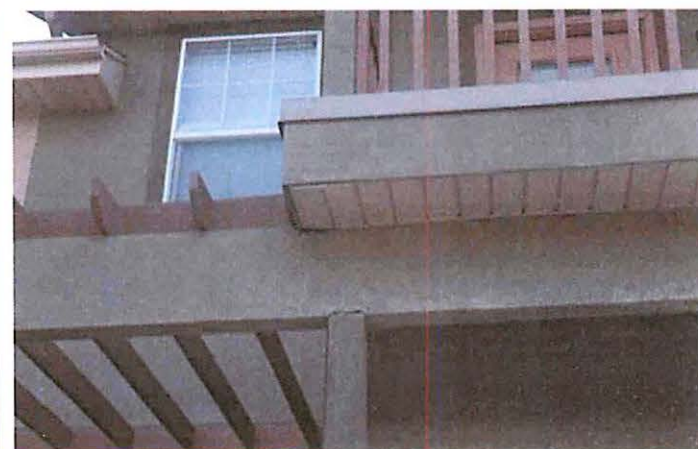
**IMG\_2064**  
10989 Maple Forest Way



**IMG\_2065**  
10989 Maple Forest Way



**IMG\_2066**  
10993 Maple Forest Way



**IMG\_2067**  
10993 Maple Forest Way





**IMG\_2056**  
10983 Maple Forest Way



**IMG\_2057**  
10983 Maple Forest Way



**IMG\_2058**  
10983 Maple Forest Way



**IMG\_2059**  
10987 Maple Forest Way



**IMG\_2060**  
10987 Maple Forest Way



**IMG\_2061**  
10988 Maple Forest Way





**IMG\_2050**  
10977 Maple Forest Way



**IMG\_2051**  
10977 Maple Forest Way



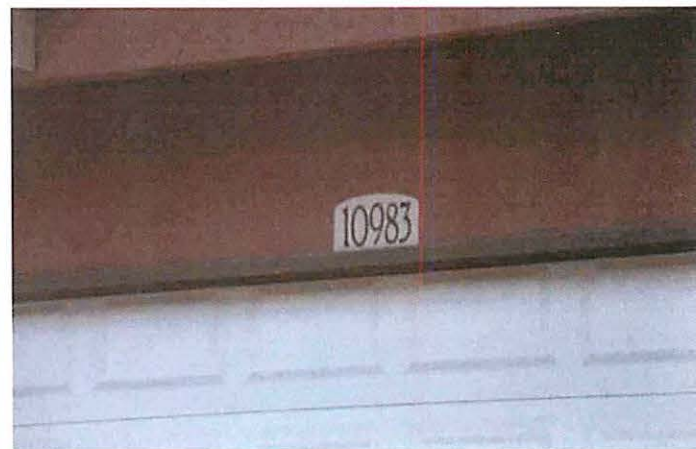
**IMG\_2052**  
10977 Maple Forest Way



**IMG\_2053**  
10983 Maple Forest Way



**IMG\_2054**  
10983 Maple Forest Way



**IMG\_2055**  
10983 Maple Forest Way





**IMG\_2044**  
10969 Maple Forest Way



**IMG\_2045**  
10969 Maple Forest Way



**IMG\_2046**  
10973 Maple Forest Way



**IMG\_2047**  
10973 Maple Forest Way



**IMG\_2048**  
10972 Maple Forest Way



**IMG\_2049**  
10972 Maple Forest Way





**IMG\_2038**  
10961 Maple Forest Way



**IMG\_2039**  
10961 Maple Forest Way



**IMG\_2040**  
10961 Maple Forest Way



**IMG\_2041**  
10961 Maple Forest Way



**IMG\_2042**  
10961 Maple Forest Way



**IMG\_2043**  
10969 Maple Forest Way





**IMG\_2032**  
10956 Maple Forest Way



**IMG\_2033**  
10956 Maple Forest Way



**IMG\_2034**  
10956 Maple Forest Way



**IMG\_2035**  
10961 Maple Forest Way



**IMG\_2036**  
10961 Maple Forest Way



**IMG\_2037**  
10961 Maple Forest Way





**IMG\_2026**  
10957 Birch Creek Rd



**IMG\_2027**  
10957 Birch Creek Rd



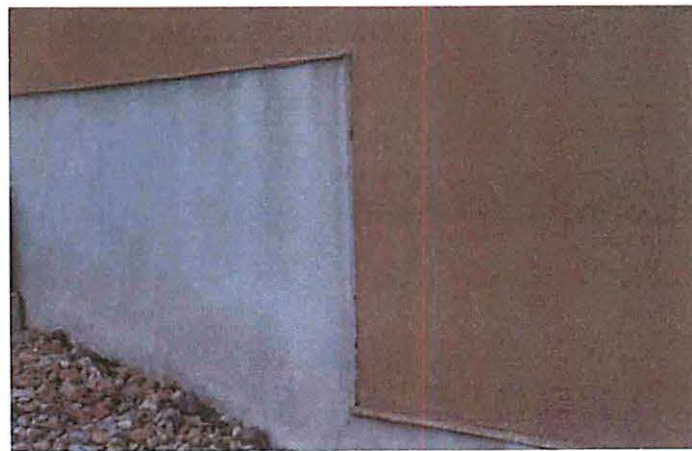
**IMG\_2028**  
10957 Birch Creek Rd



**IMG\_2029**  
10957 Birch Creek Rd



**IMG\_2030**  
10957 Birch Creek Rd



**IMG\_2031**  
10957 Birch Creek Rd





**IMG\_2020**  
10977 Birch Creek Rd



**IMG\_2021**  
10977 Birch Creek Rd



**IMG\_2022**  
10971 Birch Creek Rd



**IMG\_2023**  
10971 Birch Creek Rd



**IMG\_2024**  
10967 Birch Creek Rd

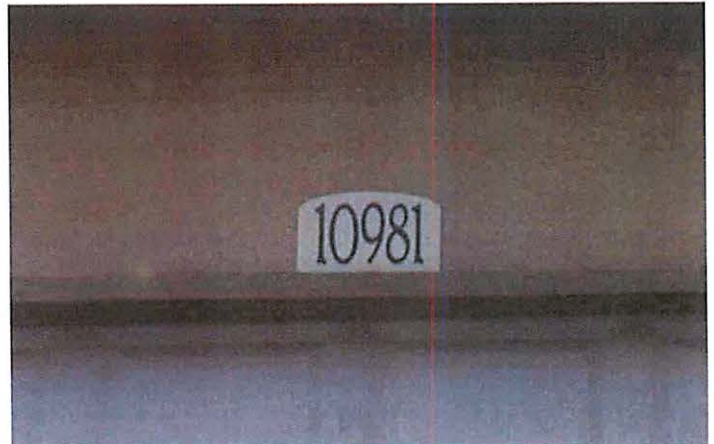


**IMG\_2025**  
10967 Birch Creek Rd





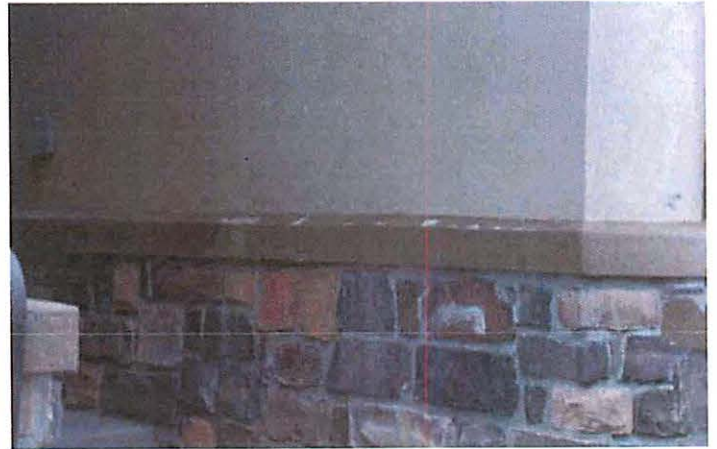
**IMG\_2014**  
10987 Birch Creek Rd



**IMG\_2015**  
10981 Birch Creek Rd



**IMG\_2016**  
10981 Birch Creek Rd



**IMG\_2017**  
10981 Birch Creek Rd



**IMG\_2018**  
10981 Birch Creek Rd



**IMG\_2019**  
10977 Birch Creek Rd

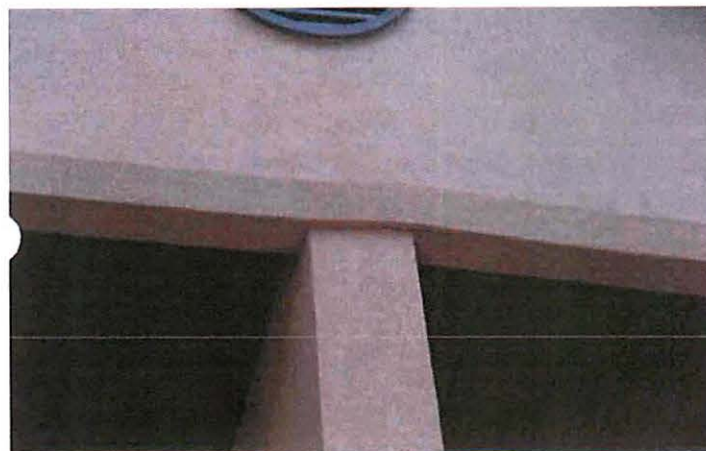




**IMG\_2008**  
10991 Birch Creek Rd



**IMG\_2009**  
10991 Birch Creek Rd



**IMG\_2010**  
10991 Birch Creek Rd



**IMG\_2011**  
10987 Birch Creek Rd



**IMG\_2012**  
10987 Birch Creek Rd



**IMG\_2013**  
10987 Birch Creek Rd





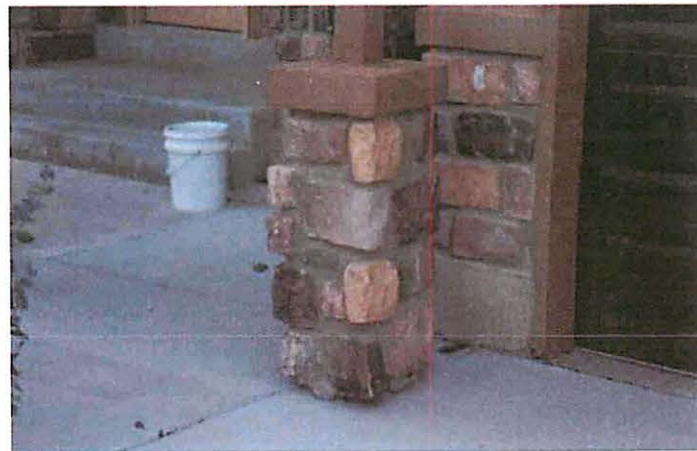
**IMG\_2002**  
10999 Birch Creek Rd



**IMG\_2003**  
10999 Birch Creek Rd



**IMG\_2004**  
10999 Birch Creek Rd



**IMG\_2005**  
10999 Birch Creek Rd



**IMG\_2006**  
10993 Birch Creek Rd



**IMG\_2007**  
10993 Birch Creek Rd





**IMG\_1996**  
11004 Birch Creek Rd



**IMG\_1997**  
11004 Birch Creek Rd



**IMG\_1998**  
11007 Birch Creek Rd



**IMG\_1999**  
11007 Birch Creek Rd



**IMG\_2000**  
11007 Birch Creek Rd



**IMG\_2001**  
11007 Birch Creek Rd





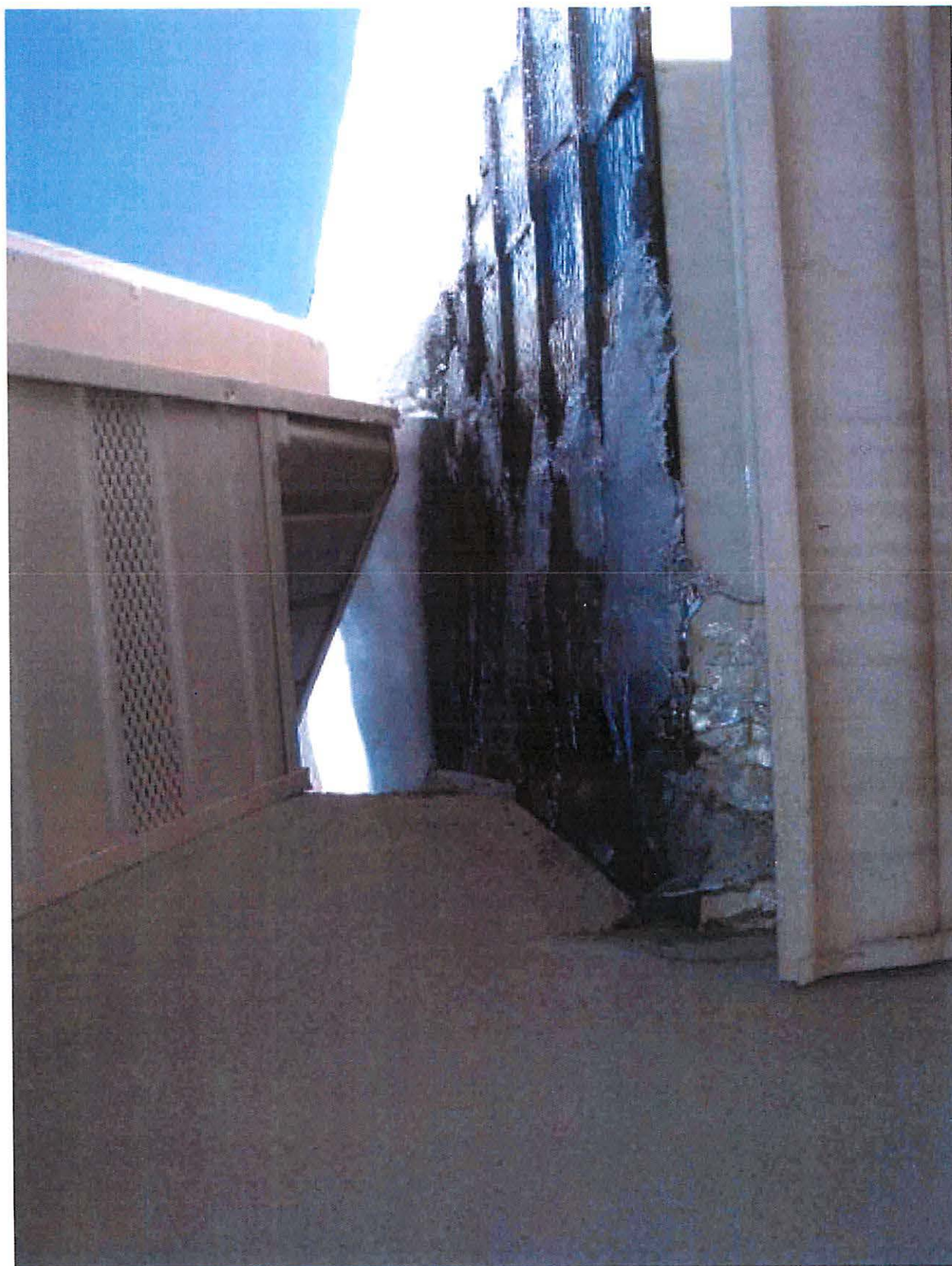




























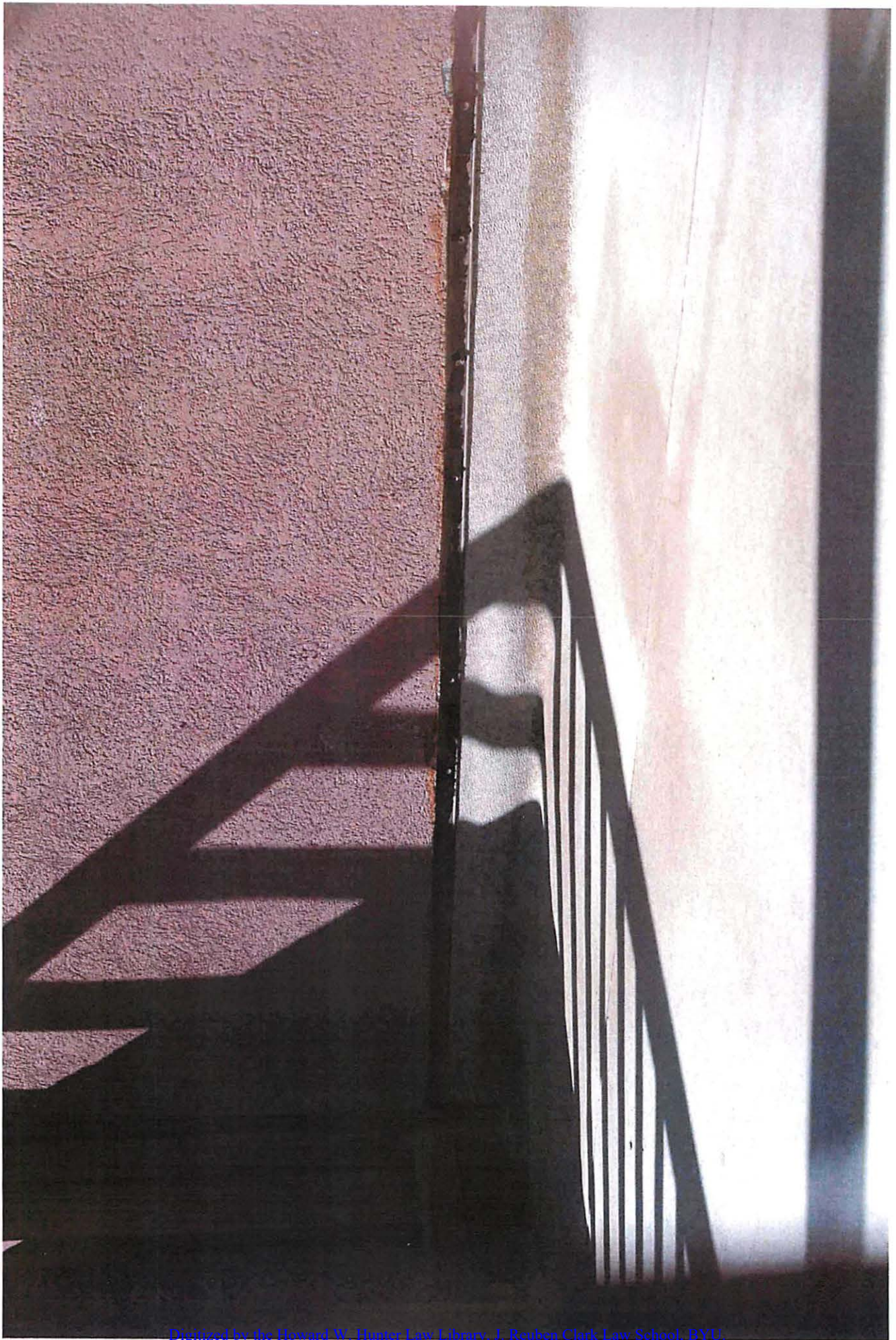








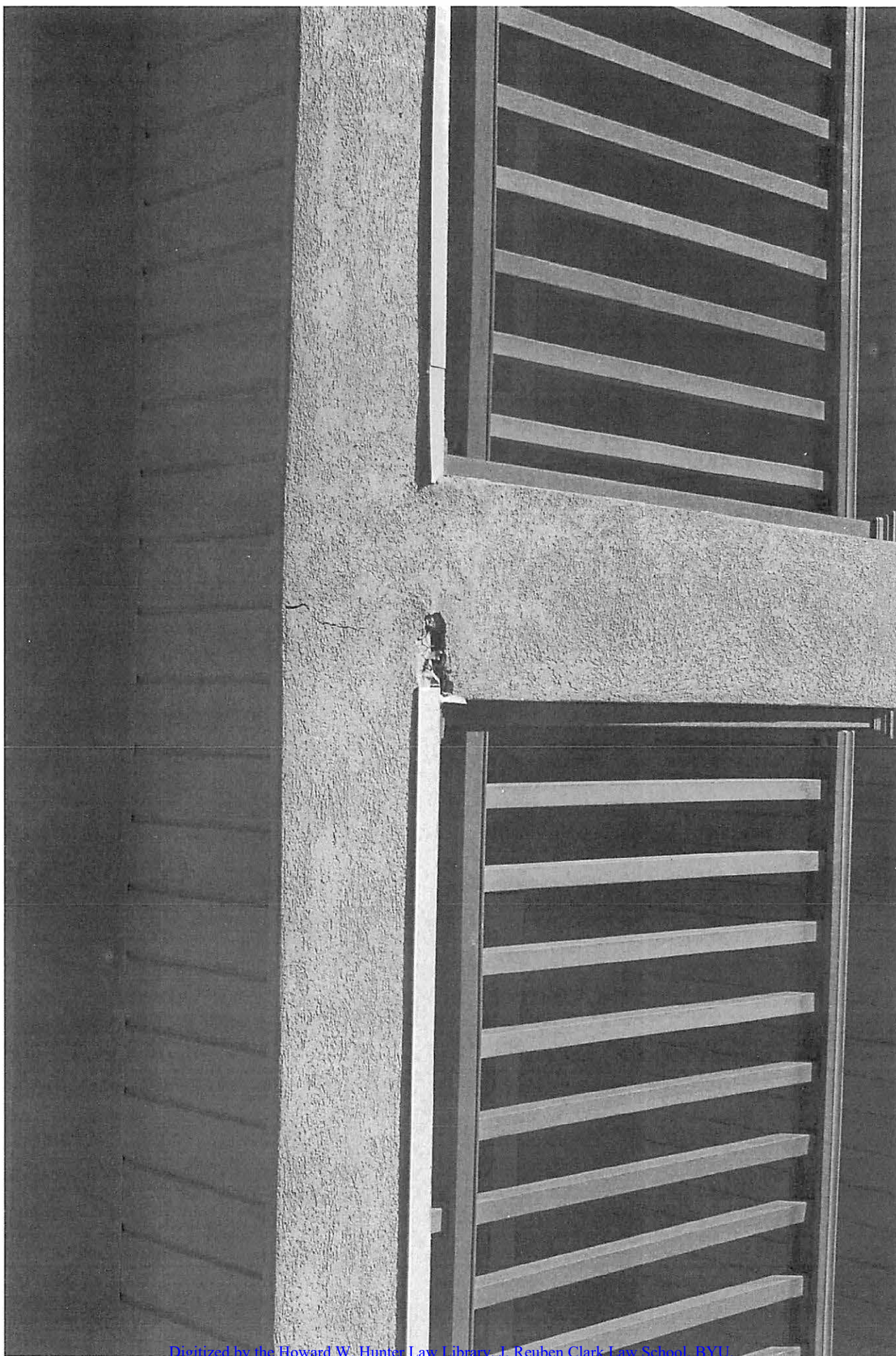




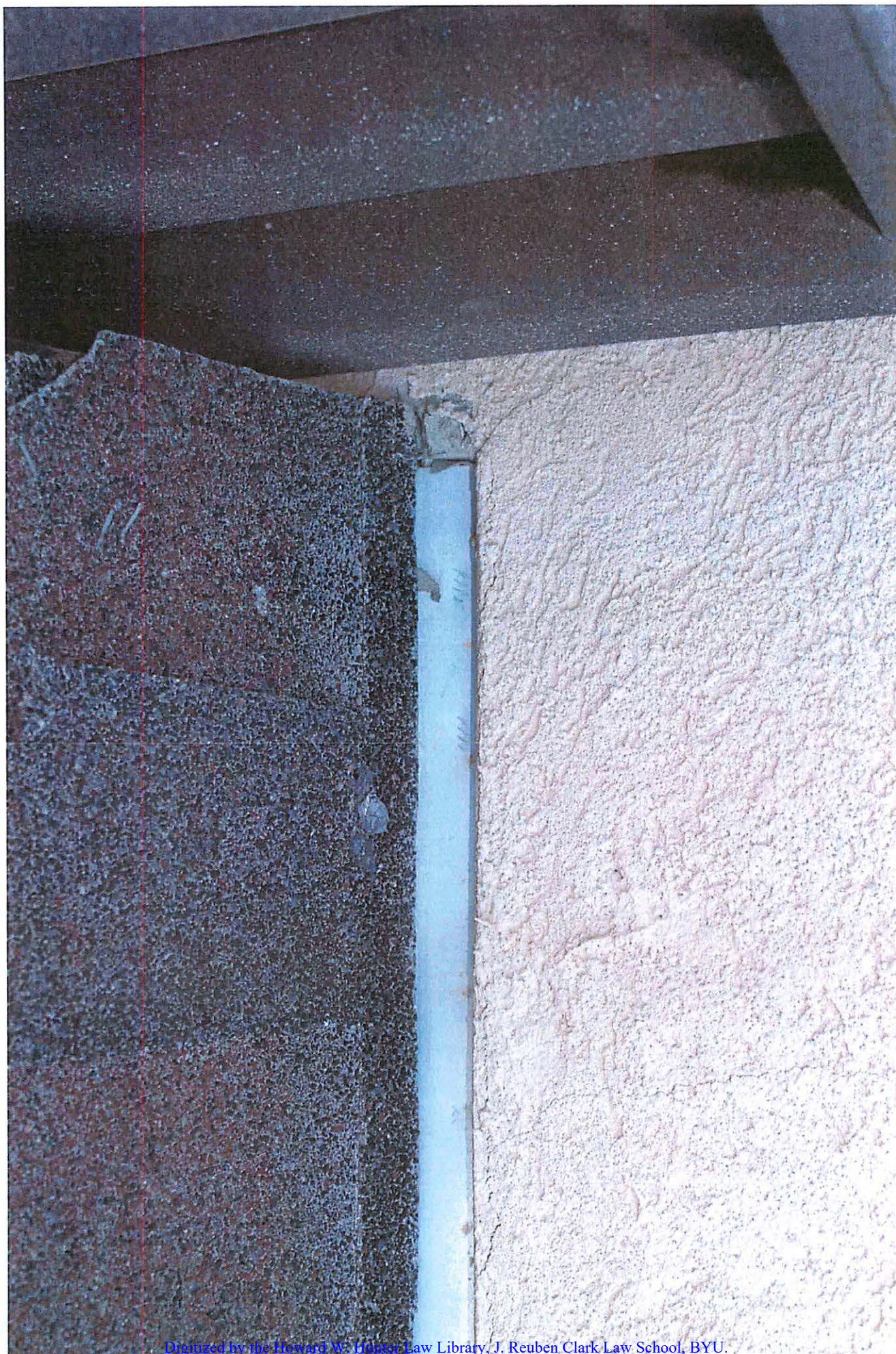
















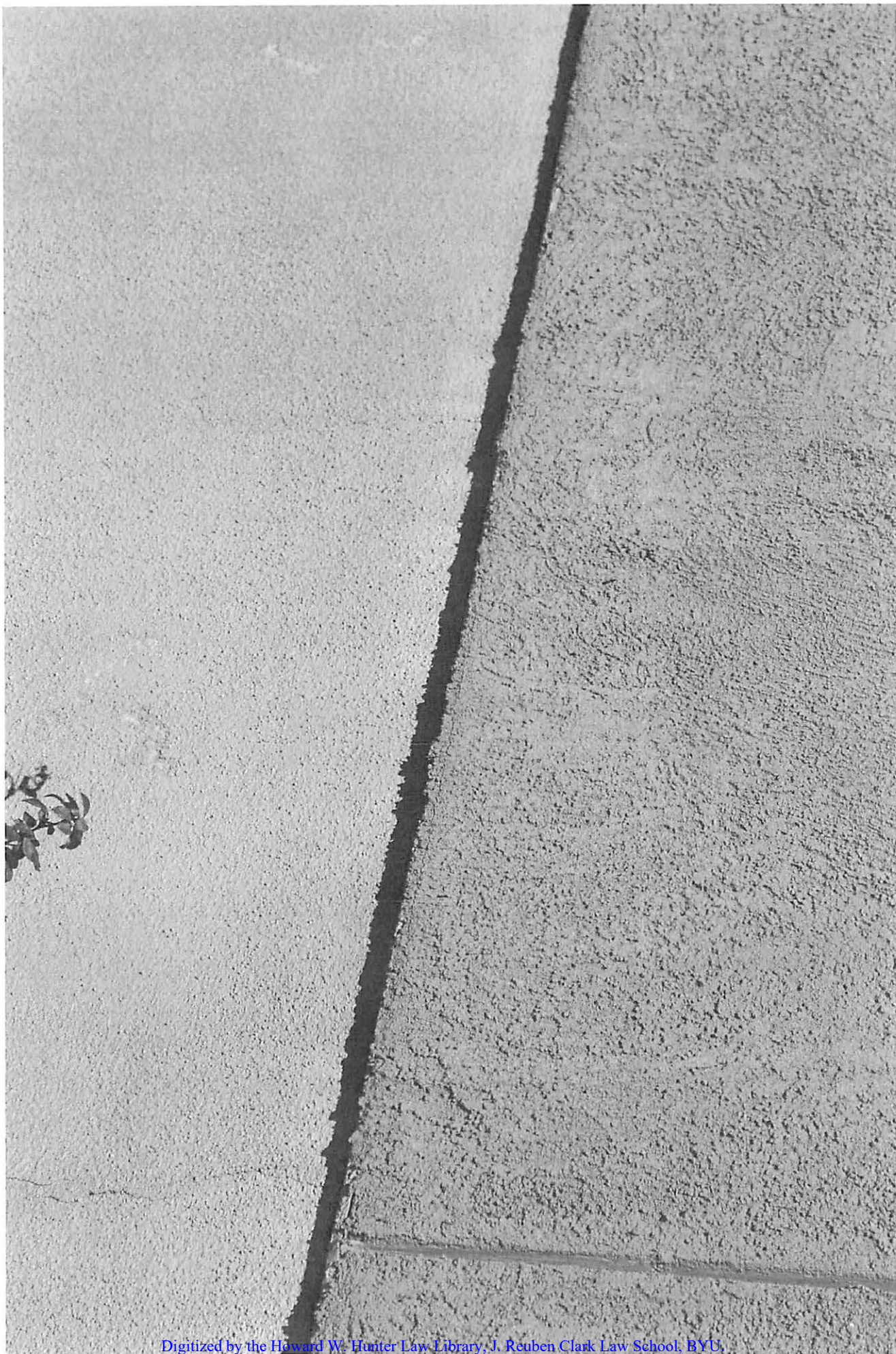
















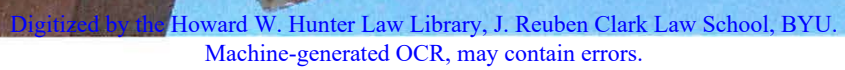




















# APPENDIX B

## Damage Report

Prepared by  
**Wilding Engineering**

**GABLES AT STERLING VILLAGE  
SOUTH JORDAN, UT**



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA005193



**This Page Intentionally Left Blank**

**WESTERN ARCHITECTURAL**  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

**GSVHOA005194**



# GABLES AT STERLING VILLAGE DAMAGE REPORT

Property location:  
SOUTH JORDAN, UTAH  
PROJECT NO. 12141

Prepared for:  
GABLES AT STERLING VILLAGE C/O HOA  
10998 S MAPLE FOREST WAY  
SOUTH JORDAN, UTAH

NOVEMBER 21, 2012



Chad P. Bhongir, PE  
Geotechnical Engineer



Mike E. Carlton, PE  
Civil Engineer



PREPARED BY:  
**WILDING ENGINEERING**  
14721 SOUTH HERITAGE CREST DRIVE  
BLUFFDALE, UTAH 84065

GSVHOA005195



## Table of Contents

|                                              |   |
|----------------------------------------------|---|
| 1. INTRODUCTION .....                        | 3 |
| 2. PURPOSE AND SCOPE .....                   | 3 |
| 3. FIELD INVESTIGATION .....                 | 3 |
| 3.1 VISUAL INSPECTION AT EACH LOCATION ..... | 4 |
| 3.2 COMPACTION TESTING .....                 | 4 |
| 3.3 SUBSURFACE SOILS .....                   | 4 |
| 3.4 LABORATORY TESTING .....                 | 4 |
| 4. CONCLUSIONS .....                         | 5 |
| 5. RECOMMENDATIONS .....                     | 6 |

## APPENDIX

Vicinity Map  
Site Map with Test Locations  
Site Photos  
Compaction Test Results  
Laboratory Test Results  
Tabulation Table



## 1. INTRODUCTION

This report presents the results of our investigation at Gables at Sterling Village located in South Jordan, Utah. The field investigation was performed in accordance with Wilding Engineering proposal dated November 7, 2012 and authorized by Mr. Doug Shumway.

## 2. PURPOSE AND SCOPE

The purpose of the investigation was to determine the cause of cracks and settlement of walkways, driveways, and decks. For this project, the following scope of services was performed:

- Reviewed existing documents. Documents included geotechnical investigation report prepared by AMEC for the referenced development titled "*Report-Geotechnical Study-Sterling Village Phase IV and V-West of existing Sterling Village Development-Approximately 11000 South and 420 West, South Jordan, Utah*", dated June 11, 2004, and associated memorandum prepared by AMEC dated October 14, 2006
- Performed a site visit to determine the extent of damage.
- As concrete is removed at each test location, visually inspect the type and condition of the underlying soils.
- Perform compaction testing at each test location to determine percent compaction under the concrete slabs.
- Obtain soil samples at each testing location for laboratory analysis.
- Performed laboratory testing on the samples collected during compaction testing. Laboratory testing included sieve analysis, atterber limits, and modified proctor testing.
- Conclusions on the extent of damage.
- Recommendations for remediation.

## 3. FIELD INVESTIGATION

An initial site visit was performed on Tuesday November 6, 2012 by Chad Bhongir and Mike Carlton. During this visit, we observed the conditions of the building exteriors, the concrete flatwork, and the roadway sections along the roadways within the development.

In general, we did not find any signs of exterior damage to the building foundation walls or the roadway section throughout the development. However, the concrete flatwork (specifically the driveways and/or walkways) had settled in relation to the building porches and/or the garage floors at units that front Maple Forest Way and Birch Creek Road. Much of this concrete was also cracked, indicating differential settlement. Due to



the damage being confined to units along Maple Forest Way and Birch Creek Road, the scope of field investigation work was focused on units that front these two roadways.

After discussing our observations with Mr. Shumway, it was determined to remove a portion of the concrete walkway between the driveway and front porch at four locations to observe the conditions under the concrete. The four locations were located at 11013 S Maple Forest Way, 10962 S Maple Forest Way, 10988 S Birch Creek Road, and 10954 S Birch Creek Road. These locations were chosen based on:

1. The existing concrete damage noted at the test locations.
2. Ensuring that the four testing locations encompassed the study area and were spread apart sufficiently to provide a representative sampling of the project area.
3. The relatively small area to disturb for the current residences (in comparison to removing a driveway section).

The testing locations are shown in Figure A-2 in the appendix.

### 3.1 VISUAL INSPECTION AT EACH LOCATION

A contractor independent of Wilding Engineering was hired by the client to break up and removed the damaged concrete at each test location on Monday November 12, 2012. A representative of Wilding Engineering was on site to observe, photograph, and document the conditions of the soils under the concrete while the demolition took place.

### 3.2 COMPACTION TESTING

Compaction testing was performed at each test location and is discussed in the conclusions of section 4 of this report. The results of the compaction testing are presented in the Appendix of this report. Soil samples were collected and transported to our laboratory for further examination and testing.

### 3.3 SUBSURFACE SOILS

Soils under the concrete slabs at 11013 and 10962 S Maple Forest Way consisted of Silty Clayey Sand and Sandy Lean Clay, respectively while soils under the concrete slabs at 10988 and 10954 S Birch Creek Road consisted of Sandy Lean Clay with Gravel to Clayey Gravel with Sand, respectively. Grain size analysis and atterberg limits test results for these soils are located in the appendix of this report.

### 3.4 LABORATORY TESTING

At each testing location, soil samples were taken to evaluate their physical and engineering properties. Grain Size Analysis and Atterberg Limits were performed on each sample. Based on the results of these tests, the test locations ST-1, ST-2, and ST-3 consisted of similar soils, while test location ST-4 consisted of more gravel. A Modified Proctor Test (Proctor A) was performed on the soil sample from location ST-1 and the result was compared against the compaction testing results from locations ST-1, ST-2, and ST-3. An additional Modified Proctor Test (Proctor B) was performed on the soil



sample from location ST-4 and compared against the compaction test results from location ST-4.

| Location | Address                   | Soil Type (per grain size analysis) | Proctor |
|----------|---------------------------|-------------------------------------|---------|
| ST-1     | 11013 S. Maple Forest Way | Silty Clayey Sand                   | A       |
| ST-2     | 10962 S. Maple Forest Way | Sandy Lean Clay                     | A       |
| ST-3     | 10988 S. Birch Creek Road | Sandy Lean Clay w/ Gravel           | A       |
| ST-4     | 10954 S. Birch Creek Road | Clayey Gravel with Sand             | B       |

All laboratory test results are presented in the appendix.

#### 4. CONCLUSIONS

1. During our initial field observations, we looked closely at the exposed foundation walls for evidence of differential settlement of the buildings in the development. We also spoke to a resident and property manager of the development, and they indicated that they had not seen any damage inside the units to indicate settlement of the buildings. We also observed the roadways within the development and concluded that their condition was consistent with their age and the roadway section showed no significant evidence of settlement.
2. Many driveways and sidewalks have experienced settlement in relation to garage floors and porches and/or significant cracks consistent with differential settlement. The geotechnical report by AMEC stated that "Preparation under driveways and outside flatwork should be as discussed for the primary roadways. If (sic) must be noted that concrete slabs over deep sequences of collapsible and non-engineered fill soil will be very susceptible to cracking." – Section 6.8.

The preparation for Primary Roadways included:

|            |                                                                                                                            |
|------------|----------------------------------------------------------------------------------------------------------------------------|
| 3.5 inches | Asphalt concrete                                                                                                           |
| 8.0 inches | Granular Base                                                                                                              |
| Over       | Properly prepared natural subgrade soils, and/or structural site grading fill extending to suitable natural subgrade soils |

The requirements for concrete flatwork should have followed the above section, with the exception of concrete being used instead of asphalt concrete. The granular base should have been placed and compacted to 95% of the maximum dry density as determined by ASTM D-1557. The natural subgrade and/or structural site grading fill should have been 'properly prepared' per section 6.2.4 of the AMEC report.

It is our opinion, based on field observations, that no granular base was used under the concrete slabs. The conditions under the concrete slabs were 3"-4" of rounded gravel over soils consistent with the native site soils that were likely placed as fill with little or no preparation.



## **ADDENDUM 7**





WESTERN ARCHITECTURAL  
forensic architects & engineers

215 S. State Street, #100B  
Salt Lake City, UT 84111  
801-990-0319

|               |                            |             |              |
|---------------|----------------------------|-------------|--------------|
| PROJECT NAME: | Gables at Sterling Village | PROJECT #:  | UT09-287     |
| FIELD REPORT: | 10993 Maple Forest Way     | ISSUE DATE: | Nov 29, 2011 |

|                   |                   |                                        |
|-------------------|-------------------|----------------------------------------|
| Observation Date: | Observation Time: | Weather Conditions During Observation: |
| Nov 2, 2011       | 12:41 - 13:00     | 46° & Clear                            |

*Observation Address:*

Gables at Sterling Village  
10993 Maple Forest Way  
South Jordan, UT 84095

*Observation Attendees:*

Russell Hansen Western Architectural  
Kim Tippetts Tippetts Construction  
Homeowner

*Distribution (via email or fax)*

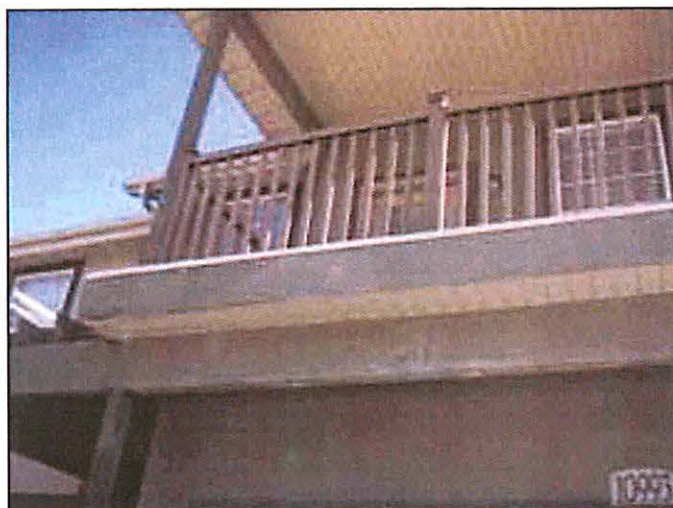
Jason Sucher Advantage Management  
Peter Harrison Vial Fotheringham



At the request of Jason Sucher, property manager, on November 2, 2011, Western Architectural (WA) observed the condition of the elevated deck at the Gables at Sterling Village 10993 Maple Forest Way. Explanation of issues found are indicated with each photo.

**A. OBSERVATIONS:**

- 1.01 10993 Maple Forest Way:  
Efflorescence visible on stucco  
facade and beam.

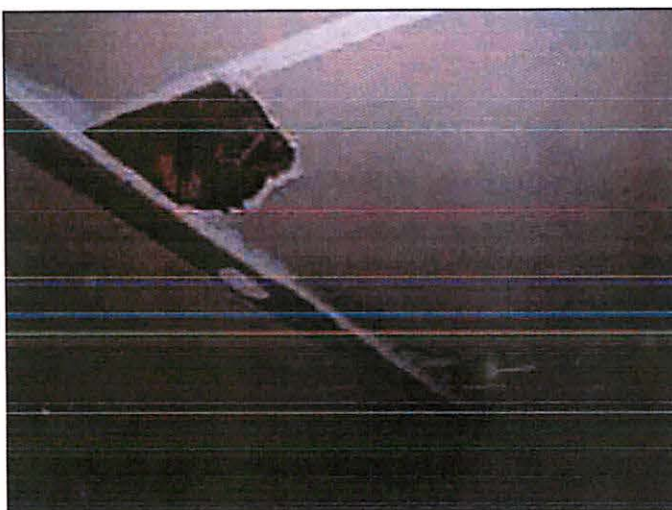




- 1.02 10993 Maple Forest Way:  
Organic growth on soffit and  
stucco at north corner.



- 1.03 10993 Maple Forest Way:  
Ceiling damage in kitchen from  
plumbing pipe issue.



- 1.04 10993 Maple Forest Way:  
Moisture on edge of wall and  
soffit from plumbing issues.



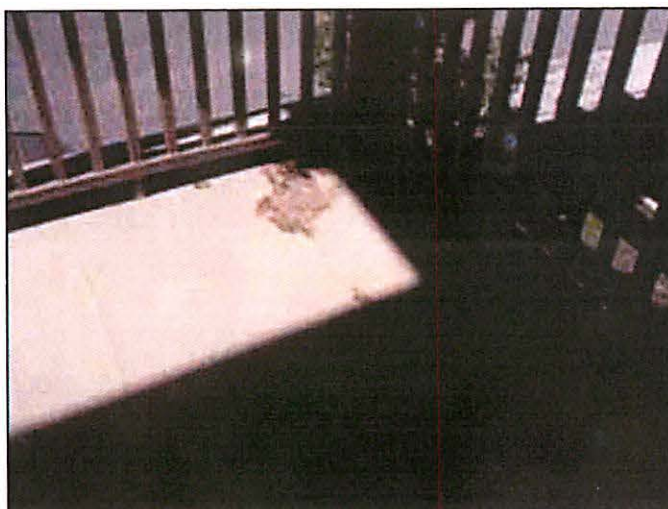
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.05 10993 Maple Forest Way:  
Moisture damage under window  
sills in living room.



- 1.06 10993 Maple Forest Way:  
Overall view of deck and hole at  
north corner.



- 1.07 10993 Maple Forest Way:  
Hole in deck at exterior column  
at north corner.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.08 10993 Maple Forest Way:  
View inside deck joists under  
deck substrate.



- 1.09 10993 Maple Forest Way:  
View inside deck joists looking  
south.



- 1.10 10993 Maple Forest Way:  
View of outside railing at  
column with damage on deck  
and at edge.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



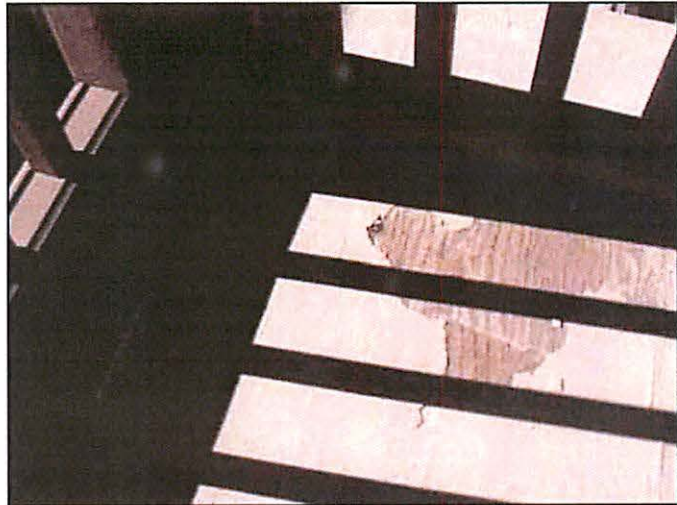
- 1.11 10993 Maple Forest Way:  
View of outside railing at  
column with damage on deck  
and at edge.



- 1.12 10993 Maple Forest Way:  
Missing top coat on deck at  
north end in front of french  
doors.



- 1.13 10993 Maple Forest Way:  
Missing top coat in deck at  
south corner.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.14 10993 Maple Forest Way:  
Overall view of deck to be  
repaired.



- 1.15 10997 Maple Forest Way:  
Deck appears to have settled at  
the southern corner as well as  
the support post of the entry  
trellis.



- 1.16 10997 Maple Forest Way:  
Settlement of concrete at entry.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



## B. CONCLUSIONS:

Corrections Needed (See Notes):

### 10993 Maple Forest Way:

Moisture damage and deterioration were very severe on the OSB substrate and through the textured surface. Remove and replace damaged plywood sheathing. Prepare sheathing for new deck membrane and install membrane per manufacturer's installation guidelines. Extend membrane up wall 6" and cover over with matching stucco. Flash and seal procedures as per previous deck repairs.

### 10997 Maple Forest Way:

Some damage was visible at the south corner of the deck. Further investigation is recommended.

Corrections Made (See Notes):

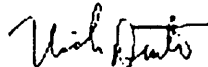
none.

Thank you for choosing Western Architectural to assist you in this matter. Should you have any questions or require further clarification on anything discussed in this report please contact me at your convenience.

Respectfully Submitted,



Russell Hansen  
Architect



Nick Dente  
Principal

## C. CONSULTANT ROLE AND DISCLAIMERS:

Our observation techniques consist of visually observing and sampling areas of the building where, in our experience, problems are likely to show themselves. However, because we do not remove all (or any in some cases) exterior cladding, windows, and other materials overlaying the structure, we may miss some or all of the damage to it; such damage would only be revealed if we removed all of the cladding and windows, and examined the surrounding surfaces. Thus, please understand that there may be damage to the building that we could not see and therefore cannot report. Western Architectural Forensic Architects and Engineers will not be held responsible for any concealed or undetected damage to your structure including microbial (mold) contamination.

Because of the necessarily limited nature of our observations, any repair guidelines we produce as a result will be limited to those conditions we actually observed during the Observation. This means, and you acknowledge, that our repair guidelines may not cover all repairs that are needed. This is why it is crucial that you retain the services of a highly qualified, detail-oriented contractor as part of your project team in addition to our professional services that dictate the remediation process should you implement an action plan.

You also understand that Western Architectural Forensic Architects and Engineers is neither a guarantor nor an insurer of the adequacy of any construction, reconstruction or recommended action, and that our services are being rendered solely as a consultant. We therefore disclaim, and you acknowledge our disclaimer of, any and all liability of any source or nature, to you or any third party, for any claims arising out of or related to the repair process. Western Architectural may only be held to the same standard of care imposed upon a professional firm providing comparable services.

You acknowledge that any reports or repair guidelines issued by Western Architectural are to be used in light of the foregoing. You also agree that Western Architectural is in no way providing any assurance to you or any third party that any repair guidelines issued by us are exhaustive as to your project, nor that the project will be (or has been) completed in accordance with any particular plans or specifications, whether or not issued by, provided to or reviewed by Western Architectural. The responsibility for quality control of (and adherence to) the repair guidelines, specifications and plans is yours and that of your chosen project team.

This report is strictly limited to your use and should, in any event, be used only in its entirety with this disclaimer included.

**END OF REPORT**





WESTERN ARCHITECTURAL  
forensic architects & engineers

215 S. State Street, #100B  
Salt Lake City, UT 84111  
801-990-0319

|               |                            |             |              |
|---------------|----------------------------|-------------|--------------|
| PROJECT NAME: | Gables at Sterling Village | PROJECT #:  | UT09-287     |
| FIELD REPORT: | 10966 Maple Forest Way     | ISSUE DATE: | Nov 17, 2011 |

|                   |                   |                                        |
|-------------------|-------------------|----------------------------------------|
| Observation Date: | Observation Time: | Weather Conditions During Observation: |
| Nov 3, 2011       | 10:19 - 11:28     | 59° Windy Clear                        |

*Observation Address:*

Gables at Sterling Village  
10966 Maple Forest Way  
South Jordan, UT 84095

*Observation Attendees:*

Eric Harker      Western Architectural  
Kim Tippetts      Tippetts Construction

*Distribution (via email or fax)*

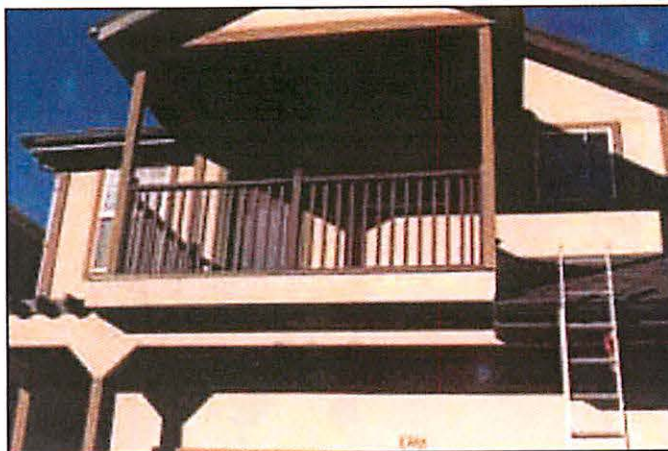
Jason Sucher      Advantage Management  
Peter Harrison      Vial Fotheringham



At the request of Jason Sucher, property manager, on November 3, 2011, Western Architectural (WA) observed the repair of the elevated deck at the Gables at Sterling Village 10966 Maple Forest Way. Explanation of issues found and repairs made are indicated with each photo.

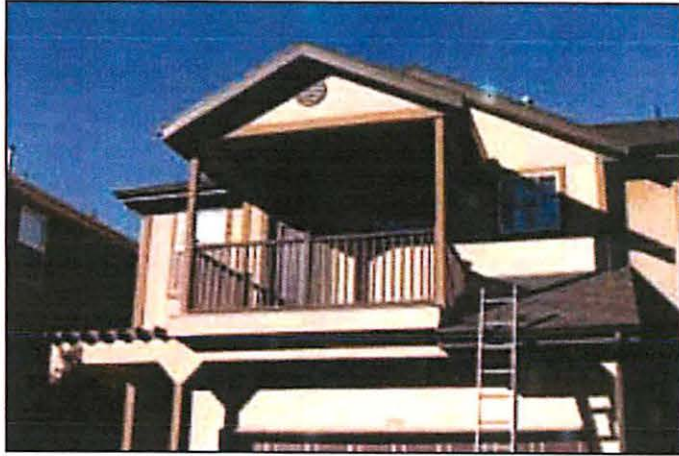
**A. OBSERVATIONS:**

- 1.01 Photos taken of 10966 S Maple Forest Way.





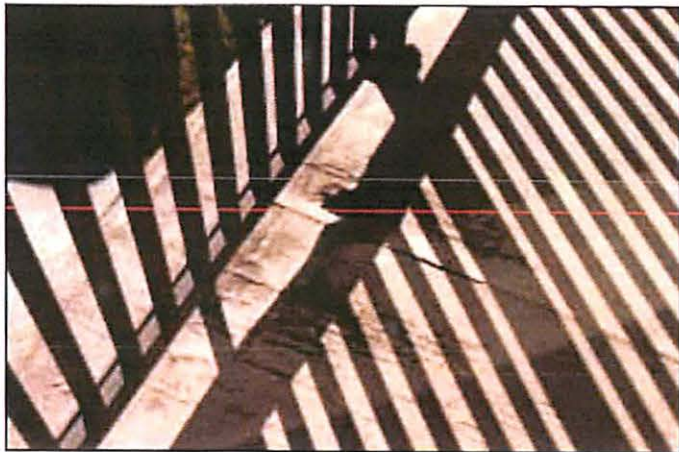
- 1.02 Overall view of area for deck demolition.



- 1.03 Existing hole in deck surface.  
Deck membrane condition.



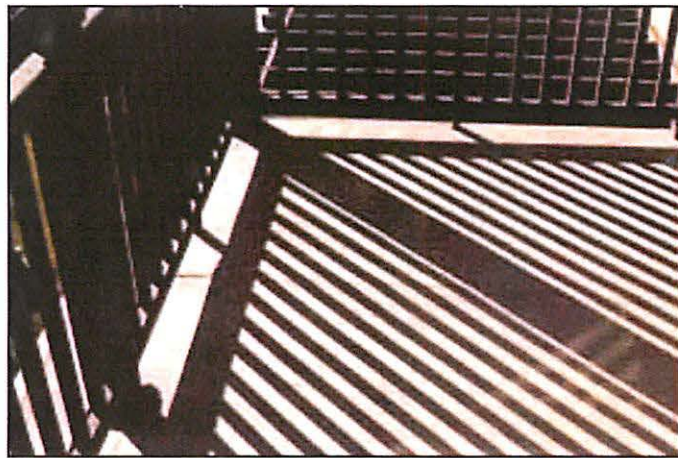
- 1.04 Existing hole in deck surface.  
Deck membrane condition.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



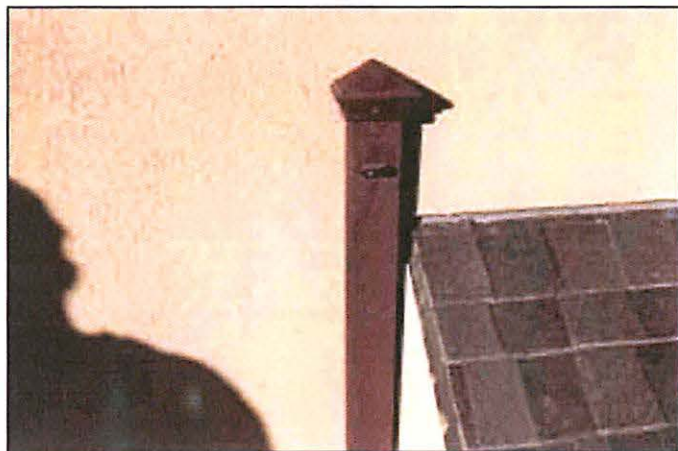
1.05 South-east corner of deck.



1.06 Crack in deck coating.



1.07 Rail removal in progress. Deck railing post with rail section removed.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

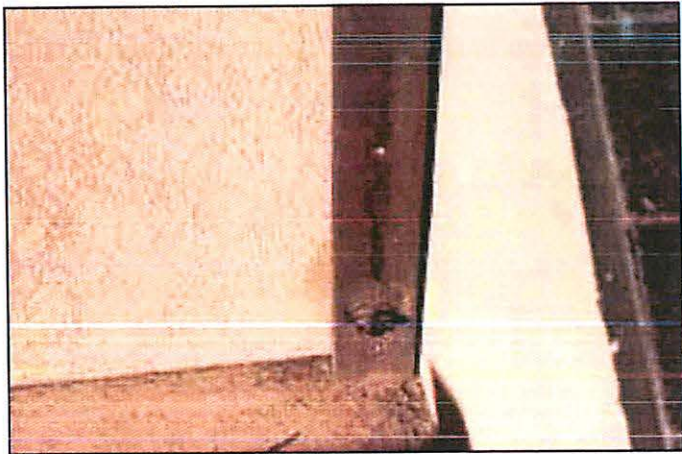


- 1.08 Rail removal in progress. Deck railing post with rail section removed.

Deterioration of deck coating at rake wall to deck transition.



- 1.09 Moisture stains on railing post.



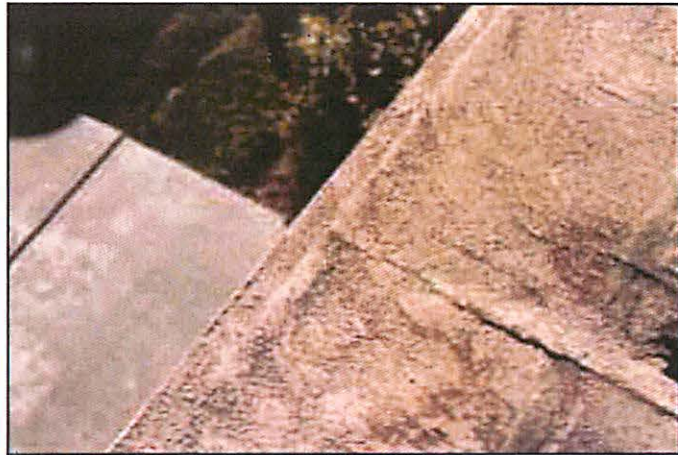
- 1.10 Deteriorated condition of deck coating and sheathing at street side edge.



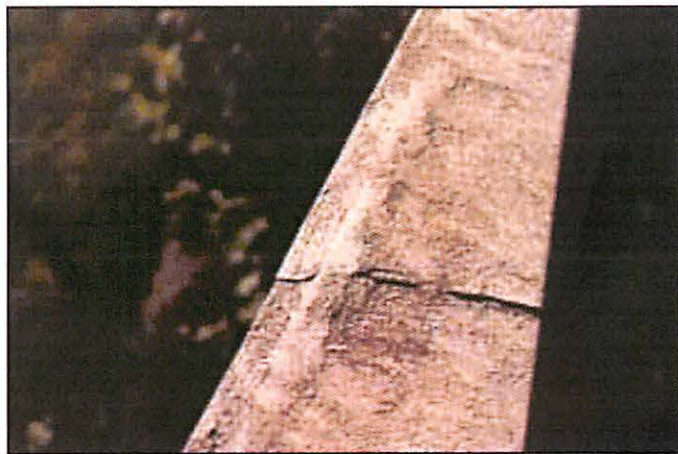
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.11 Deteriorated condition of deck coating at street side edge.



- 1.12 Flashing condition at deck edge. Deteriorated condition of deck coating at street side edge.



- 1.13 Demolition in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.14 Demolition in progress.



1.15 Demolition in progress. View inside deck cavity revealing moisture on joist.



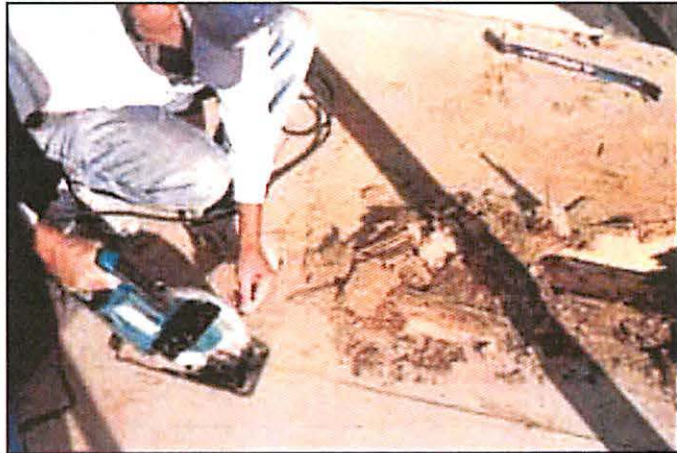
1.16 Demolition in progress. Removal of specific sections of deck determined to be damaged.



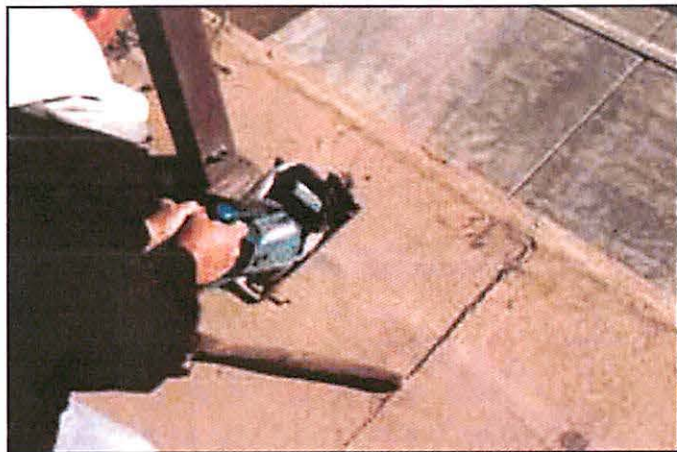
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.17 Demolition in progress.  
Removal of specific sections of  
deck determined to be  
damaged.



- 1.18 Demolition in progress.  
Removal of specific sections of  
deck determined to be  
damaged.



- 1.19 Demolition in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.20 Removal of top sheathing layer reveals moisture damage and growth on OSB.



- 1.21 Removal of top sheathing layer reveals moisture damage and growth on OSB.



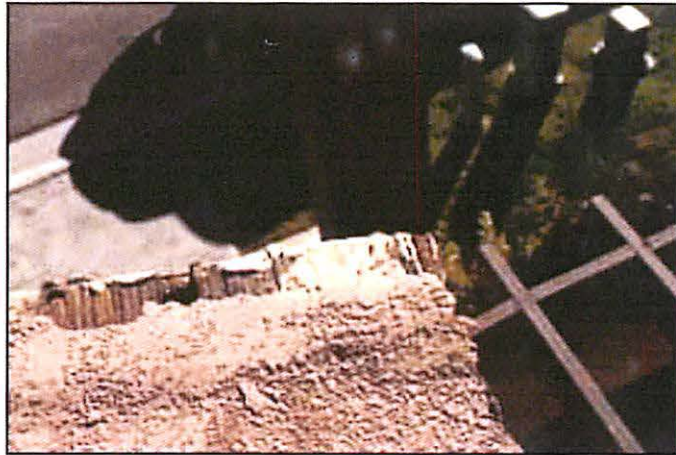
- 1.22 Corroded fastener and moisture stained sheathing. Omitted sealant at flashing transition.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.23 Growth on OSB sheathing.



1.24 Removal of top sheathing layer reveals severe moisture damage and growth on OSB.



1.25 Removal of top sheathing layer reveals severe moisture damage and growth on OSB.





1.26 Demolition in progress.



1.27 Demolition in progress.



1.28 Removal of both layers of OSB sheathing reveals staining on beam and garage header.



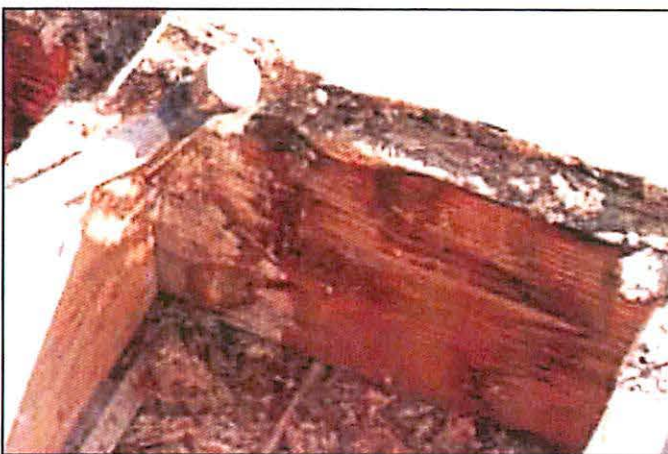
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.29 Exposed insulation from garage wall.



- 1.30 Demolition in progress.



- 1.31 Demolition in progress.



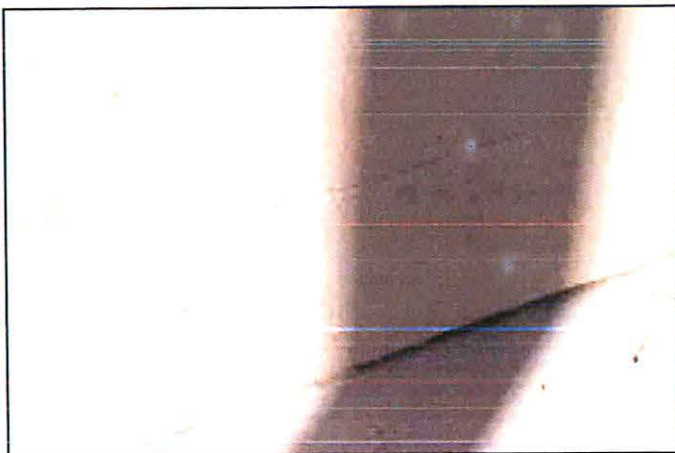
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.32 Cutting of stucco for code adherence and flashing installation in progress.



- 1.33 Cutting of stucco for code adherence and flashing installation in progress.



- 1.34 Demolition of stucco for code adherence and flashing installation in progress.



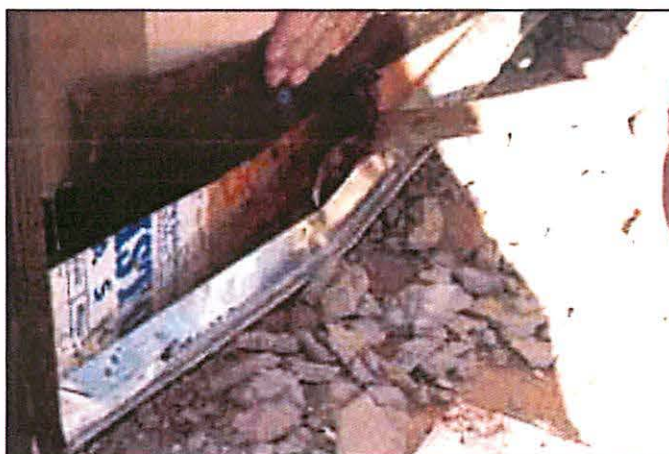
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



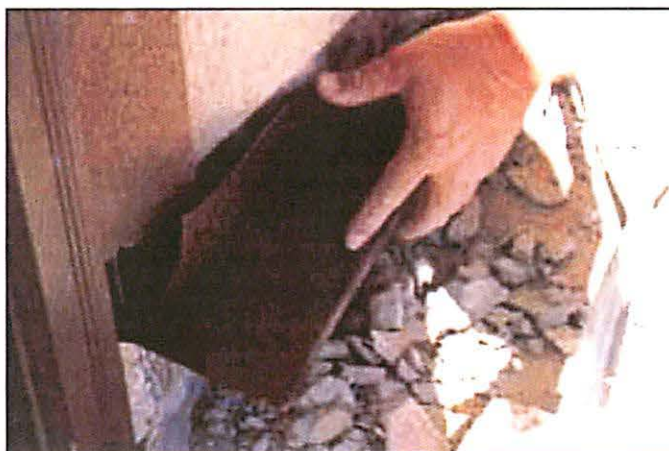
- 1.35 Demolition of stucco for code adherence and flashing installation in progress.



- 1.36 Removal of stucco reveals Moistop flashing at door, plastic sheeting at base, OSB sheathing, building paper, and metal weep screed.



- 1.37 Two layers of building paper.

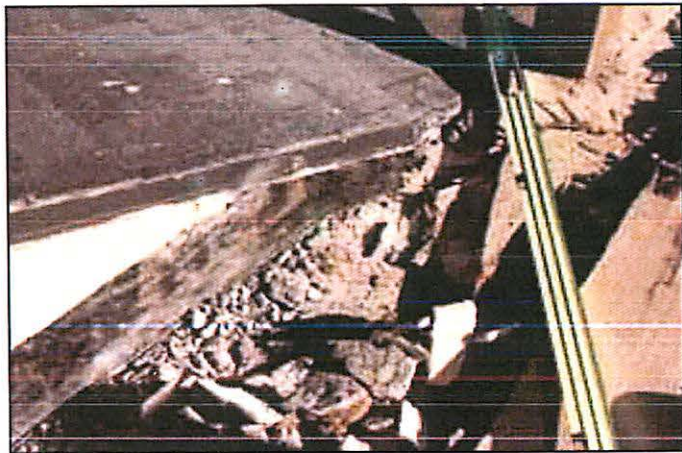




1.38 Two layers of building paper.



1.39 Rake to deck transition condition.



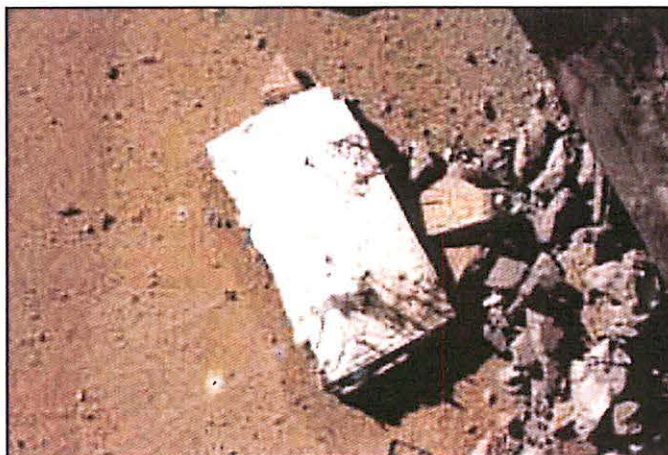
1.40 Condition of sample removed from deck.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.41 Back side of EPS plant-on.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



## B. CONCLUSIONS:

### Corrections Needed (See Notes):

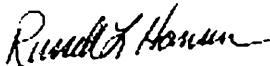
Moisture damage and deterioration were visible on the OSB substrate and through the textured surface. Remove and replace damaged plywood sheathing. Prepare sheathing for new deck membrane and install membrane per manufacturer's installation guidelines. Extend membrane up wall 6" and cover over with matching stucco. Flash and seal procedures as per previous deck repairs.

### Corrections Made (See Notes):

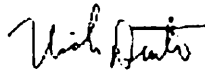
Demolition in progress.

Thank you for choosing Western Architectural to assist you in this matter. Should you have any questions or require further clarification on anything discussed in this report please contact me at your convenience.

Respectfully Submitted,



Russell Hansen  
Architect



Nick Dente  
Principal

## C. CONSULTANT ROLE AND DISCLAIMERS:

Our observation techniques consist of visually observing and sampling areas of the building where, in our experience, problems are likely to show themselves. However, because we do not remove all (or any in some cases) exterior cladding, windows, and other materials overlaying the structure, we may miss some or all of the damage to it; such damage would only be revealed if we removed all of the cladding and windows, and examined the surrounding surfaces. Thus, please understand that there may be damage to the building that we could not see and therefore cannot report. Western Architectural Forensic Architects and Engineers will not be held responsible for any concealed or undetected damage to your structure including microbial (mold) contamination.

Because of the necessarily limited nature of our observations, any repair guidelines we produce as a result will be limited to those conditions we actually observed during the Observation. This means, and you acknowledge, that our repair guidelines may not cover all repairs that are needed. This is why it is crucial that you retain the services of a highly qualified, detail-oriented contractor as part of your project team in addition to our professional services that dictate the remediation process should you implement an action plan.

You also understand that Western Architectural Forensic Architects and Engineers is neither a guarantor nor an insurer of the adequacy of any construction, reconstruction or recommended action, and that our services are being rendered solely as a consultant. We therefore disclaim, and you acknowledge our disclaimer of, any and all liability of any source or nature, to you or any third party, for any claims arising out of or related to the repair process. Western Architectural may only be held to the same standard of care imposed upon a professional firm providing comparable services.

You acknowledge that any reports or repair guidelines issued by Western Architectural are to be used in light of the foregoing. You also agree that Western Architectural is in no way providing any assurance to you or any third party that any repair guidelines issued by us are exhaustive as to your project, nor that the project will be (or has been) completed in accordance with any particular plans or specifications, whether or not issued by, provided to or reviewed by Western Architectural. The responsibility for quality control of (and adherence to) the repair guidelines, specifications and plans is yours and that of your chosen project team.

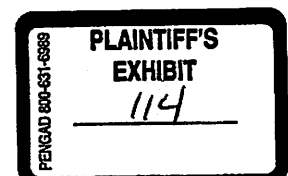
This report is strictly limited to your use and should, in any event, be used only in its entirety with this disclaimer included.

**END OF REPORT**



## Deck Repairs @ Sterling Village

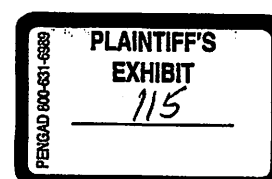
| Date     | Unit #                  | Reference              | Cost (\$)     | Contractor  |
|----------|-------------------------|------------------------|---------------|-------------|
| 6/7/11   | 10967                   | Deck Repair            | 1,190         | Kim Tippets |
| 11/15/12 |                         | Deck Replacement       | 16,560        | Prestige    |
| 4/23/13  |                         | Deck Repairs           | 20,000        | Prestige    |
| 5/7/13   |                         | Remaining Deck Repairs | 16,115        | Prestige    |
| 5/16/13  | 10922 Birch             | Deck Repairs           | 3,610         | Prestige    |
| 9/4/13   |                         | Repair Pipe Flashing   | 215           | Prestige    |
| 9/30/13  | 10946<br>10999<br>10982 | Deck Repairs           | 5,775         | Prestige    |
| 7/22/14  | 6 units                 | Deck Repairs           | 11,665        | Prestige    |
| 3/23/15  | 3 units                 | 3 Deck Repairs         | 5,400         | Prestige    |
|          |                         |                        |               |             |
|          |                         | <b>Total</b>           | <b>80,530</b> |             |





## Post Repairs @ Sterling Village

| Date    | Unit # | Reference              | Cost (\$)        | Contractor   |
|---------|--------|------------------------|------------------|--------------|
|         |        |                        |                  |              |
| 5/12/10 |        | Permit for Post Repair | 153.21           | Nick Nichols |
| 5/12/10 |        | Post Repairs           | 3,192.50         | Nick Nichols |
| 9/4/13  |        | Post Stone Repairs     | 320              | Prestige     |
| 9/15/10 |        | Repaired Post          | 3,417.24         | Nick Nichols |
| 10/1/13 | 10992  | Post Repairs           | 3,240            | Prestige     |
|         |        |                        |                  |              |
|         |        | <b>Total</b>           | <b>10,322.95</b> |              |







## **BUILDING ENVELOPE CONDITION ASSESSMENT REPORT**

FOR:

**Gables at Sterling Village Townhomes  
Maple Forest Way  
South Jordan, UT 84095**

**Issued: 21 November 2012**

WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004221



The Gables at Sterling Village Townhomes - Building 6

6D.01 Building 6

Unit 10977

Settlement cracks.



6D.02 Building 6

Unit 10977

Corrosion on beam.



6D.03 Building 6

Reverse lap in flashing; gaps in flashing at foundation wall.



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004549



6D.07 Building 6

Unit 10983

Settlement gap at underside of deck.



6D.08 Building 6

Improper clearance, settlement at column.



6D.09 Building 6

Concrete settlement cracks.





The Gables at Sterling Village Townhomes - Building 6

6D.10 Building 6

Unit 10993

Settlement cracks along beam.



6D.11 Building 6

Unit 10993

Efflorescence and moisture damage in stucco.



6D.12 Building 6

Unit 10997

Settlement cracks at beam.



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004552



11B.19 Building 11

The stucco is lapped onto the door frame with no separation of dissimilar materials, or gap for caulking, at all doors.

\* This condition occurs on all buildings.



11B.20 Building 11

At all of the column base areas there is stucco installed horizontally with inadequate slope.

\* This condition occurs on all buildings.



11B.21 Building 11

There are multiple areas of cracking stucco.

\* This condition occurs on all buildings.





The Gables at Sterling Village Townhomes - Building 11

11B.22 Building 11

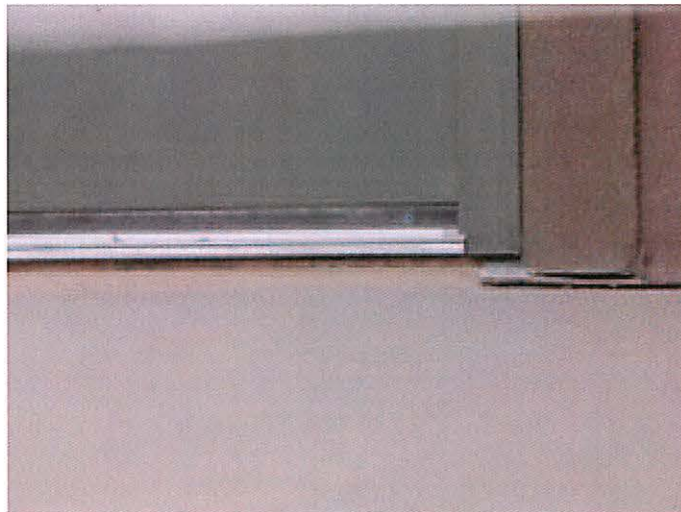
There are multiple areas of finish coat de-bonding with the substrate.



11B.23 Building 11

There are multiple areas of exposed exterior sheathing.

\* This condition occurs on all buildings.



11B.24 Building 11

The open trellis is attached through the stucco with omitted ledger flashing.

\* This condition occurs on all buildings.





## The Gables at Sterling Village Townhomes - Building 11

## 11B.25 Building 11

The door head flashings are in direct contact with the stucco with no separation for water egress.

\* This condition occurs on all buildings.



## 11B.26 Building 11

The adhered manufactured stone has omitted weep holes at the bottom termination.

\* This condition occurs on all buildings.



## 11B.27 Building 11

The mortar for the adhered manufactured stone is loose and de-bonded.

\* This condition occurs on all buildings.





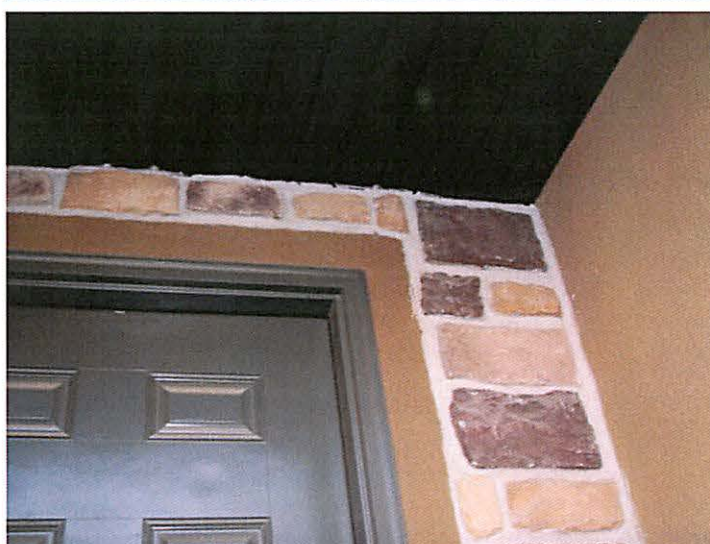
11D.01 Building 11

Improper flashing configuration,  
improper lap in flashing at  
foundation.



11D.02 Building 11

Omitted head flashing at door.



11D.03 Building 11

Damage to stucco, improper  
slope in stucco.





The Gables at Sterling Village Townhomes - Building 14

14A.07 Building 14

Unit 10988

Soil subsidence below entry stairs.



14A.08 Building 14

Unit 10988

Cracks in concrete flatwork.



14A.09 Building 14

Unit 10974

Cracks in concrete flatwork.





The Gables at Sterling Village Townhomes - Building 14

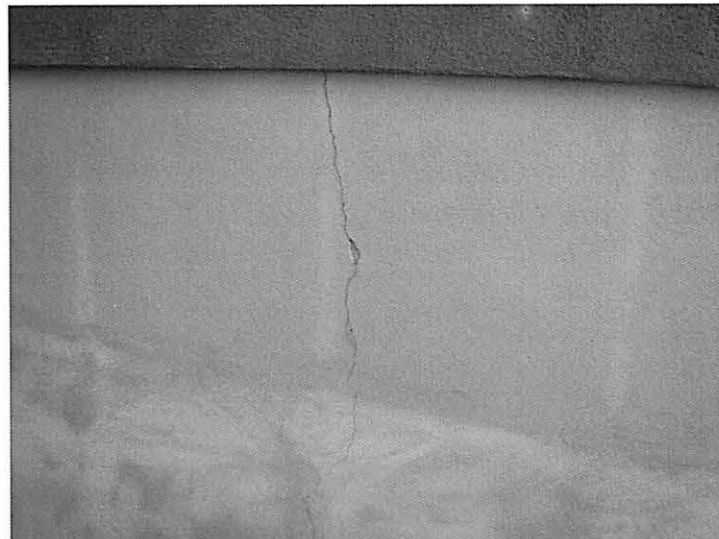
14D.01 Building 14

Reverse slope in flashing.



14D.02 Building 14

Foundation wall crack at north end of building.



14D.03 Building 14

Blocked weeps; omitted sealant around windows.



WESTERN ARCHITECTURAL  
SALT LAKE CITY OFFICE: 215 S. State Street, Suite 100B, Salt Lake City UT 84111  
P: 801.990.0319 | [www.westernarchitectural.com](http://www.westernarchitectural.com) | F: 801.990.0318

GSVHOA004923



15B.16 Building 15

The stucco is applied lapping onto the utility penetration with no gap for caulking.

\* This condition occurs on all buildings.



15B.17 Building 15

The door head flashings are in direct contact with the stucco with no separation for water egress.

\* This condition occurs on all buildings.



15B.18 Building 15

The mortar for the adhered manufactured stone is loose and de-bonded.

\* This condition occurs on all buildings.







WESTERN ARCHITECTURAL  
forensic architects & engineers

215 S. State Street, #100B  
Salt Lake City, UT 84111  
801-990-0319

|               |                            |             |              |
|---------------|----------------------------|-------------|--------------|
| PROJECT NAME: | Gables at Sterling Village | PROJECT #:  | UT09-287     |
| FIELD REPORT: | 10993 Maple Forest Way     | ISSUE DATE: | Nov 29, 2011 |

|                   |                   |                                        |
|-------------------|-------------------|----------------------------------------|
| Observation Date: | Observation Time: | Weather Conditions During Observation: |
| Nov 2, 2011       | 12:41 - 13:00     | 46° & Clear                            |

Observation Address:

Gables at Sterling Village  
10993 Maple Forest Way  
South Jordan, UT 84095

Observation Attendees:

Russell Hansen Western Architectural  
Kim Tippetts Tippetts Construction  
Homeowner

Distribution (via email or fax)

Jason Sucher Advantage Management  
Peter Harrison Vial Fotheringham



At the request of Jason Sucher, property manager, on November 2, 2011, Western Architectural (WA) observed the condition of the elevated deck at the Gables at Sterling Village 10993 Maple Forest Way. Explanation of issues found are indicated with each photo.

A. OBSERVATIONS:

- 1.01 10993 Maple Forest Way:  
Efflorescence visible on stucco  
facade and beam.

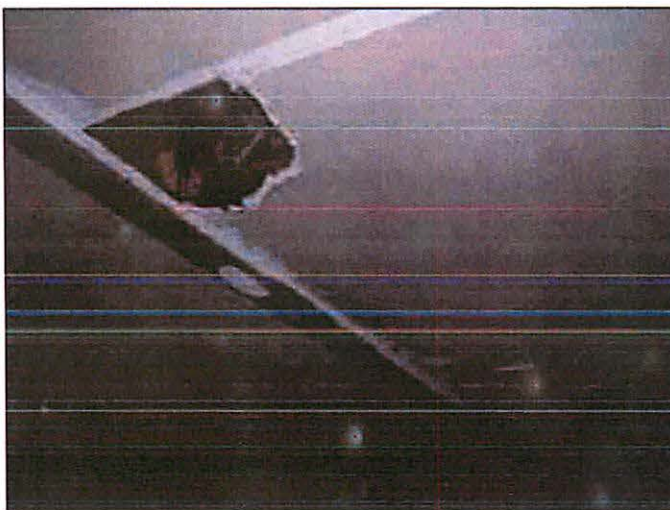




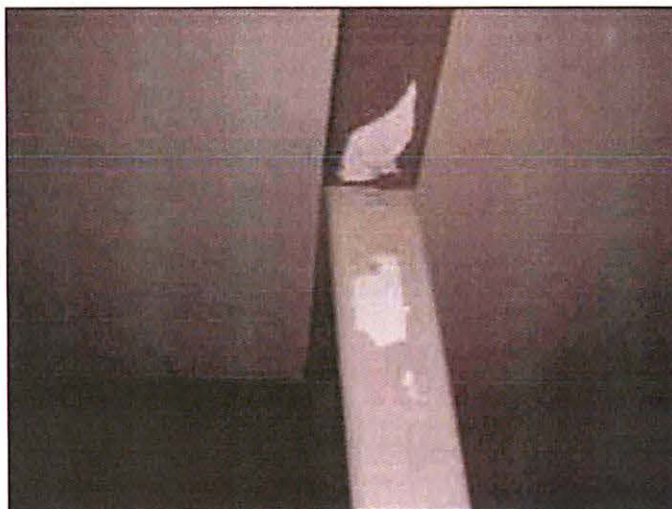
- 1.02 10993 Maple Forest Way:  
Organic growth on soffit and  
stucco at north corner.



- 1.03 10993 Maple Forest Way:  
Ceiling damage in kitchen from  
plumbing pipe issue.



- 1.04 10993 Maple Forest Way:  
Moisture on edge of wall and  
soffit from plumbing issues.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.05 10993 Maple Forest Way:  
Moisture damage under window  
sills in living room.



- 1.06 10993 Maple Forest Way:  
Overall view of deck and hole at  
north corner.



- 1.07 10993 Maple Forest Way:  
Hole in deck at exterior column  
at north corner.



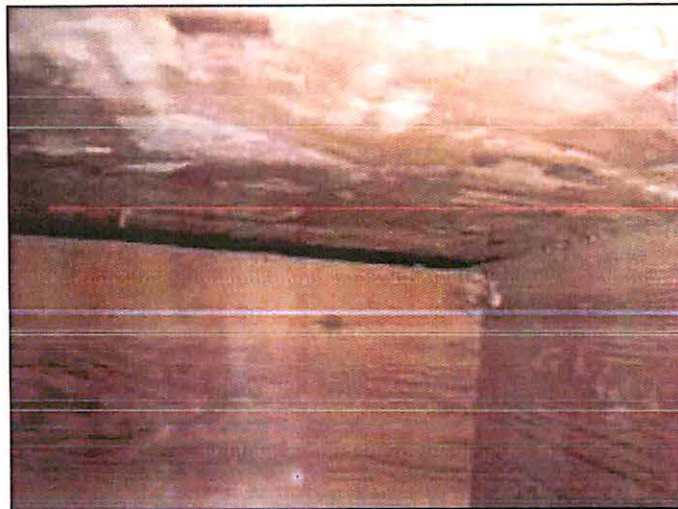
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.08 10993 Maple Forest Way:  
View inside deck joists under  
deck substrate.



- 1.09 10993 Maple Forest Way:  
View inside deck joists looking  
south.



- 1.10 10993 Maple Forest Way:  
View of outside railing at  
column with damage on deck  
and at edge.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



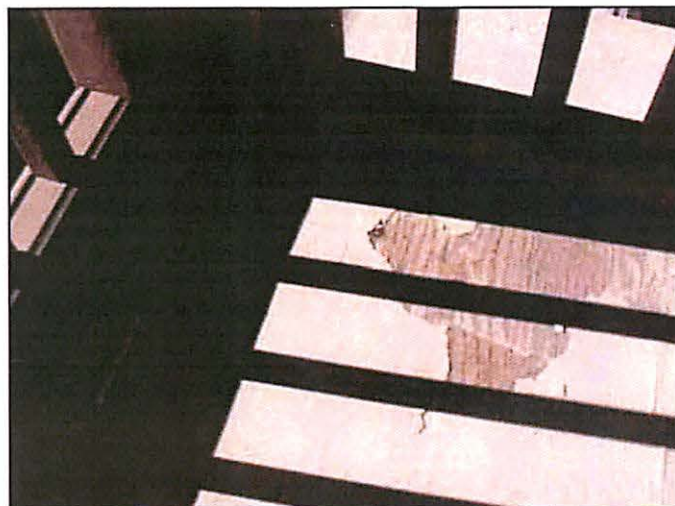
- 1.11 10993 Maple Forest Way:  
View of outside railing at  
column with damage on deck  
and at edge.



- 1.12 10993 Maple Forest Way:  
Missing top coat on deck  
at north end in front of french  
doors.



- 1.13 10993 Maple Forest Way:  
Missing top coat in deck at  
south corner.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.14 10993 Maple Forest Way:  
Overall view of deck to be repaired.



- 1.15 10997 Maple Forest Way:  
Deck appears to have settled at the southern corner as well as the support post of the entry trellis.



- 1.16 10997 Maple Forest Way:  
Settlement of concrete at entry.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



## B. CONCLUSIONS:

Corrections Needed (See Notes):

### 10993 Maple Forest Way:

Moisture damage and deterioration were very severe on the OSB substrate and through the textured surface. Remove and replace damaged plywood sheathing. Prepare sheathing for new deck membrane and install membrane per manufacturer's installation guidelines. Extend membrane up wall 6" and cover over with matching stucco. Flash and seal procedures as per previous deck repairs.

### 10997 Maple Forest Way:

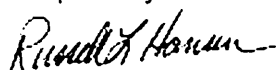
Some damage was visible at the south corner of the deck. Further investigation is recommended.

Corrections Made (See Notes):

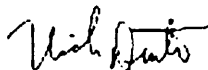
none.

Thank you for choosing Western Architectural to assist you in this matter. Should you have any questions or require further clarification on anything discussed in this report please contact me at your convenience.

Respectfully Submitted,



Russell Hansen  
Architect



Nick Dente  
Principal

## C. CONSULTANT ROLE AND DISCLAIMERS:

Our observation techniques consist of visually observing and sampling areas of the building where, in our experience, problems are likely to show themselves. However, because we do not remove all (or any in some cases) exterior cladding, windows, and other materials overlaying the structure, we may miss some or all of the damage to it; such damage would only be revealed if we removed all of the cladding and windows, and examined the surrounding surfaces. Thus, please understand that there may be damage to the building that we could not see and therefore cannot report. Western Architectural Forensic Architects and Engineers will not be held responsible for any concealed or undetected damage to your structure including microbial (mold) contamination.

Because of the necessarily limited nature of our observations, any repair guidelines we produce as a result will be limited to those conditions we actually observed during the Observation. This means, and you acknowledge, that our repair guidelines may not cover all repairs that are needed. This is why it is crucial that you retain the services of a highly qualified, detail-oriented contractor as part of your project team in addition to our professional services that dictate the remediation process should you implement an action plan.

You also understand that Western Architectural Forensic Architects and Engineers is neither a guarantor nor an insurer of the adequacy of any construction, reconstruction or recommended action, and that our services are being rendered solely as a consultant. We therefore disclaim, and you acknowledge our disclaimer of, any and all liability of any source or nature, to you or any third party, for any claims arising out of or related to the repair process. Western Architectural may only be held to the same standard of care imposed upon a professional firm providing comparable services.

You acknowledge that any reports or repair guidelines issued by Western Architectural are to be used in light of the foregoing. You also agree that Western Architectural is in no way providing any assurance to you or any third party that any repair guidelines issued by us are exhaustive as to your project, nor that the project will be (or has been) completed in accordance with any particular plans or specifications, whether or not issued by, provided to or reviewed by Western Architectural. The responsibility for quality control of (and adherence to) the repair guidelines, specifications and plans is yours and that of your chosen project team.

This report is strictly limited to your use and should, in any event, be used only in its entirety with this disclaimer included.

**END OF REPORT**





WESTERN ARCHITECTURAL  
forensic architects & engineers

215 S. State Street, #100B  
Salt Lake City, UT 84111  
801-990-0319

|               |                            |             |              |
|---------------|----------------------------|-------------|--------------|
| PROJECT NAME: | Gables at Sterling Village | PROJECT #:  | UT09-287     |
| FIELD REPORT: | 10966 Maple Forest Way     | ISSUE DATE: | Nov 17, 2011 |

|                   |                   |                                        |
|-------------------|-------------------|----------------------------------------|
| Observation Date: | Observation Time: | Weather Conditions During Observation: |
| Nov 3, 2011       | 10:19 - 11:28     | 59° Windy Clear                        |

*Observation Address:*

Gables at Sterling Village  
10966 Maple Forest Way  
South Jordan, UT 84095

*Observation Attendees:*

Eric Harker      Western Architectural  
Kim Tippetts      Tippetts Construction

*Distribution (via email or fax)*

Jason Sucher      Advantage Management  
Peter Harrison      Vial Fotheringham



At the request of Jason Sucher, property manager, on November 3, 2011, Western Architectural (WA) observed the repair of the elevated deck at the Gables at Sterling Village 10966 Maple Forest Way. Explanation of issues found and repairs made are indicated with each photo.

**A. OBSERVATIONS:**

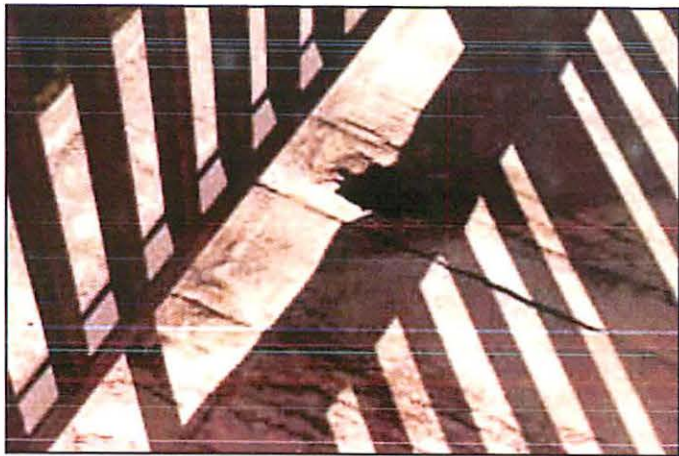
- 1.01 Photos taken of 10966 S Maple Forest Way.



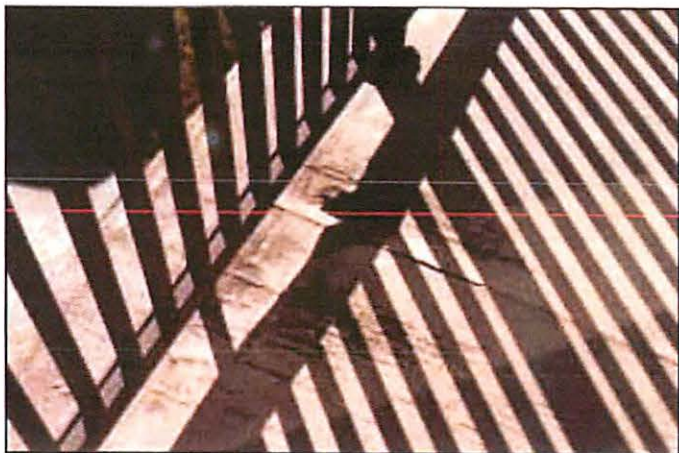
- 1.02 Overall view of area for deck demolition.



- 1.03 Existing hole in deck surface.  
Deck membrane condition.



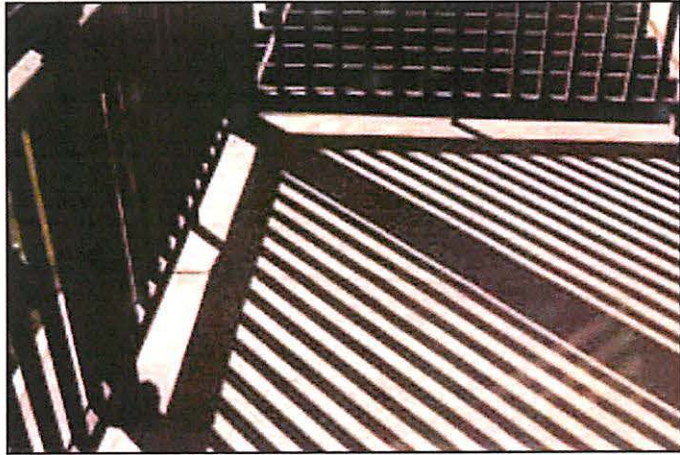
- 1.04 Existing hole in deck surface.  
Deck membrane condition.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



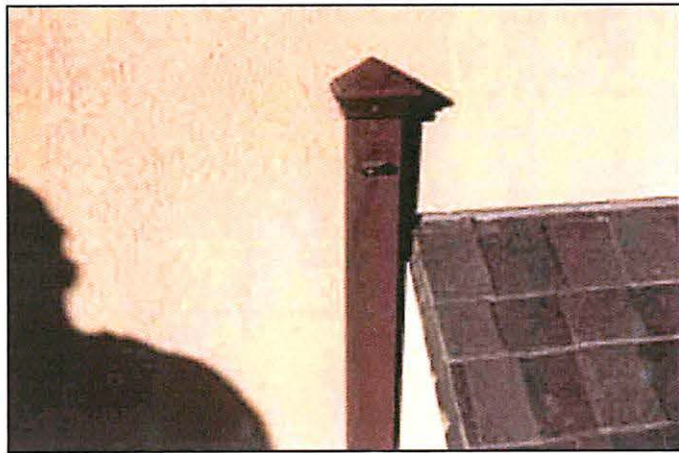
1.05 South-east corner of deck.



1.06 Crack in deck coating.



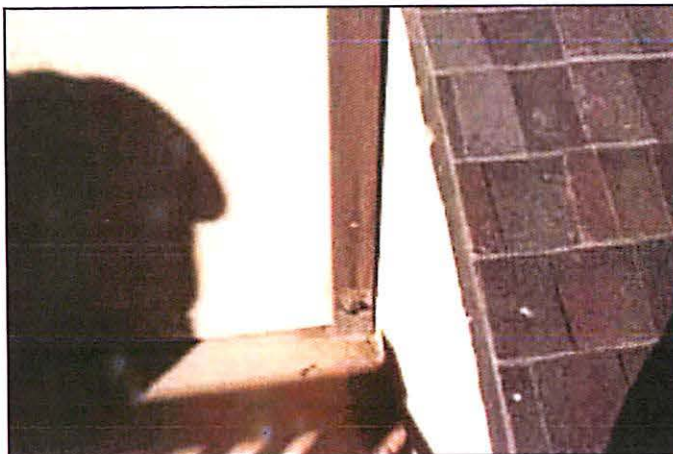
1.07 Rail removal in progress. Deck railing post with rail section removed.



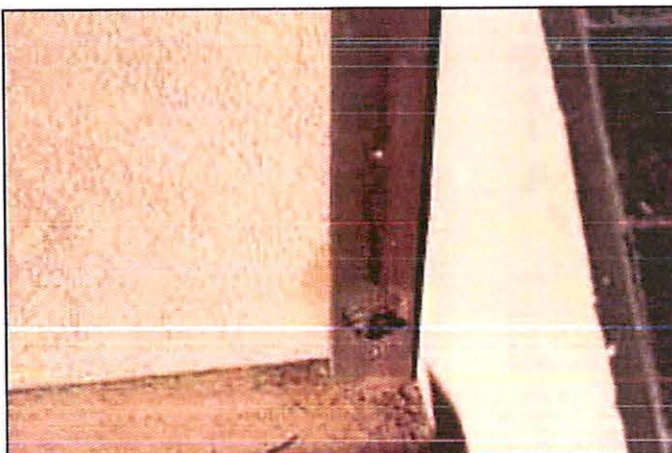
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

- 1.08 Rail removal in progress. Deck railing post with rail section removed.

Deterioration of deck coating at rake wall to deck transition.



- 1.09 Moisture stains on railing post.



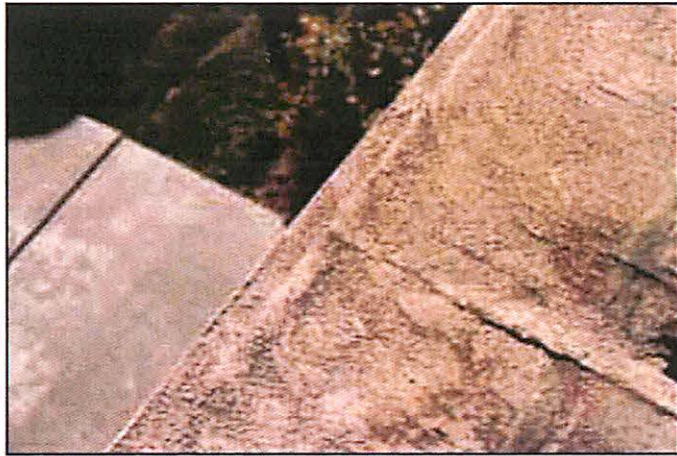
- 1.10 Deteriorated condition of deck coating and sheathing at street side edge.



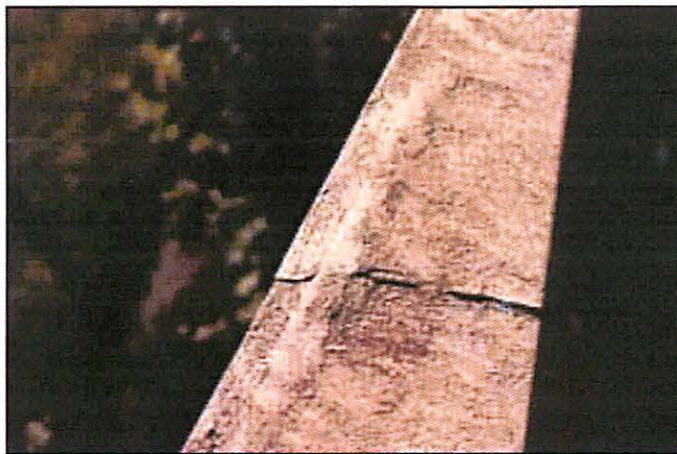
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



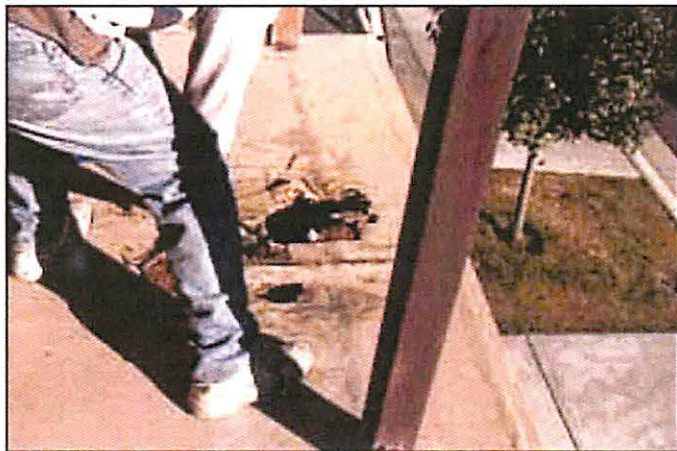
- 1.11 Deteriorated condition of deck coating at street side edge.



- 1.12 Flashing condition at deck edge. Deteriorated condition of deck coating at street side edge.



- 1.13 Demolition in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

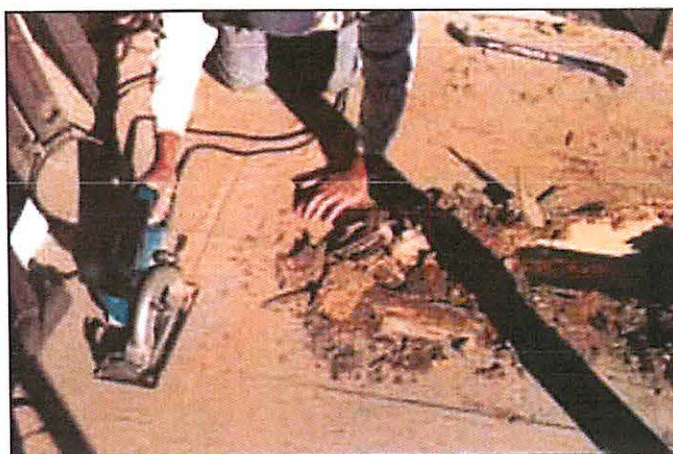
1.14 Demolition in progress.



1.15 Demolition in progress. View inside deck cavity revealing moisture on joist.



1.16 Demolition in progress. Removal of specific sections of deck determined to be damaged.



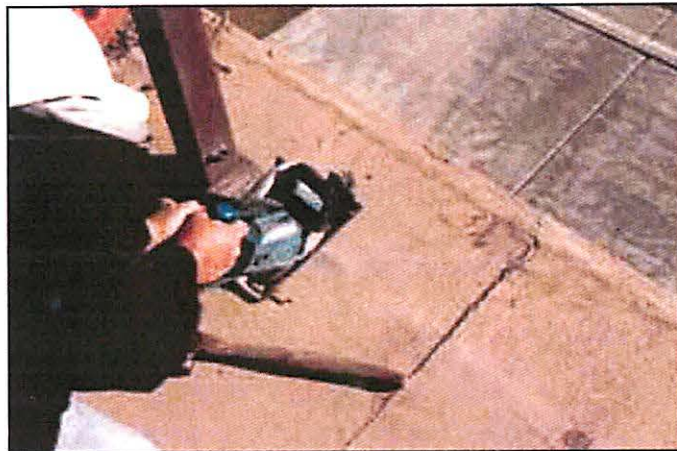
215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



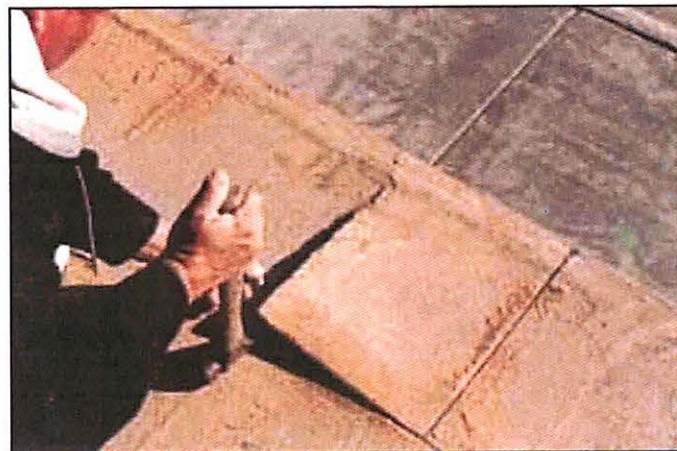
- 1.17 Demolition in progress.  
Removal of specific sections of  
deck determined to be  
damaged.



- 1.18 Demolition in progress.  
Removal of specific sections of  
deck determined to be  
damaged.



- 1.19 Demolition in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

- 1.20 Removal of top sheathing layer reveals moisture damage and growth on OSB.



- 1.21 Removal of top sheathing layer reveals moisture damage and growth on OSB.



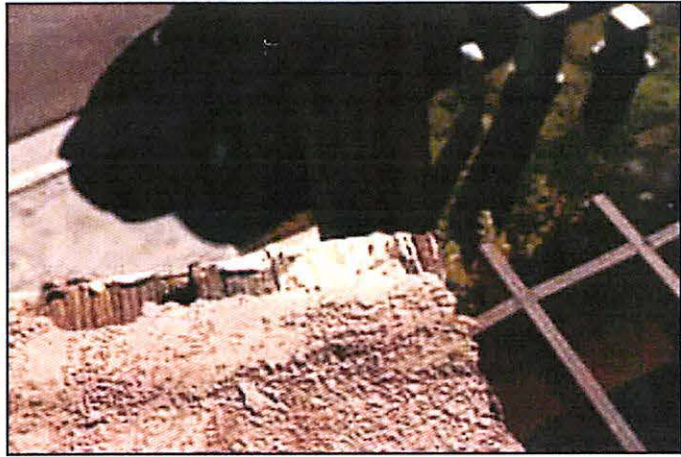
- 1.22 Corroded fastener and moisture stained sheathing. Omitted sealant at flashing transition.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.23 Growth on OSB sheathing.



1.24 Removal of top sheathing layer reveals severe moisture damage and growth on OSB.



1.25 Removal of top sheathing layer reveals severe moisture damage and growth on OSB.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

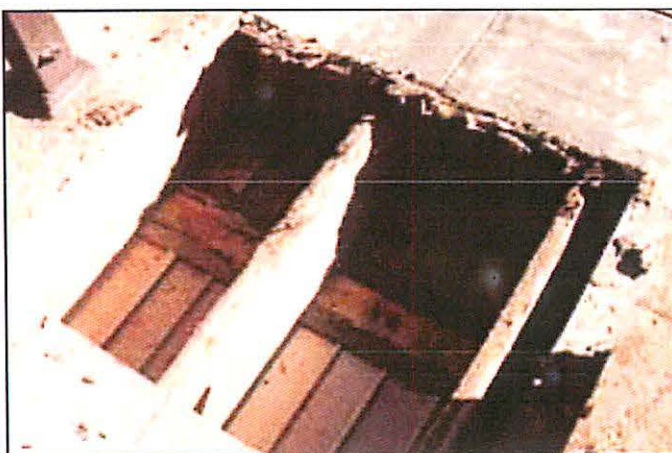
1.26 Demolition in progress.



1.27 Demolition in progress.



1.28 Removal of both layers of OSB sheathing reveals staining on beam and garage header.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.29 Exposed insulation from garage wall.



1.30 Demolition in progress.



1.31 Demolition in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

- 1.32 Cutting of stucco for code adherence and flashing installation in progress.



- 1.33 Cutting of stucco for code adherence and flashing installation in progress.



- 1.34 Demolition of stucco for code adherence and flashing installation in progress.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



- 1.35 Demolition of stucco for code adherence and flashing installation in progress.



- 1.36 Removal of stucco reveals Moistop flashing at door, plastic sheeting at base, OSB sheathing, building paper, and metal weep screed.



- 1.37 Two layers of building paper.



1.38 Two layers of building paper.



1.39 Rake to deck transition condition.



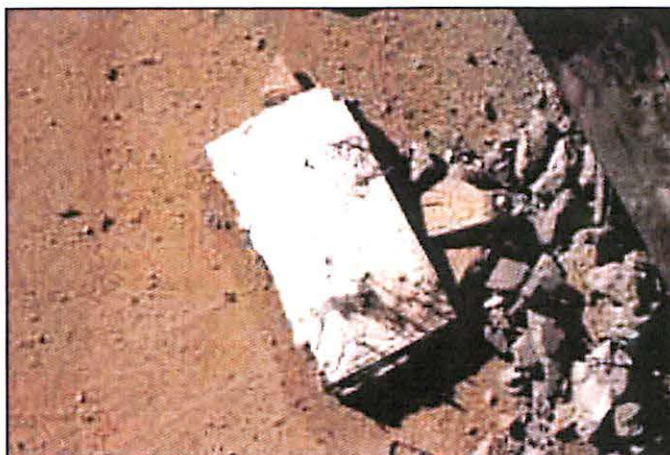
1.40 Condition of sample removed from deck.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)



1.41 Back side of EPS plant-on.



215 S. State Street Suite 100B  
Salt Lake City, Utah 84111  
801-990-0319  
[www.westernarchitectural.com](http://www.westernarchitectural.com)

## B. CONCLUSIONS:

### Corrections Needed (See Notes):

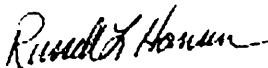
Moisture damage and deterioration were visible on the OSB substrate and through the textured surface. Remove and replace damaged plywood sheathing. Prepare sheathing for new deck membrane and install membrane per manufacturer's installation guidelines. Extend membrane up wall 6" and cover over with matching stucco. Flash and seal procedures as per previous deck repairs.

### Corrections Made (See Notes):

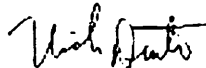
Demolition in progress.

Thank you for choosing Western Architectural to assist you in this matter. Should you have any questions or require further clarification on anything discussed in this report please contact me at your convenience.

Respectfully Submitted,



Russell Hansen  
Architect



Nick Dente  
Principal

## C. CONSULTANT ROLE AND DISCLAIMERS:

Our observation techniques consist of visually observing and sampling areas of the building where, in our experience, problems are likely to show themselves. However, because we do not remove all (or any in some cases) exterior cladding, windows, and other materials overlaying the structure, we may miss some or all of the damage to it; such damage would only be revealed if we removed all of the cladding and windows, and examined the surrounding surfaces. Thus, please understand that there may be damage to the building that we could not see and therefore cannot report. Western Architectural Forensic Architects and Engineers will not be held responsible for any concealed or undetected damage to your structure including microbial (mold) contamination.

Because of the necessarily limited nature of our observations, any repair guidelines we produce as a result will be limited to those conditions we actually observed during the Observation. This means, and you acknowledge, that our repair guidelines may not cover all repairs that are needed. This is why it is crucial that you retain the services of a highly qualified, detail-oriented contractor as part of your project team in addition to our professional services that dictate the remediation process should you implement an action plan.

You also understand that Western Architectural Forensic Architects and Engineers is neither a guarantor nor an insurer of the adequacy of any construction, reconstruction or recommended action, and that our services are being rendered solely as a consultant. We therefore disclaim, and you acknowledge our disclaimer of, any and all liability of any source or nature, to you or any third party, for any claims arising out of or related to the repair process. Western Architectural may only be held to the same standard of care imposed upon a professional firm providing comparable services.

You acknowledge that any reports or repair guidelines issued by Western Architectural are to be used in light of the foregoing. You also agree that Western Architectural is in no way providing any assurance to you or any third party that any repair guidelines issued by us are exhaustive as to your project, nor that the project will be (or has been) completed in accordance with any particular plans or specifications, whether or not issued by, provided to or reviewed by Western Architectural. The responsibility for quality control of (and adherence to) the repair guidelines, specifications and plans is yours and that of your chosen project team.

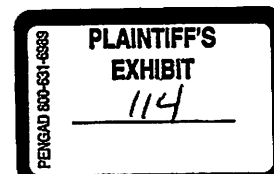
This report is strictly limited to your use and should, in any event, be used only in its entirety with this disclaimer included.

**END OF REPORT**



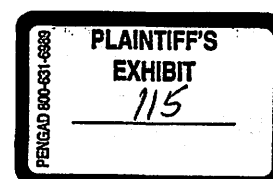
## Deck Repairs @ Sterling Village

| Date     | Unit #                  | Reference              | Cost (\$)     | Contractor  |
|----------|-------------------------|------------------------|---------------|-------------|
| 6/7/11   | 10967                   | Deck Repair            | 1,190         | Kim Tippets |
| 11/15/12 |                         | Deck Replacement       | 16,560        | Prestige    |
| 4/23/13  |                         | Deck Repairs           | 20,000        | Prestige    |
| 5/7/13   |                         | Remaining Deck Repairs | 16,115        | Prestige    |
| 5/16/13  | 10922 Birch             | Deck Repairs           | 3,610         | Prestige    |
| 9/4/13   |                         | Repair Pipe Flashing   | 215           | Prestige    |
| 9/30/13  | 10946<br>10999<br>10982 | Deck Repairs           | 5,775         | Prestige    |
| 7/22/14  | 6 units                 | Deck Repairs           | 11,665        | Prestige    |
| 3/23/15  | 3 units                 | 3 Deck Repairs         | 5,400         | Prestige    |
|          |                         |                        |               |             |
|          |                         | <b>Total</b>           | <b>80,530</b> |             |



### Post Repairs @ Sterling Village

| Date    | Unit # | Reference              | Cost (\$) | Contractor   |
|---------|--------|------------------------|-----------|--------------|
|         |        |                        |           |              |
| 5/12/10 |        | Permit for Post Repair | 153.21    | Nick Nichols |
| 5/12/10 |        | Post Repairs           | 3,192.50  | Nick Nichols |
| 9/4/13  |        | Post Stone Repairs     | 320       | Prestige     |
| 9/15/10 |        | Repaired Post          | 3,417.24  | Nick Nichols |
| 10/1/13 | 10992  | Post Repairs           | 3,240     | Prestige     |
|         |        |                        |           |              |
|         |        | Total                  | 10,322.95 |              |





## **ADDENDUM 8**

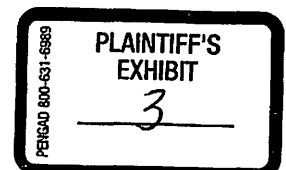
# Gables at Sterling Village Home Owner's Association Estimated Operating Budget

|                                        | Avg. Cost at<br>78<br>units/month | Monthly Ave.      | Year totals        |
|----------------------------------------|-----------------------------------|-------------------|--------------------|
| Reserve                                | \$13.00                           | \$1,014.00        | \$12,168.00        |
| All Inclusive Yard Care                | \$16.25                           | \$1,267.50        | \$15,210.00        |
| General Maintenance                    | \$2.00                            | \$156.00          | \$1,872.00         |
| Paint                                  | \$2.00                            | \$156.00          | \$1,872.00         |
| General Cleaning                       | \$2.50                            | \$195.00          | \$2,340.00         |
| Insurance                              | \$11.25                           | \$877.50          | \$10,530.00        |
| Utilities: Electricity                 | \$1.25                            | \$97.50           | \$1,170.00         |
| Common Area Water                      | \$5.50                            | \$429.00          | \$5,148.00         |
| Garbage - Sign up w/ South Jordan City | \$0.00                            | \$0.00            | \$0.00             |
| Utility Margin                         | \$0.25                            | \$19.50           | \$234.00           |
| Snow Removal                           | \$7.00                            | \$546.00          | \$6,552.00         |
| Management                             | \$8.00                            | \$624.00          | \$7,488.00         |
| Master Assoc. Fees - Delayed to 1/07   | \$0.00                            | \$0.00            | \$0.00             |
| Newsletters                            | \$0.50                            | \$39.00           | \$468.00           |
| Office - Miscellaneous                 | \$1.50                            | \$117.00          | \$1,404.00         |
| <b>TOTAL FEE</b>                       | <b>\$71.00</b>                    | <b>\$5,538.00</b> | <b>\$66,456.00</b> |

|                                | Avg. Cost at<br>78<br>units/month | Monthly Ave.    | Year totals       |
|--------------------------------|-----------------------------------|-----------------|-------------------|
| STERLING VILLAGE MASTER ASSOC. |                                   |                 |                   |
| Insurance - Liability Only     | \$2.00                            | \$156.00        | \$1,872.00        |
| Road Maintenance               | \$2.00                            | \$156.00        | \$1,872.00        |
| Long Term Maintenance Fund     | \$5.00                            | \$390.00        | \$4,680.00        |
| <b>TOTAL FEE</b>               | <b>\$9.00</b>                     | <b>\$702.00</b> | <b>\$8,424.00</b> |

500 W. 10900 S.  
South Jordan, UT

CastleSterling01920

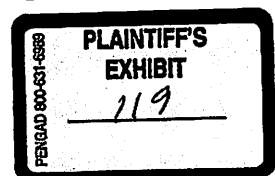




## **ADDENDUM 9**

## HOA Financial History @ Sterling Village

| Year | Reserve<br>Balance                                              | Operating<br>Cash | Year-End<br>Assets  |
|------|-----------------------------------------------------------------|-------------------|---------------------|
| 2007 | \$18,326.90                                                     | \$5,957.56        | <u>\$24,284.46</u>  |
| 2008 | \$15,111.84<br>+ \$652.30<br><br>\$15,764.14                    | \$3,407.74        | <u>\$19,171.88</u>  |
| 2009 | \$15,111.84<br>+ \$623.45<br><br>\$15,735.29                    | \$4,376.58        | <u>\$20,111.87</u>  |
| 2010 | \$15,111.84<br>+2,128.75<br><br>\$17,240.59                     | \$3,155.54        | <u>\$20,396.13</u>  |
| 2011 | \$15,111.84<br>+ \$3,035.91<br>+ \$314.00<br><br>\$18,461.75    | \$25,324.19       | <u>\$43,785.94</u>  |
| 2012 | \$13,822.05<br>+ \$4,664.84<br>+ \$314.00<br><br>\$18,800.89    | \$1,482.29        | <u>\$20,283.18</u>  |
| 2013 | \$13,822.05<br>+ \$16,793.14<br>+ \$6,514.64<br><br>\$37,129.83 | \$3,030.00        | <u>\$40,159.83</u>  |
| 2014 | \$13,822.05<br>+ \$5,718.93<br>+ \$.56<br><br>\$19,541.54       | \$10,121.83       | <u>\$29,663.37</u>  |
| 2015 | \$13,822.05<br>+ \$201,579.16<br><br>\$215,401.21               | \$2,054.32        | <u>\$217,455.53</u> |





## **ADDENDUM 10**

# The Gables at Sterling Village

## Level I Reserve Study



**Report Period – 1/01/09 – 12/31/09**

**Client Reference Number ..... 11286**  
**Property Type ..... Townhouses**  
**Number of Units ..... 78**  
**Fiscal Year End ..... December 31**  
**Date of Property Inspection ..... October 16, 2008**  
**Inspector ..... Robert Forney**

**Report prepared on – Monday, November 17, 2008**





## Table of Contents

### ***Introduction***

---

- Executive Summary page 1
- Introduction page 2
- General Information and Frequently Asked Questions page 3 - 4

### ***Reserve Analysis***

---

- Funding Summary page 5
- Percent Funded – Graph page 6
- Component Inventory page 7
- Significant Components page 8
- Significant Components – Graph page 9
- Yearly Summary page 10
- Yearly Reserve Contributions – Graph page 11
- Component Funding Information page 12
- Yearly Cash Flow page 13
- Yearly Reserve Expenditures – Graph page 14
- Projected Reserve Expenditures by Year page 15 - 16

### ***Component Evaluation***

---

- Component Evaluation page 1 - 12

### ***Glossary of Commonly used Words and Phrases***

---



## Executive Summary – The Gables at Sterling Village HOA - ID # 11286

Information to complete this Reserve Study was gathered on October 16th, 2008 by performing an on-site inspection of the common area elements. In addition, we also obtained information by contacting any vendors and/or contractors that have worked on the property recently, as well as communicating with the property representative (BOD Member and/or Community Manager). To the best of our knowledge, the conclusions and recommendations of this report are considered reliable and accurate insofar as the information obtained from these sources.

|                                                  |          |
|--------------------------------------------------|----------|
| Projected Starting Balance as of January 1, 2009 | \$16,581 |
| Ideal Reserve Balance as of January 1, 2009      | \$45,760 |
| Percent Funded as of January 1, 2009             | 36%      |
| Recommended Reserve Contribution (per month)     | \$3,850  |
| Minimum Reserve Contribution (per month)         | \$3,350  |
| Recommended Special Assessment                   | \$0      |
| Minimum Recommended Special Assessment           | \$0      |

The Gables at Sterling Village HOA is a 78-unit townhouse community. The association's reserve responsibilities include the maintenance of the roofs, painting of the buildings, and the maintenance of the streets. Construction on the community was completed in 2008.

### Currently Programmed Projects

There are no projects programmed to occur this year. (See page 15)

### Major Reserve Expenditures

The first major reserve expenditure is programmed to occur in fiscal year 2018. Projects programmed to occur in fiscal year 2018 include repainting the exterior stucco surfaces (Comp# 201), repainting the doors (Comp# 204), and repairing the concrete surfaces (Comp# 403). We have programmed approximately \$169,979 in reserve funds or approximately 35% of fiscal year 2018's recommended starting balance towards the completion of these projects (see page 10).

### Significant Reserve Projects

The association's significant reserve projects include replacing the roofs (Comp# 105), repainting the Buildings (Comp# 201), overlaying the asphalt streets (Comp# 401), and refurbishing the trex decks (Comp# 607). The fiscal significance of these components is approximately 28%, 28%, 8%, and 8% respectively (see page 8). A component's significance is calculated by dividing its replacement cost by its useful life. In this way, not only is a component's replacement cost considered but also the frequency of occurrence. These components most significantly contribute to the total monthly reserve contribution. As these components have a high level of fiscal significance the association should properly maintain them to ensure they reach their full useful lives.

### Reserve Funding

In comparing the projected starting reserve balance of \$16,581 versus the ideal reserve balance of \$45,760 we find the association's reserve fund to be approximately 36% funded. This indicates a fair reserve fund position. In order to continue to strengthen the account fund, we suggest adopting a monthly reserve contribution of \$3,850 (\$49.36/unit) per month. We have also included a minimum reserve contribution of \$3,350 (\$42.95/unit) per month. If the contribution falls below this rate, then the reserve fund may fall into a situation where special assessments, deferred maintenance, and lower property values are likely at some point in the future.





## Introduction

### Reserve Study Purpose

The purpose of this Reserve Study is to provide an educated estimate of the necessary reserve allocation. The detailed schedules will serve as an advanced warning that major projects will need to be addressed in the future. This will allow the Board of Directors to have ample time to obtain competitive estimates and bids that will result in cost savings to the individual homeowners. It will also ensure the physical well-being of the property and ultimately enhance each owner's investment, while limiting the possibility of unexpected major projects that may lead to special assessments.

### Preparer's Credentials

After working for a notable national reserve study provider Mr. Forney started Complex Solutions Ltd. in 2001. Complex Solutions provides reserve study consulting services to clients primarily in California, Nevada and Utah. Mr. Forney holds a Bachelor of Science degree in Business Administration from Pepperdine University.

- Conducted over 650 reserve studies
- Created the proprietary software and databases used to prepare Complex Solutions' reserve studies. This proprietary software gives Complex Solutions the freedom and ability to create reports tailored to the individual clients needs.
- Projects have ranged in size from small apartment-style condominium communities to 1000+ Planned Unit Communities (PUD).
- Clients have ranged from developers interested in setting initial reserve accounts for communities under construction to high-rise communities, even an aero park (small airport).
- Active member of three local chapters of CAI (Nevada, Utah, and Channel Islands, CA).
- (3) Articles published in Community Interests.

### Budget Breakdown

Every association conducts their business within a budget. There are typically two main parts to this budget, operating and reserves. The operating budget includes all expenses that are fixed on an annual basis. These would include management fees, maintenance fees, utilities, etc. The reserves is primarily made up of capital replacement items such as roofing, fencing, mechanical equipment, etc., that do not normally occur on an annual basis. Typically, the reserve contribution makes up 15% - 40% of the association's total budget. Therefore, reserves are considered to be a major part of the overall monthly association payment.

### Report Sections

The **Reserve Analysis** Section contains the evaluation of the association's reserve balance, income, and expenses. It includes a finding of the client's current reserve fund status (measured as percent funded) and a recommendation for an appropriate reserve allocation rate (also known as the funding plan).

The **Component Evaluation** Section contains information regarding the physical status and replacement cost of major common area components the association is responsible to maintain. It is important to understand that while the component inventory will remain relatively "stable" from year to year, the condition assessment and life estimates will most likely vary from year to year.



## General Information and Frequently Asked Questions

### Why is it important to perform a Reserve Study?

As previously mentioned, the reserve allocation makes up a significant portion of the total monthly dues. This report provides the essential information that is needed to guide the Board of Directors in establishing the budget in order to run the daily operations of your association. It is suggested that a third party professionally prepare the Reserve Study since there is no vested interest in the property. Also, a professional knows what to look for and how to properly develop an accurate and reliable component list.

### After we have a Reserve Study completed, what do we do with it?

Hopefully, you will not look at this report and think it is too cumbersome to understand. Our intention is to make this Reserve Study easy to read and understand. Please take the time to review it carefully and make sure the "main ingredients" (component information) are complete and accurate. If there are any inaccuracies, please inform us immediately so we may revise the report.

Once you feel the report is an accurate tool to work from, use it to help establish your budget for the upcoming fiscal year. The reserve allocation makes up a large portion of the total monthly dues and this report should help you determine the correct amount of money to go into the reserve fund. Additionally, the Reserve Study should act as a guide to obtain proposals in advance of pending projects. This will give you an opportunity to shop around for the best price available.

The Reserve Study should be readily available for real estate agents, brokerage firms, and lending institutions for potential future homeowners. As the importance of reserves becomes more of a household term, people are requesting homeowners associations reveal the strength of the reserve fund prior to purchasing a condominium, town home, or any property that belongs to an association.

### How often do we update or review the Reserve Study?

Unfortunately, there is a misconception that these reports are good for an extended period of time since the report has projections for the next 30 years. Just like any major line item in the budget, the Reserve Study should be reviewed each year before the budget is established. Invariably, some assumptions have to be made during the compilation of this analysis. Anticipated events may not materialize and unpredictable circumstances could occur. Deterioration rates and repair/replacement costs will vary from causes that are unforeseen. Earned interest rates may vary from year to year. These variations could alter the content of the Reserve Study. Therefore, this analysis should be reviewed annually, and a property inspection should be conducted at least once every three years.

### Is it the law to have a Reserve Study conducted?

The Government requires reserve analyses in approximately 20 States. Even if it is not currently governed by your State, the chances are very good that the documents of the association require the association to have a reserve fund established. This doesn't mean a Reserve Study is required, but how are you going to know you have enough funds in the account if you don't have the proper information? Some associations look at the Reserve fund and think that \$50,000 is a lot of money and they are in good shape. What they don't know is that the roof is going to need to be replaced within 5 years, and the cost of the roof is going to exceed \$75,000. So while \$50,000 sounds like a lot of money, in reality it won't even cover the cost of a roof, let alone all the other amenities the association is responsible to maintain.

### What is a "Reserve Component" versus an "Operating Component"?

A "Reserve" component is an item that is the responsibility of the association to maintain, has a limited useful life, predictable remaining useful life, typically occurs on a cyclical basis that exceeds 1 year, and costs above a minimum threshold amount. An "Operating" expense is typically a fixed expense that occurs on an annual basis. For instance, minor repairs to a roof for damage caused by high winds or other weather elements would be considered an "Operating" expense. However, if the entire roof needs to be replaced because it has reached the end of its life expectancy, then the replacement would be considered a reserve expense.

### What are the GREY areas of "maintenance" items that are often seen in a Reserve Study?

One of the most popular questions revolves around major "maintenance" items, such as painting the buildings or seal coating the asphalt. You may hear from your accountant that since painting or seal coating is not replacing a "capital"



item, then it cannot be considered a Reserve issue. However, it is the opinion of several major Reserve Study providers that these items are considered to be major expenses that occur on a cyclical basis. Therefore, it makes it very difficult to ignore a major expense that meets the criteria to be considered a reserve component. Once explained in this context, many accountants tend to agree and will include any expenses, such as these examples, as a reserve component.

### **What happens during the Property Inspection?**

The Property Inspection was conducted following a review of the documents that were established by the developer identifying all common area assets. In some cases, the Board of Directors at some point may have revised the documents. In either case, the most current set of documents was reviewed prior to inspecting the property. In addition, common area assets may have been reported to Complex Solutions by the client, or by other parties.

Estimated life expectancies and life cycles are based upon conditions that were readily accessible and visible at the time of the inspection. We did not destroy any landscape work, building walls, or perform any methods of intrusive investigation during the inspection. In these cases, information may have been obtained by contacting the contractor or vendor that has worked on the property.

### **What is the Financial Analysis?**

We projected the starting balance by taking the most recent balance statement, adding expected reserve contributions for the rest of the fiscal year, and subtracting any pending projects that will be paid for before the end of the current fiscal year. We compared this number to the ideal reserve balance and arrived at the percent funded level.

#### **Measures of strength are as follows:**

- 0% - 30% Funded** is considered to be a "weak" financial position. Associations that fall into this category are subject to special assessments and deferred maintenance, which could lead to lower property values. If the association is in this position, actions should be taken to improve the financial strength of the reserve fund.
- 31% - 69% Funded** is considered a "fair" financial position. The majority of associations fall into this category. While this doesn't represent financial strength and stability, the likelihood of special assessments and deferred maintenance is diminished. Effort should be taken to continue strengthening the financial position of the reserve fund.
- 70% - 99% Funded** is considered a "strong" financial position. This indicates financial strength of a reserve fund and every attempt to maintain this level should be a goal of the association.
- 100% Funded** is considered an "ideal" financial position. This means that the association has the exact amount of funds in the reserve account.

## Funding Summary

### Beginning Assumptions

|                                    |          |
|------------------------------------|----------|
| # of units                         | 78       |
| Fiscal Year End                    | 31-Dec   |
| Projected Starting Reserve Balance | \$16,581 |
| Ideal Starting Reserve Balance     | \$45,760 |

### Economic Assumptions

|                                  |       |
|----------------------------------|-------|
| Current Inflation Rate           | 3.00% |
| Reported After-Tax Interest Rate | 2.00% |

### Current Reserve Status

|                                         |     |
|-----------------------------------------|-----|
| Current Balance as a % of Ideal Balance | 36% |
|-----------------------------------------|-----|

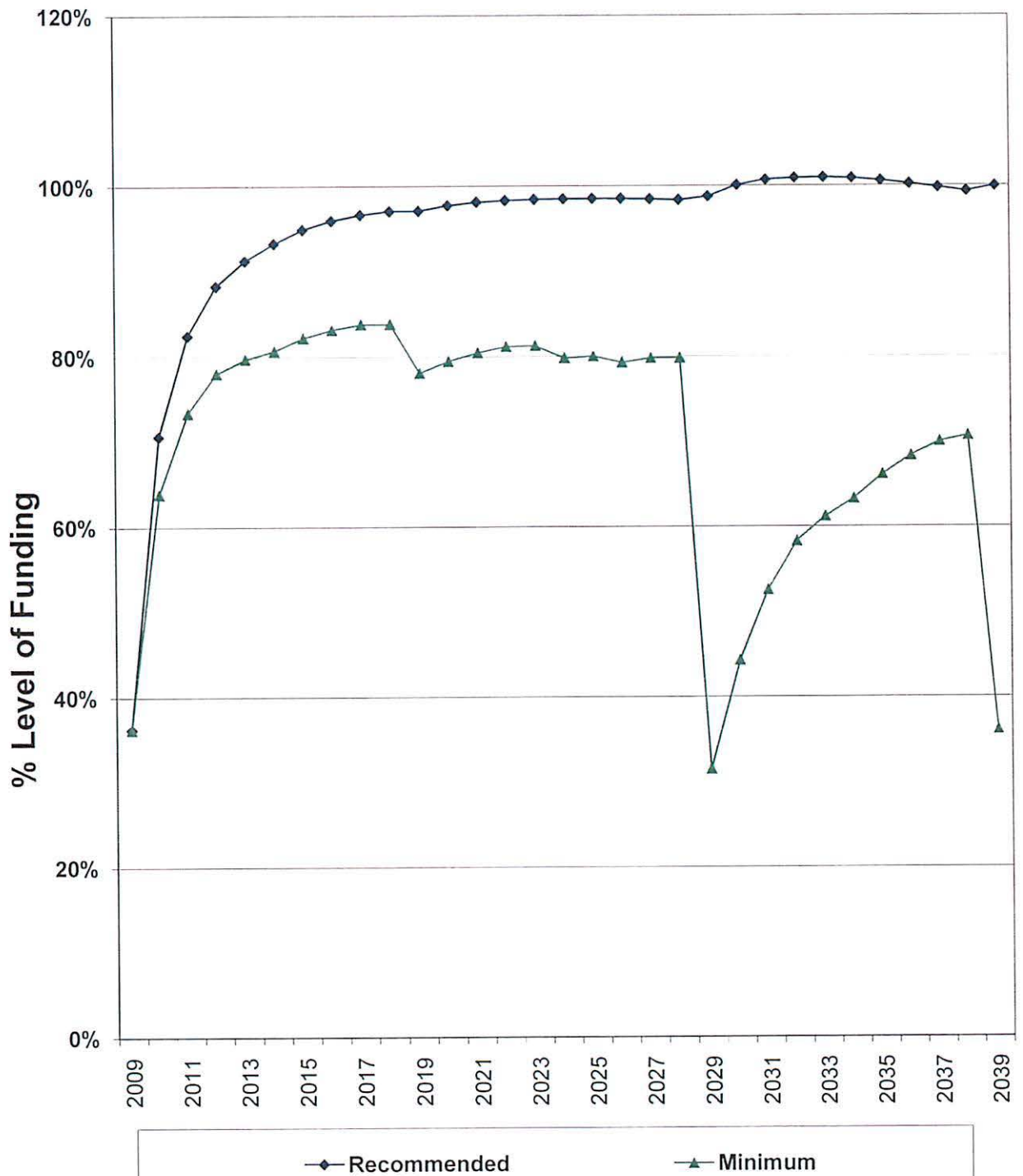
### Recommendations

|                                                |         |
|------------------------------------------------|---------|
| Recommended Monthly Reserve Allocation         | \$3,850 |
| Per Unit                                       | \$49.36 |
| Future Annual Increases                        | 3.00%   |
| For number of years:                           | 20      |
| Increases thereafter:                          | 2.50%   |
| Minimum Recommended Monthly Reserve Allocation | \$3,350 |
| Per Unit                                       | \$42.95 |
| Future Annual Increases                        | 3.00%   |
| For number of years:                           | 25      |
| Increases thereafter:                          | 2.50%   |





## Percent Funded - Graph



## Component Inventory

| Category         | ID # | Component Name                       | Useful Life (yrs.) | Remaining Useful Life (yrs.) | Best Cost | Worst Cost |
|------------------|------|--------------------------------------|--------------------|------------------------------|-----------|------------|
| Roofing          | 105  | Pitched Roof - Comp Shingle - Repla  | 20                 | 19                           | \$228,200 | \$245,700  |
| Painted Surfaces | 201  | Stucco Surfaces - Repaint            | 10                 | 9                            | \$109,200 | \$124,800  |
|                  | 204  | Front Doors - Repaint                | 5                  | 4                            | \$6,250   | \$7,800    |
| Siding Materials | 390  | Trex Trellis - Refurbish             | 30                 | 29                           | \$41,600  | \$49,925   |
| Drive Materials  | 401  | Asphalt - Overlay                    | 20                 | 19                           | \$62,300  | \$74,800   |
|                  | 402  | Asphalt - Slurry Seal                | 5                  | 3                            | \$9,950   | \$12,500   |
|                  | 403  | Concrete - Repair/Replace            | 5                  | 4                            | \$5,000   | \$7,500    |
| Decking          | 604  | Elastomeric Deck - Resurface         | 15                 | 14                           | \$30,000  | \$45,000   |
|                  | 607  | Trex Deck - Refurbish/Repair         | 30                 | 29                           | \$91,000  | \$104,000  |
| Fencing          | 1008 | PVC Vinyl Fencing - Replace          | 18                 | 16                           | \$31,800  | \$35,800   |
| Light Fixtures   | 1602 | Exterior Wall Mount Lights - Replace | 16                 | 15                           | \$7,800   | \$11,700   |
|                  | 1609 | Street Lights - Replace              | N/A                |                              | \$0       | \$0        |

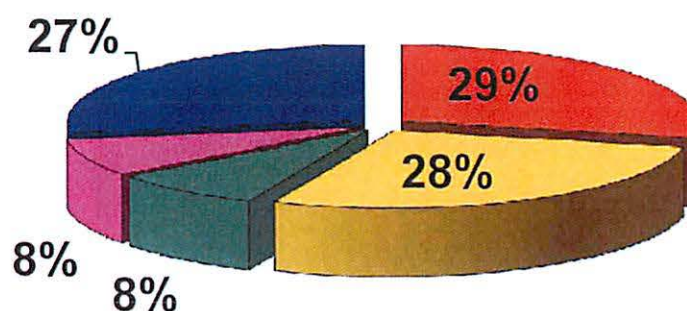


## Significant Components

| ID # | Component Name                        | Useful Life (yrs.) | Remaining Useful Life (yrs.) | Average Current Cost | Significance: (Curr Cost/UL) |          |
|------|---------------------------------------|--------------------|------------------------------|----------------------|------------------------------|----------|
|      |                                       |                    |                              |                      | As \$                        | As %     |
| 105  | Pitched Roof - Comp Shingle - Replace | 20                 | 19                           | \$236,950            | \$11,848                     | 28.4539% |
| 201  | Stucco Surfaces - Repaint             | 10                 | 9                            | \$117,000            | \$11,700                     | 28.0996% |
| 204  | Front Doors - Repaint                 | 5                  | 4                            | \$7,025              | \$1,405                      | 3.3744%  |
| 390  | Trex Trellis - Refurbish              | 30                 | 29                           | \$45,763             | \$1,525                      | 3.6636%  |
| 401  | Asphalt - Overlay                     | 20                 | 19                           | \$68,550             | \$3,428                      | 8.2317%  |
| 402  | Asphalt - Slurry Seal                 | 5                  | 3                            | \$11,225             | \$2,245                      | 5.3918%  |
| 403  | Concrete - Repair/Replace             | 5                  | 4                            | \$6,250              | \$1,250                      | 3.0021%  |
| 604  | Elastomeric Deck - Resurface          | 15                 | 14                           | \$37,500             | \$2,500                      | 6.0042%  |
| 607  | Trex Deck - Refurbish/Repair          | 30                 | 29                           | \$97,500             | \$3,250                      | 7.8055%  |
| 1008 | PVC Vinyl Fencing - Replace           | 18                 | 16                           | \$33,800             | \$1,878                      | 4.5098%  |
| 1602 | Exterior Wall Mount Lights - Replace  | 16                 | 15                           | \$9,750              | \$609                        | 1.4635%  |



## Significant Components - Graph



| ID #      | Component Name                       | Useful Life (yrs.) | Remaining Useful Life (yrs.) | Average Current Cost | Significance: (Curr Cost/UL) |      |
|-----------|--------------------------------------|--------------------|------------------------------|----------------------|------------------------------|------|
|           |                                      |                    |                              |                      | As \$                        | As % |
| 105       | Pitched Roof - Comp Shingle - Replac | 20                 | 19                           | \$236,950            | \$11,848                     | 28%  |
| 201       | Stucco Surfaces - Repaint            | 10                 | 9                            | \$117,000            | \$11,700                     | 28%  |
| 401       | Asphalt - Overlay                    | 20                 | 19                           | \$68,550             | \$3,428                      | 8%   |
| 607       | Trex Deck - Refurbish/Repair         | 30                 | 29                           | \$97,500             | \$3,250                      | 8%   |
| All Other | See Expanded Table For Breakdown     |                    |                              |                      | \$11,413                     | 27%  |

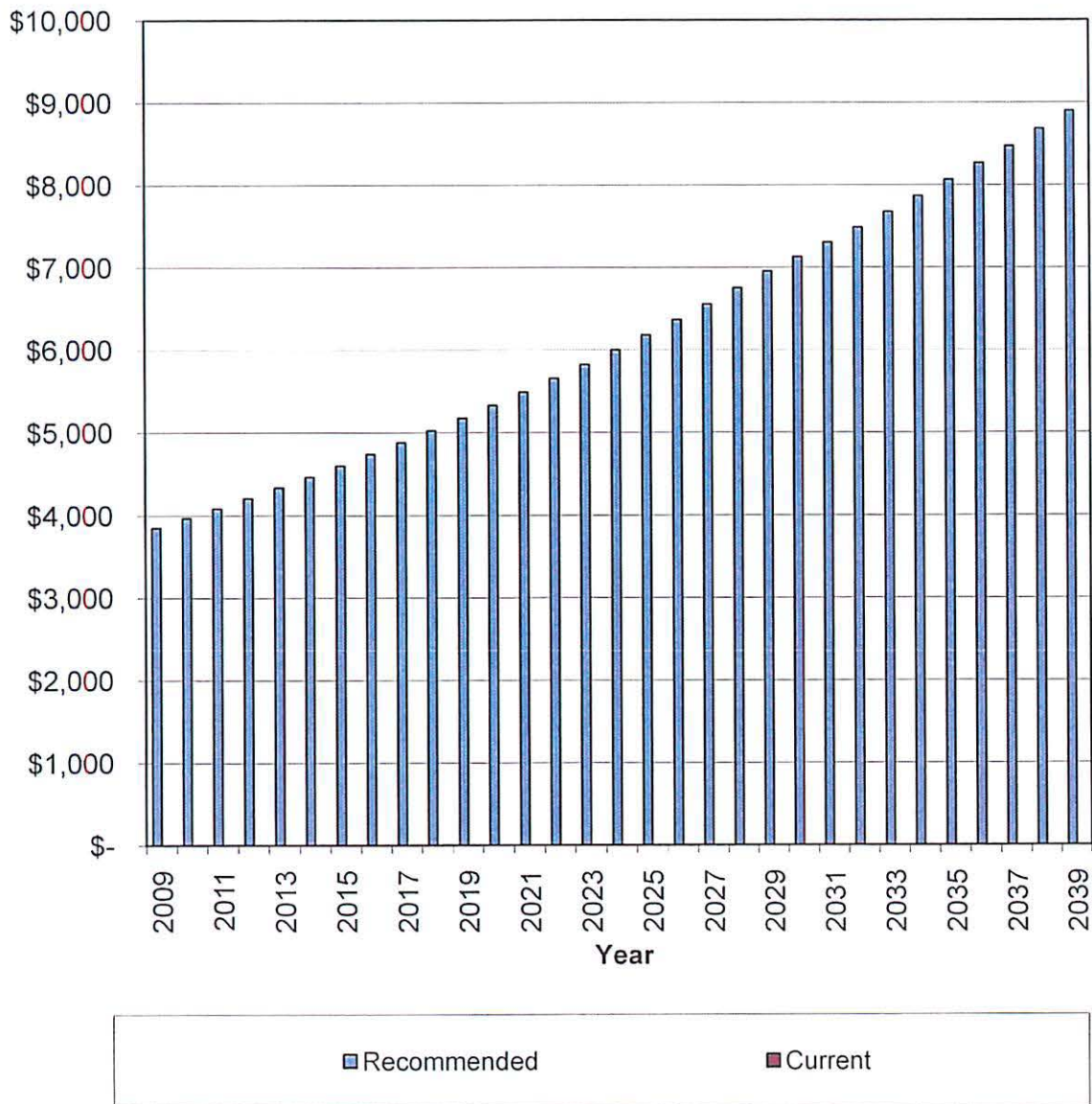


## Yearly Summary

| Year | Fully<br>Funded<br>Balance | Starting<br>Reserve<br>Balance | Percent<br>Funded | Reserve<br>Contributions | Interest<br>Income | Reserve<br>Expenses |
|------|----------------------------|--------------------------------|-------------------|--------------------------|--------------------|---------------------|
| 2009 | \$45,760                   | \$16,581                       | 36%               | \$46,200                 | \$801              | \$0                 |
| 2010 | \$90,020                   | \$63,582                       | 71%               | \$47,586                 | \$1,764            | \$0                 |
| 2011 | \$136,894                  | \$112,932                      | 82%               | \$49,014                 | \$2,774            | \$0                 |
| 2012 | \$186,499                  | \$164,719                      | 88%               | \$50,484                 | \$3,710            | \$12,266            |
| 2013 | \$226,324                  | \$206,648                      | 91%               | \$51,999                 | \$4,545            | \$14,941            |
| 2014 | \$265,993                  | \$248,250                      | 93%               | \$53,558                 | \$5,551            | \$0                 |
| 2015 | \$323,691                  | \$307,360                      | 95%               | \$55,165                 | \$6,761            | \$0                 |
| 2016 | \$384,610                  | \$369,286                      | 96%               | \$56,820                 | \$8,027            | \$0                 |
| 2017 | \$448,894                  | \$434,133                      | 97%               | \$58,525                 | \$9,210            | \$14,219            |
| 2018 | \$502,042                  | \$487,648                      | 97%               | \$60,281                 | \$8,736            | \$169,979           |
| 2019 | \$397,982                  | \$386,685                      | 97%               | \$62,089                 | \$8,432            | \$0                 |
| 2020 | \$467,558                  | \$457,206                      | 98%               | \$63,952                 | \$9,874            | \$0                 |
| 2021 | \$540,950                  | \$531,031                      | 98%               | \$65,870                 | \$11,383           | \$0                 |
| 2022 | \$618,324                  | \$608,285                      | 98%               | \$67,846                 | \$12,796           | \$16,484            |
| 2023 | \$682,876                  | \$672,443                      | 98%               | \$69,882                 | \$13,503           | \$76,802            |
| 2024 | \$689,126                  | \$679,026                      | 99%               | \$71,978                 | \$14,279           | \$15,190            |
| 2025 | \$760,970                  | \$750,092                      | 99%               | \$74,137                 | \$15,341           | \$54,239            |
| 2026 | \$796,754                  | \$785,332                      | 99%               | \$76,362                 | \$16,622           | \$0                 |
| 2027 | \$891,541                  | \$878,315                      | 99%               | \$78,652                 | \$18,329           | \$19,110            |
| 2028 | \$971,616                  | \$956,187                      | 98%               | \$81,012                 | \$12,406           | \$764,134           |
| 2029 | \$288,909                  | \$285,471                      | 99%               | \$83,442                 | \$6,604            | \$0                 |
| 2030 | \$375,034                  | \$375,517                      | 100%              | \$85,528                 | \$8,443            | \$0                 |
| 2031 | \$466,067                  | \$469,489                      | 101%              | \$87,667                 | \$10,361           | \$0                 |
| 2032 | \$562,224                  | \$567,516                      | 101%              | \$89,858                 | \$12,138           | \$22,154            |
| 2033 | \$640,914                  | \$647,359                      | 101%              | \$92,105                 | \$13,724           | \$26,985            |
| 2034 | \$719,526                  | \$726,202                      | 101%              | \$94,407                 | \$15,611           | \$0                 |
| 2035 | \$830,907                  | \$836,220                      | 101%              | \$96,768                 | \$17,855           | \$0                 |
| 2036 | \$948,323                  | \$950,843                      | 100%              | \$99,187                 | \$20,193           | \$0                 |
| 2037 | \$1,072,037                | \$1,070,223                    | 100%              | \$101,666                | \$22,369           | \$25,682            |
| 2038 | \$1,175,867                | \$1,168,576                    | 99%               | \$104,208                | \$17,241           | \$732,980           |

## Reserve Contributions - Graph

### Monthly Reserve Contributions





## Component Funding Information

| ID   | Component Name                        | UL | RUL | Quantity                             | Average Current Cost | Ideal Balance | Current Fund Balance | Monthly    |
|------|---------------------------------------|----|-----|--------------------------------------|----------------------|---------------|----------------------|------------|
| 105  | Pitched Roof - Comp Shingle - Replace | 20 | 19  | Approx 117,000 Sq.ft.                | \$236,950            | \$11,848      | \$0                  | \$1,095.47 |
| 201  | Stucco Surfaces - Repaint             | 10 | 9   | (78) Units                           | \$117,000            | \$11,700      | \$0                  | \$1,081.84 |
| 204  | Front Doors - Repaint                 | 5  | 4   | (78) Front doors                     | \$7,025              | \$1,405       | \$5,356              | \$129.91   |
| 390  | Trex Trellis - Refurbish              | 30 | 29  | Approx 4,160 Sq.ft.                  | \$45,763             | \$1,525       | \$0                  | \$141.05   |
| 401  | Asphalt - Overlay                     | 20 | 19  | Approx 49,850 Sq.ft.                 | \$68,550             | \$3,428       | \$0                  | \$316.92   |
| 402  | Asphalt - Slurry Seal                 | 5  | 3   | Approx 49,850 Sq.ft.                 | \$11,225             | \$4,490       | \$11,225             | \$207.58   |
| 403  | Concrete - Repair/Replace             | 5  | 4   | Extensive Sq.ft.                     | \$6,250              | \$1,250       | \$0                  | \$115.58   |
| 604  | Elastomeric Deck - Resurface          | 15 | 14  | Approx 7,500 Sq.ft.                  | \$37,500             | \$2,500       | \$0                  | \$231.16   |
| 607  | Trex Deck - Refurbish/Repair          | 30 | 29  | Approx 2,600 Sq.ft. / 700 LF railing | \$97,500             | \$3,250       | \$0                  | \$300.51   |
| 1008 | PVC Vinyl Fencing - Replace           | 18 | 16  | Approx 995 Linear ft.                | \$33,800             | \$3,756       | \$0                  | \$173.63   |
| 1602 | Exterior Wall Mount Lights - Replace  | 16 | 15  | Approx 130 Lights                    | \$9,750              | \$609         | \$0                  | \$56.35    |

\$45,760

\$16,581

\$3,850

Current Fund Balance as a percentage of Ideal Balance:

36%



## Yearly Cash Flow

| Year                        | 2009     | 2010      | 2011      | 2012      | 2013      |
|-----------------------------|----------|-----------|-----------|-----------|-----------|
| <b>Starting Balance</b>     | \$16,581 | \$63,582  | \$112,932 | \$164,719 | \$206,648 |
| <i>Reserve Income</i>       | \$46,200 | \$47,586  | \$49,014  | \$50,484  | \$51,999  |
| <i>Interest Earnings</i>    | \$801    | \$1,764   | \$2,774   | \$3,710   | \$4,545   |
| <i>Special Assessments</i>  | \$0      | \$0       | \$0       | \$0       | \$0       |
| <b>Funds Available</b>      | \$63,582 | \$112,932 | \$164,719 | \$218,914 | \$263,191 |
| <b>Reserve Expenditures</b> | \$0      | \$0       | \$0       | \$12,266  | \$14,941  |
| <b>Ending Balance</b>       | \$63,582 | \$112,932 | \$164,719 | \$206,648 | \$248,250 |

| Year                        | 2014      | 2015      | 2016      | 2017      | 2018      |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|
| <b>Starting Balance</b>     | \$248,250 | \$307,360 | \$369,286 | \$434,133 | \$487,648 |
| <i>Reserve Income</i>       | \$53,558  | \$55,165  | \$56,820  | \$58,525  | \$60,281  |
| <i>Interest Earnings</i>    | \$5,551   | \$6,761   | \$8,027   | \$9,210   | \$8,736   |
| <i>Special Assessments</i>  | \$0       | \$0       | \$0       | \$0       | \$0       |
| <b>Funds Available</b>      | \$307,360 | \$369,286 | \$434,133 | \$501,868 | \$556,665 |
| <b>Reserve Expenditures</b> | \$0       | \$0       | \$0       | \$14,219  | \$169,979 |
| <b>Ending Balance</b>       | \$307,360 | \$369,286 | \$434,133 | \$487,648 | \$386,685 |

| Year                        | 2019      | 2020      | 2021      | 2022      | 2023      |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|
| <b>Starting Balance</b>     | \$386,685 | \$457,206 | \$531,031 | \$608,285 | \$672,443 |
| <i>Reserve Income</i>       | \$62,089  | \$63,952  | \$65,870  | \$67,846  | \$69,882  |
| <i>Interest Earnings</i>    | \$8,432   | \$9,874   | \$11,383  | \$12,796  | \$13,503  |
| <i>Special Assessments</i>  | \$0       | \$0       | \$0       | \$0       | \$0       |
| <b>Funds Available</b>      | \$457,206 | \$531,031 | \$608,285 | \$688,927 | \$755,827 |
| <b>Reserve Expenditures</b> | \$0       | \$0       | \$0       | \$16,484  | \$76,802  |
| <b>Ending Balance</b>       | \$457,206 | \$531,031 | \$608,285 | \$672,443 | \$679,026 |

| Year                        | 2024      | 2025      | 2026      | 2027      | 2028        |
|-----------------------------|-----------|-----------|-----------|-----------|-------------|
| <b>Starting Balance</b>     | \$679,026 | \$750,092 | \$785,332 | \$878,315 | \$956,187   |
| <i>Reserve Income</i>       | \$71,978  | \$74,137  | \$76,362  | \$78,652  | \$81,012    |
| <i>Interest Earnings</i>    | \$14,279  | \$15,341  | \$16,622  | \$18,329  | \$12,406    |
| <i>Special Assessments</i>  | \$0       | \$0       | \$0       | \$0       | \$0         |
| <b>Funds Available</b>      | \$765,283 | \$839,571 | \$878,315 | \$975,297 | \$1,049,605 |
| <b>Reserve Expenditures</b> | \$15,190  | \$54,239  | \$0       | \$19,110  | \$764,134   |
| <b>Ending Balance</b>       | \$750,092 | \$785,332 | \$878,315 | \$956,187 | \$285,471   |

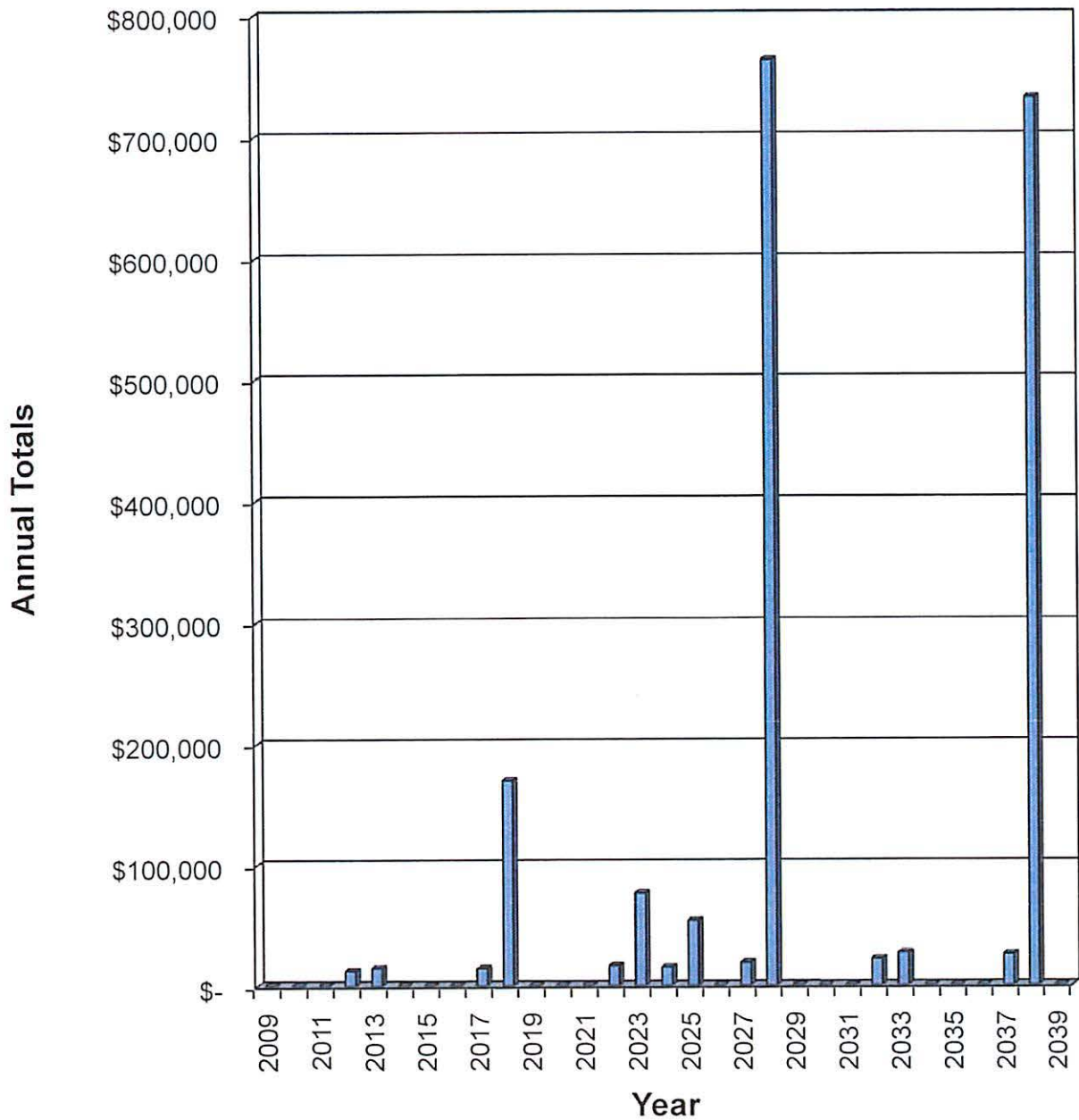
| Year                        | 2029      | 2030      | 2031      | 2032      | 2033      |
|-----------------------------|-----------|-----------|-----------|-----------|-----------|
| <b>Starting Balance</b>     | \$285,471 | \$375,517 | \$469,489 | \$567,516 | \$647,359 |
| <i>Reserve Income</i>       | \$83,442  | \$85,528  | \$87,667  | \$89,858  | \$92,105  |
| <i>Interest Earnings</i>    | \$6,604   | \$8,443   | \$10,361  | \$12,138  | \$13,724  |
| <i>Special Assessments</i>  | \$0       | \$0       | \$0       | \$0       | \$0       |
| <b>Funds Available</b>      | \$375,517 | \$469,489 | \$567,516 | \$669,513 | \$753,188 |
| <b>Reserve Expenditures</b> | \$0       | \$0       | \$0       | \$22,154  | \$26,985  |
| <b>Ending Balance</b>       | \$375,517 | \$469,489 | \$567,516 | \$647,359 | \$726,202 |

| Year                        | 2034      | 2035      | 2036        | 2037        | 2038        |
|-----------------------------|-----------|-----------|-------------|-------------|-------------|
| <b>Starting Balance</b>     | \$726,202 | \$836,220 | \$950,843   | \$1,070,223 | \$1,168,576 |
| <i>Reserve Income</i>       | \$94,407  | \$96,768  | \$99,187    | \$101,666   | \$104,208   |
| <i>Interest Earnings</i>    | \$15,611  | \$17,855  | \$20,193    | \$22,369    | \$17,241    |
| <i>Special Assessments</i>  | \$0       | \$0       | \$0         | \$0         | \$0         |
| <b>Funds Available</b>      | \$836,220 | \$950,843 | \$1,070,223 | \$1,194,258 | \$1,290,025 |
| <b>Reserve Expenditures</b> | \$0       | \$0       | \$0         | \$25,682    | \$732,980   |
| <b>Ending Balance</b>       | \$836,220 | \$950,843 | \$1,070,223 | \$1,168,576 | \$557,045   |





## Yearly Reserve Expenditures - Graph



## Projected Reserve Expenditures by Year

| Year | ID # | Component Name                        | Projected Cost | Total Per Annum |
|------|------|---------------------------------------|----------------|-----------------|
| 2009 |      | No Expenditures Projected             |                | \$0             |
| 2010 |      | No Expenditures Projected             |                | \$0             |
| 2011 |      | No Expenditures Projected             |                | \$0             |
| 2012 | 402  | Asphalt - Slurry Seal                 | \$12,266       | \$12,266        |
| 2013 | 204  | Front Doors - Repaint                 | \$7,907        |                 |
|      | 403  | Concrete - Repair/Replace             | \$7,034        | \$14,941        |
| 2014 |      | No Expenditures Projected             |                | \$0             |
| 2015 |      | No Expenditures Projected             |                | \$0             |
| 2016 |      | No Expenditures Projected             |                | \$0             |
| 2017 | 402  | Asphalt - Slurry Seal                 | \$14,219       | \$14,219        |
| 2018 | 201  | Stucco Surfaces - Repaint             | \$152,658      |                 |
|      | 204  | Front Doors - Repaint                 | \$9,166        |                 |
|      | 403  | Concrete - Repair/Replace             | \$8,155        | \$169,979       |
| 2019 |      | No Expenditures Projected             |                | \$0             |
| 2020 |      | No Expenditures Projected             |                | \$0             |
| 2021 |      | No Expenditures Projected             |                | \$0             |
| 2022 | 402  | Asphalt - Slurry Seal                 | \$16,484       | \$16,484        |
| 2023 | 204  | Front Doors - Repaint                 | \$10,626       |                 |
|      | 403  | Concrete - Repair/Replace             | \$9,454        |                 |
|      | 604  | Elastomeric Deck - Resurface          | \$56,722       | \$76,802        |
| 2024 | 1602 | Exterior Wall Mount Lights - Replace  | \$15,190       | \$15,190        |
| 2025 | 1008 | PVC Vinyl Fencing - Replace           | \$54,239       | \$54,239        |
| 2026 |      | No Expenditures Projected             |                | \$0             |
| 2027 | 402  | Asphalt - Slurry Seal                 | \$19,110       | \$19,110        |
| 2028 | 105  | Pitched Roof - Comp Shingle - Replace | \$415,493      |                 |
|      | 201  | Stucco Surfaces - Repaint             | \$205,160      |                 |
|      | 204  | Front Doors - Repaint                 | \$12,318       |                 |
|      | 401  | Asphalt - Overlay                     | \$120,203      |                 |
|      | 403  | Concrete - Repair/Replace             | \$10,959       | \$764,134       |
| 2029 |      | No Expenditures Projected             |                | \$0             |
| 2030 |      | No Expenditures Projected             |                | \$0             |
| 2031 |      | No Expenditures Projected             |                | \$0             |
| 2032 | 402  | Asphalt - Slurry Seal                 | \$22,154       | \$22,154        |
| 2033 | 204  | Front Doors - Repaint                 | \$14,280       |                 |
|      | 403  | Concrete - Repair/Replace             | \$12,705       | \$26,985        |
| 2034 |      | No Expenditures Projected             |                | \$0             |
| 2035 |      | No Expenditures Projected             |                | \$0             |
| 2036 |      | No Expenditures Projected             |                | \$0             |
| 2037 | 402  | Asphalt - Slurry Seal                 | \$25,682       | \$25,682        |
| 2038 | 201  | Stucco Surfaces - Repaint             | \$275,718      |                 |
|      | 204  | Front Doors - Repaint                 | \$16,555       |                 |
|      | 390  | Trex Trellis - Refurbish              | \$107,842      |                 |
|      | 403  | Concrete - Repair/Replace             | \$14,729       |                 |
|      | 604  | Elastomeric Deck - Resurface          | \$88,371       |                 |
|      | 607  | Trex Deck - Refurbish/Repair          | \$229,765      | \$732,980       |



| Year | Comp ID | Component Name            | Projected Cost | Total Per Annum |
|------|---------|---------------------------|----------------|-----------------|
| 2039 |         | No Expenditures Projected |                | \$0             |

## Component Evaluation

Comp #: 105 Pitched Roof - Comp Shingle - Replace



Location: Building roofs

Quantity: Approx 117,000 Sq.ft.

Life Expectancy: 20 Remaining Life: 19

Best Cost: \$228,200

\$1.95/Sq.ft.; Estimate to replace roof

Worst Cost: \$245,700

\$2.10/Sq.ft.; Higher estimate for more labor costs

Source of Information: CSL Cost Database

### Observations:

All shingles are intact and in good condition with no problems noted at time of inspection. Typically this type of roofing material has a useful life of approximately 20 years. Inspect roofs regularly and make local repairs as necessary as an operating issue to ensure full life from this component.

### General Notes:



Comp #: 201 Stucco Surfaces - Repaint



*Location:* Exterior stucco surfaces

*Quantity:* (78) Units

*Life Expectancy:* 10 *Remaining Life:* 9

*Best Cost:* \$109,200

\$1,400/Unit; Estimate to repaint stucco surfaces

*Worst Cost:* \$124,800

\$1,600/Unit; Higher estimate for more prep. Costs

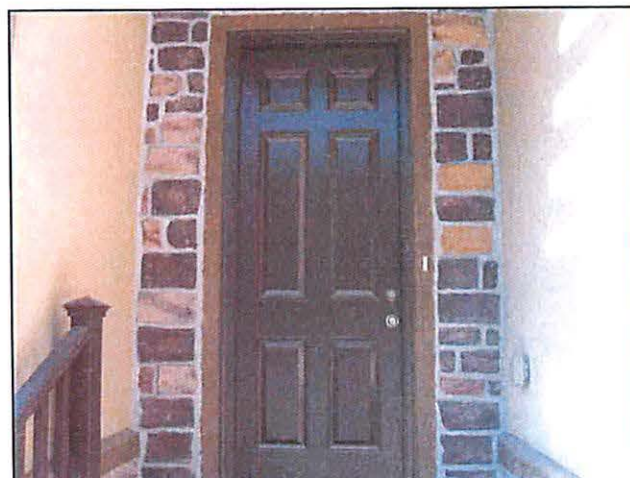
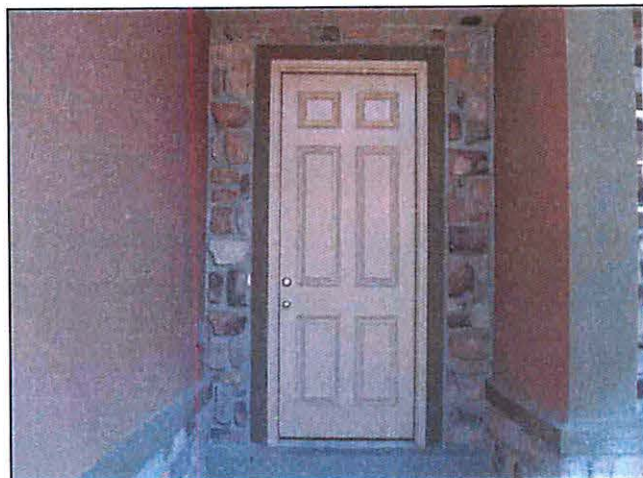
*Source of Information:* CSL Cost Database

*Observations:*

Painted stucco surfaces are generally in good condition, no significant staining or discoloration noted. Stucco surfaces should typically be repainted approximately every 10 to 12 years to protect stucco surface and maintain appearance. Remaining life based on current condition.

*General Notes:*

Comp #: 204 Front Doors - Repaint



*Location:* Front doors

*Quantity:* (78) Front doors

*Life Expectancy:* 5 *Remaining Life:* 4

*Best Cost:* \$6,250

\$80/Door; Estimate to repaint doors

*Worst Cost:* \$7,800

\$100/Door; Higher estimate for more prep work

*Source of Information:* CSL Cost Database

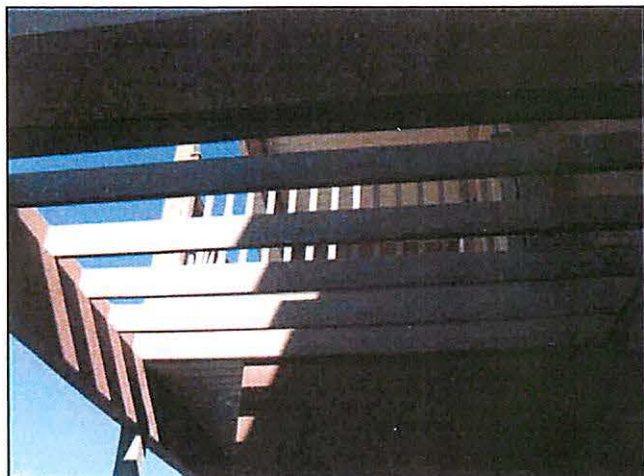
*Observations:*

Painted door surfaces are generally in good condition. No significant scuffing or marking noted. Repaint doors approximately every 5 years to maintain appearance.

*General Notes:*



Comp #: 390 Trex Trellis - Refurbish



*Location:* At each building

*Quantity:* Approx 4,160 Sq.ft.

*Life Expectancy:* 30 *Remaining Life:* 29

*Best Cost:* \$41,600

\$10/Sq.ft.; Estimate to refurbish

*Worst Cost:* \$49,925

\$12/Sq.ft.; Higher estimate

*Source of Information:* CSL Cost Database

*Observations:*

Although these trellis' may reach an extended life we recommend funding to replace the shade trellis approximately every 30 years to ensure appearance.

*General Notes:*

A large, empty rectangular box with a thin black border, intended for general notes.

Comp #: 401 Asphalt - Overlay



*Location:* Community streets

*Quantity:* Approx 49,850 Sq.ft.

*Life Expectancy:* 20 *Remaining Life:* 19

*Best Cost:* \$62,300

\$1.25/Sq.ft.; Estimate for overlay

*Worst Cost:* \$74,800

\$1.50/Sq.ft.; Higher estimate for local repairs

*Source of Information:* CSL Cost Database

*Observations:*

Asphalt streets are in good condition. No cracking or structural problems noted at the time of inspection. Seal these streets regularly (see Comp# 402 Asphalt - Slurry Seal) to protect surface and ensure full life.

*General Notes:*

**Quantity breakdown:**

10,800 Sq.ft. - S. Birch Creek Rd.  
9,250 Sq.ft. - W. Birch Park Dr.  
8,050 Sq.ft. - Maple Farms Lane  
9,600 Sq.ft. - S. Maple Farms Lane  
12,150 Sq.ft. - S. Maple Forest Way

49,850 Sq.ft. - Total



Comp #: 402 Asphalt - Slurry Seal



*Location:* Community streets

*Quantity:* Approx 49,850 Sq.ft.

*Life Expectancy:* 5 *Remaining Life:* 3

*Best Cost:* \$9,950

\$0.20/Sq.ft.; Estimate for seal coat only

*Worst Cost:* \$12,500

\$0.25/Sq.ft.; Higher estimate for local repairs

*Source of Information:* CSL Cost Database

*Observations:*

Asphalt seal coat is in good to fair condition. No significant raveling or surface loss noted. Seal asphalt surfaces regularly to prevent premature overlay (see Comp# 401 Asphalt - Overlay). Remaining life based on current condition.

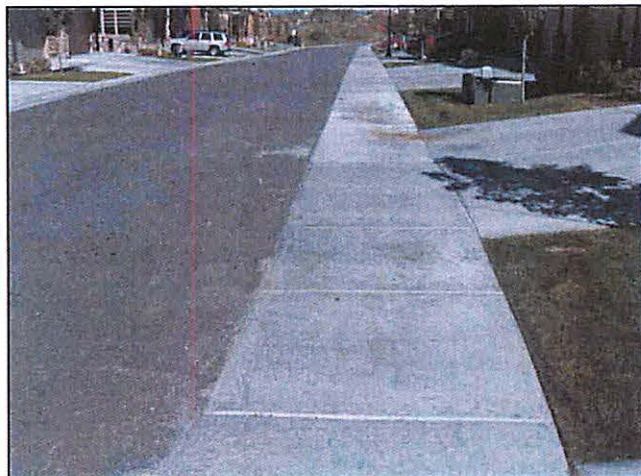
*General Notes:*

Quantity breakdown:

10,800 Sq.ft. - S. Birch Creek Rd.  
9,250 Sq.ft. - W. Birch Park Dr.  
8,050 Sq.ft. - Maple Farms Lane  
9,600 Sq.ft. - S. Maple Farms Lane  
12,150 Sq.ft. - S. Maple Forest Way

49,850 Sq.ft. - Total

Comp #: 403 Concrete - Repair/Replace



*Location:* Curbs, driveways, etc.

*Quantity:* Extensive Sq.ft.

*Life Expectancy:* 5 *Remaining Life:* 4

*Best Cost:* \$5,000

Allowance to make repairs

*Worst Cost:* \$7,500

Higher allowance

*Source of Information:* CSL Cost Database

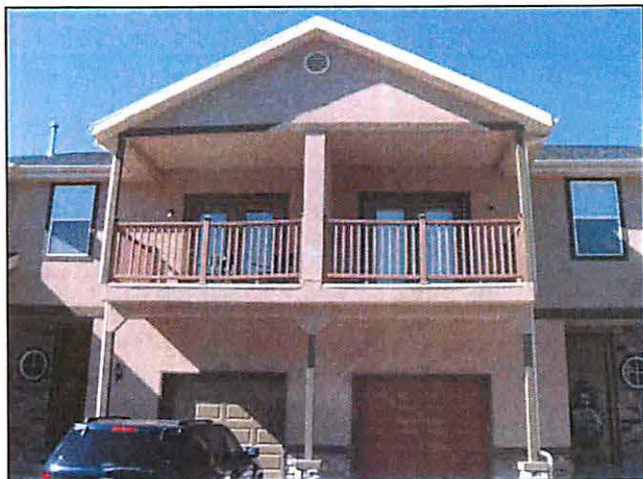
*Observations:*

Concrete is generally in good condition. No expectation to completely replace these surfaces. We recommend making repairs annually as an operating expense and funding to make significant repairs approximately every 5 years.

*General Notes:*



Comp #: 604 Elastomeric Deck - Resurface



*Location:* At each unit

*Quantity:* Approx 7,500 Sq.ft.

*Life Expectancy:* 15 *Remaining Life:* 14

*Best Cost:* \$30,000

\$4.00/Sq.ft.; Estimate to resurface kool deck

*Worst Cost:* \$45,000

\$6.00/Sq.ft.; Higher estimate for more prep work

*Source of Information:* CSL Cost Database

*Observations:*

No access to decks at the time of inspection. These decks are newer, for the purposes of this report we have assumed decks are in good condition and aging normally.

*General Notes:*

Comp #: 607 Trex Deck - Refurbish/Repair



*Location:* West and South most buildings

*Quantity:* Approx 2,600 Sq.ft. / 700 LF railings

*Life Expectancy:* 30 *Remaining Life:* 29

*Best Cost:* \$91,000  
\$35/Sq.ft.; Estimate to replace wood deck

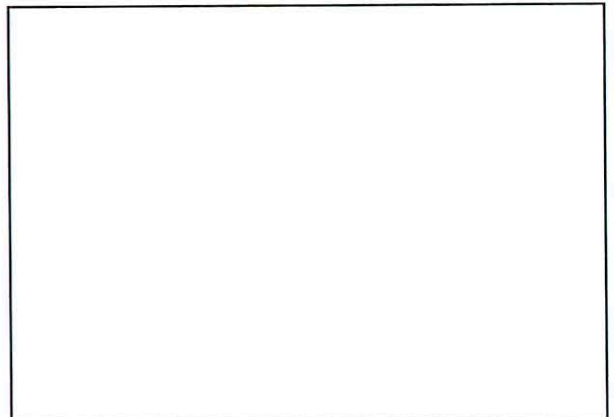
*Worst Cost:* \$104,000  
\$40/Sq.ft.; Higher estimate for more labor

*Source of Information:* CSL Cost Database

*Observations:*

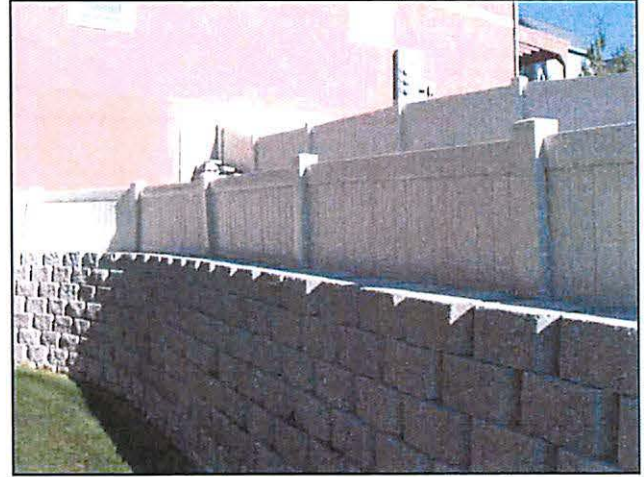
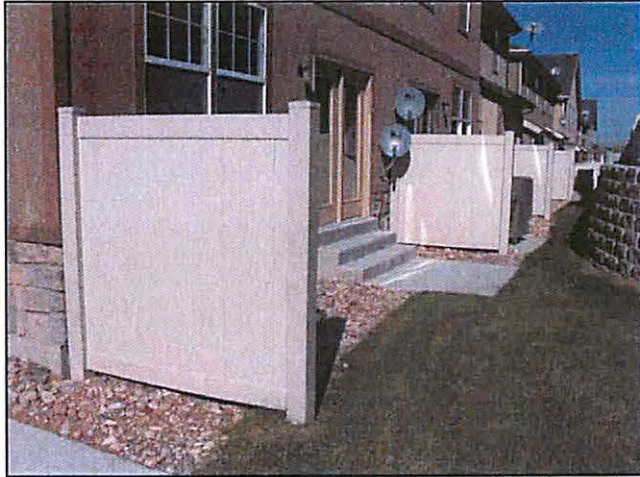
No expectation to completely replace the decks. We recommend funding to generally rebuild and refurbish the decks approximately every 30 years.

*General Notes:*





Comp #: 1008 PVC Vinyl Fencing - Replace



*Location:* Privacy fencing, common area fencing

*Quantity:* Approx 995 Linear ft.

*Life Expectancy:* 18 *Remaining Life:* 16

*Best Cost:* \$31,800  
\$32/Linear ft.; Estimate for PVC vinyl fence replacement

*Worst Cost:* \$35,800  
\$36/Linear ft.; Higher estimate for better quality material

*Source of Information:* CSL Cost Database

*Observations:*

Fencing was observed to be in good condition at the time of inspection. Some minor warping noted in local areas. We recommend funding to replace this type of fencing on an 18-year schedule. Remaining life based on current age.

*General Notes:*

Quantity breakdown:

650 Linear ft. - Privacy fencing  
345 Linear ft. - Common area fencing  
995 Linear ft. - Total

Comp #: 1602 Exterior Wall Mount Lights - Replace



*Location:* Balconies, garage lights

*Quantity:* Approx 130 Lights

*Life Expectancy:* 16 *Remaining Life:* 15

*Best Cost:* \$7,800

\$60/Lamp; Estimate to replace exterior wall lamp

*Worst Cost:* \$11,700

\$90/Lamp; Higher estimate for better quality

*Source of Information:* CSL Cost Database

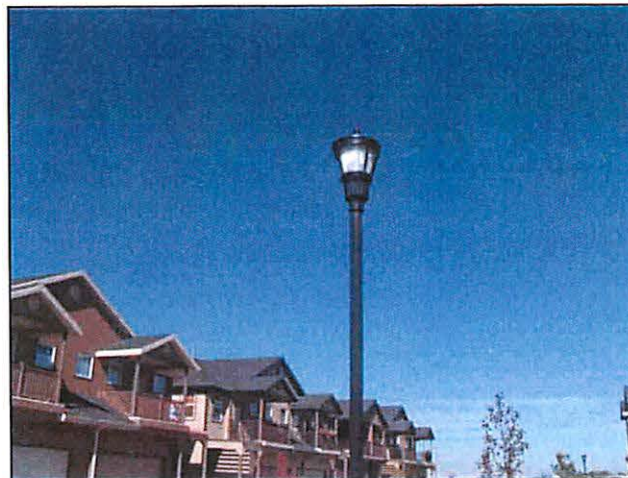
*Observations:*

Lights are generally in good condition. No significant pitting or discoloration noted. Expect to replace these lights approximately every 16 years to maintain appearance. Remaining life based on current age and condition.

*General Notes:*



Comp #: 1609 Street Lights - Replace



*Location:* Community streets

*Quantity:* (7) Lights

*Life Expectancy:* N/A *Remaining Life:*

*Best Cost:* \$0

*Worst Cost:* \$0

*Source of Information:*

*Observations:*

Client reports that these lights are the responsibility of the city. No reserve funding necessary.

*General Notes:*

## Glossary of Commonly Used Words And Phrases

(Provided by the National Reserve Study Standards of the Community Associations Institute)

**Cash Flow Method** – A method of developing a reserve funding plan where contributions to the reserve fund are designed to offset the variable annual expenditures from the reserve fund. Different reserve funding plans are tested against the anticipated schedule of reserve expenses until the desired funding goal is achieved.

**Component** – Also referred to as an “Asset.” Individual line items in the Reserve Study developed or updated in the physical analysis. These elements form the building blocks for the Reserve Study. Components typically are: 1) Association responsibility, 2) with limited useful life expectancies, 3) have predictable remaining life expectancies, 4) above a minimum threshold cost, and 5) required by local codes.

**Component Full Funding** – When the actual (or projected) cumulative reserve balance for all components is equal to the fully funded balance.

**Component Inventory** – The task of selecting and quantifying reserve components. This task can be accomplished through on-site visual observations, review of association design and organizational documents, a review of established association precedents, and discussion with appropriate association representatives.

**Deficit** – An actual (or projected reserve balance), which is less than the fully funded balance.

**Effective Age** – The difference between useful life and remaining useful life (UL - RUL).

**Financial Analysis** – The portion of the Reserve Study where current status of the reserves (measured as cash or percent funded) and a recommended reserve contribution rate (reserve funding plan) are derived, and the projected reserve income and expenses over time is presented. The financial analysis is one of the two parts of the Reserve Study.

**Fully Funded Balance** – An indicator against which the actual (or projected) reserve balance can be compared. The reserve balance that is in direct proportion to the fraction of life “used up” of the current repair or replacement cost of a reserve component. This number is calculated for each component, and then summed together for an association total.

$$\text{FFB} = \text{Current Cost} * \text{Effective Age} / \text{Useful Life}$$

**Fund Status** – The status of the reserve fund as compared to an established benchmark, such as percent funded.

**Funding Goals** – Independent of calculation methodology utilized, the following represent the basic categories of funding plan goals:

- *Baseline Funding:* Establishing a reserve-funding goal of keeping the reserve balance above zero.
- *Component Full Funding:* Setting a reserve funding goal of attaining and maintaining cumulative reserves at or near 100% funded.
- *Threshold Funding:* Establishing a reserve funding goal of keeping the reserve balance above a specified dollar or percent funded amount.

**Funding Plan** – An association’s plan to provide income to a reserve fund to offset anticipated expenditures from that fund.





**Funding Principles –**

- Sufficient funds when required
- Stable contributions through the year
- Evenly distributed contributions over the years
- Fiscally responsible

**GSF - Gross Square Feet**

**Life and Valuation Estimates –** The task of estimating useful life, remaining useful life, and repair or replacement costs for the reserve components.

**LF - Linear Feet**

**Percent Funded –** The ratio, at a particular point in time (typically the beginning of the fiscal year), of the actual (or projected) reserve balance to the ideal fund balance, expressed as a percentage.

**Physical Analysis –** The portion of the Reserve Study where the component evaluation, condition assessment, and life and valuation estimate tasks are performed. This represents one of the two parts of the Reserve Study.

**Remaining Useful Life (RUL) –** Also referred to as “remaining life” (RL). The estimated time, in years, that a reserve component can be expected to continue to serve its intended function. Projects anticipated to occur in the current fiscal year have a “0” remaining useful life.

**Replacement Cost –** The cost of replacing, repairing, or restoring a reserve component to its original functional condition. The current replacement cost would be the cost to replace, repair, or restore the component during that particular year.

**Reserve Balance –** Actual or projected funds as of a particular point in time (typically the beginning of the fiscal year) that the association has identified for use to defray the future repair or replacement of those major components that the association is obligated to maintain. Also known as “reserves,” “reserve accounts,” or “cash reserves.” In this report the reserve balance is based upon information provided and is not audited.

**Reserve Study –** A budget-planning tool, which identifies the current status of the reserve fund and a stable and equitable funding plan to offset the anticipated future major common area expenditures. The Reserve Study consists of two parts: The Physical Analysis and the Financial Analysis.

**Special Assessment –** An assessment levied on the members of an association in addition to regular assessments. Governing documents or local statutes often regulate special assessments.

**Surplus –** An actual (or projected) reserve balance that is greater than the fully funded balance.

**Useful Life (UL) –** Also known as “life expectancy.” The estimated time, in years, that a reserve component can be expected to serve its intended function if properly constructed and maintained in its present application of installation.

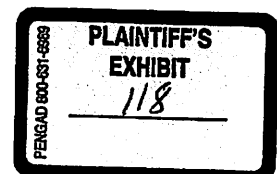


## **ADDENDUM 11**



## HOA Assessment History @ Sterling Village

| Date                                    | Assessment (\$) | Type of Assessment |
|-----------------------------------------|-----------------|--------------------|
| November 1, 2006 –<br>December 31, 2008 | 71              | Monthly            |
| January 1, 2009 –<br>February 28, 2014  | 100             | Monthly            |
| February 2013                           | 1,000           | Special            |
| March 1, 2015 –<br>Present              | 150             | Monthly            |



## **ADDENDUM 12**



MAR - 4 2014

SALT LAKE COUNTY

By \_\_\_\_\_  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH  
SALT LAKE DEPARTMENT

GABLES AT STERLING VILLAGE  
HOMEOWNERS ASSOCIATION, a Utah  
nonprofit corporation,

Plaintiff,

v.

CASTLEWOOD-STERLING VILLAGE I,  
LLC, a Utah limited liability company, et al.,

Defendants.

CASTLEWOOD-STERLING VILLAGE I,  
LLC, a Utah limited liability company, et al.,

Third-Party Plaintiffs,

v.

TRICOR, a Utah corporation, et al.,

Third-Party Defendants.

**RULING AND ORDER ON  
THIRD-PARTY DEFENDANT B.A.  
CRITCHFIELD  
CONSTRUCTION'S MOTION  
FOR SUMMARY JUDGMENT  
AGAINST PLAINTIFF HOA**

Case No. 100901740

Judge Elizabeth A. Hruby-Mills

DATE: March 3, 2014

This matter is before the Court on Third-Party Defendant B.A. Critchfield Construction's ("Critchfield") Motion for Summary Judgment Against Plaintiff Homeowners Association ("HOA") dated September 6, 2013. Third-Party Defendant R&JL Siding and Management has filed a joinder in Critchfield's Motion. The Motion was scheduled for oral argument on January 10, 2014. The Court heard the arguments of counsel and, having considered those arguments, the briefings submitted by the parties, and relevant case law, hereby rules as follows:

**I. Background**

This law suit involves the construction of a condominium development in Salt Lake City known as the Gables at Sterling Village. Plaintiff, Gables' Homeowners Association, filed suit

04092

against the development's builders and developers for alleged failures in the design, workmanship and/or with defective materials that allegedly caused cement and stone cladding cracking, water intrusion in the units and common area, and other damages. Defendants filed their Third-Party Complaint on March 18, 2011 against various entities, including Critchfield, alleging causes of action for breach of contract, negligence and indemnity.

## II. Summary Judgment Standard

"Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Swan Creek Vill. Homeowners Ass'n v. Warne*, 2006 UT 22, ¶ 16, 134 P.3d 1122 (quoting *Norman v. Arnold*, 2002 UT 81, ¶ 15, 57 P.3d 997, Utah R. Civ. P. 56(c)) ("The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.") All "facts and reasonable inferences drawn therefrom [should be viewed] in the light most favorable to the non-moving party." *Ellsworth Paulsen Constr. Co. v. 51-SPR-L.L.C.*, 2008 UT 28, ¶ 12, 183 P.3d 248 (quoting *Dowling v. Bullen*, 2004 UT 50, ¶ 7, 94 P.3d 915).

## III. Critchfield's Motion for Summary Judgment

Critchfield moves this Court to enter summary judgment in its favor based on the Plaintiff HOA's lack of contractual privity between it and any of the other parties, as well as the HOA's failure to set forth a prima facie case of breach of the implied warranty. The HOA counters that the Association's Declaration confers the necessary privity to bring this lawsuit and further that it has set forth sufficient facts to meet each required element in order to bring its implied warranty claim.

### *The Economic Loss Rule*

The economic loss rule holds that an individual or an entity may not recover for economic losses as a non-intentional tort. *American Towers Ass'n., Inc. v. CCI Mechanical, Inc.*, 930 P.2d 1182, 1189 (Utah 1996)(overruled on other grounds). It represents the majority position across the courts and has been consistently reaffirmed as Utah's governing law by Utah's Supreme Court. *See, id.* Economic losses are those which are defined as:

damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits-without any claim of personal injury or damage to other property...as well as 'the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold.'

*Id.* (quoting *Maack v. Resource Design & Construction, Inc.*, 875 P.2d 570, 579-80 (Utah Ct. App. 1994)). The economic loss rule, while originally applicable solely to products liability cases, has been extended and applied to other design professionals, such as architects and engineers, as well as to negligent construction claims against contractors and subcontractors. *AME Industries, Inc. v. Thompson, Ventulett, Stainback and Assoc., Inc.*, 2001 UT 54, ¶ 38, 28 P.3d 669.



More recently, in *Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65, 221 P.3d 234, the Utah Supreme Court upheld the general applicability of the economic loss rule to a negligence action brought by a homeowners association against the property's developer and builder. Additionally, the Court abrogated its prior decisions by recognizing a new cause of action for breach of the implied warranty of workmanlike manner and habitability in the sale of a new residence. The Court found that the purchaser of a newly constructed residential property has an expectation interest in receiving a dwelling "suitable for habitation" and that such a purchaser has a right to have those expectation interests judicially protected. *Id.* at ¶ 54. Therefore, "[u]nder Utah law, in every contract for the sale of a new residence, a vendor in the business of building or selling such residences makes an implied warranty to the vendee that the residence is constructed in a workmanlike manner and fit for habitation." *Id.* at ¶ 55.

While the Court indicated that the scope of the implied warranty "should be construed broadly," it also recognized that "privity of contract is required" to bring any such claim. *Id.* at ¶ 57. This requirement recognizes both that the cause of action for implied warranty arises under contract rather than tort law, and is in accordance with Utah's codification of the economic loss rule, which mandates that "[a]n action for defective design or construction may be brought only by a person in privity of contract." *Id.* at n. 13 (quoting Utah Code Ann. § 78B-4-513(4) (2008)).

In addition to requiring contractual privity, as well as complying with the applicable requirements under Utah Code Ann. § 78B-2-225,

to establish a breach of the implied warranty of workmanlike manner or habitability under Utah law, a plaintiff must show (1) the purchase of a new residence from a defendant builder-vendor/developer-vendor; (2) the residence contained a latent defect; (3) the defect manifested itself after purchase; (4) the defect was caused by improper design, material, or workmanship; and (5) the defect created a question of safety or made the house unfit for human habitation.

*Id.* at ¶ 60 (citing *Albrecht v. Clifford*, 436 Mass. 706, 767 N.E.2d 42, 47 (2002)).

#### Privity

Critchfield alleges that the HOA lacks standing to bring this lawsuit due to the lack of contractual privity between it and any of the other parties. The HOA counters that the Association's Declaration confers the necessary privity to bring this lawsuit. Both parties urge us to interpret *Davencourt* in support of their respective positions.

While this Court agrees that the facts in *Davencourt* and the facts of this case are virtually identical and therefore that *Davencourt* is controlling law, it is not helpful in determining whether privity can be found in the case at bar. While *Davencourt* recognized that privity is required in any action for defective design or construction, the *Davencourt* court specifically did not reach the issue of whether the HOA in that case was in privity with either the builder or the developer. *Id.* at ¶ 63 (stating "we do not address whether privity of contract exists, because the issue is not before us.").

In *sole* support of its position that privity exists in this case, the HOA cites to its Declaration, Article VI, Section 6.1(c), which provides in relevant part:

The Association *shall provide exterior maintenance* of the Living Units including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces.

(Opp. Ex. A) (emphasis added). The HOA states that this language gives the Association “broad authority to act on behalf of owners in relation to action taken related to damage to association property, expressly the exterior maintenance of the Living Units” and further, evidences the homeowners’ consent to the Association to pursue the claims in Plaintiff’s Amended Complaint by agreeing to the terms of the Declaration.

The Court does not dispute that the governing documents, including the Declaration, are a binding contract between the homeowners and the HOA. *See, e.g., Swan Creek Vill. Homeowners Ass’n v. Warne*, 2006 UT 22, ¶ 46 (Utah 2006). As such, as discussed in *Swan Creek*, the appropriate approach when determining the rights and obligations of the parties to a contract is to look to the terms of that contract. *Id.* at ¶¶ 47-52. In this case, the Declaration requires that the HOA maintain the exterior of the “Living Units.” Nothing in the Declaration, however, speaks to whether the HOA has the right to sue third parties for damages to the “Living Units” on behalf of the homeowners. In light of the failure of such explicit contractual authority, and absent independent statutory or other legal authority, this Court cannot conclude that the terms of the Declaration provides the HOA with authorization from the homeowners to pursue claims for breach of implied warranty on their behalf, nor does it evidence the HOA’s independent authority to bring such claims on its own behalf. Therefore, the Court agrees with Defendant that the lack of privity bars Plaintiff’s claims.

#### Breach of Implied Warranty

Critchfield also argues that the HOA failed to set forth a prima facie case of breach of the implied warranty by failing to meet its first and fifth elements of the claim: namely (1) the purchase of a new residence from a defendant builder-vendor/developer-vendor, and (2) that the defect created a question of safety or made the house unfit for human habitation. The Court agrees that a prima facie case for breach of the implied warranty has not been met based on the HOA’s failure to demonstrate both elements.

First, with respect to demonstrating the purchase of a new residence from a defendant builder-vendor/developer-vendor, the HOA has not demonstrated that the units containing the alleged latent defects are owned by the original homeowners, such that the implied warranty attaches. In its Opposition, the HOA provided only two affidavits from current owners attesting to their purchase of their homes from Castlewood-Sterling Village I, LLC in June 2007. Therefore, even if the Court accepts that the HOA has demonstrated the purchase of the new residence with respect to these two individuals, there is no evidence on the record as to this first element with respect to the remaining units and purchasers. Additionally, although the HOA argues that a sole affidavit from an original purchaser would meet the first element for a breach



of implied warranty claim, the Court disagrees. As alluded to in *Nolin*, to survive summary judgment the Plaintiff must allege individual latent defects (or at the very least a latent defect in a shared common area such as the roof or foundation) that affect the safety or habitability of *each residence*. *Nolin v. S & S Construction*, 2013 UT App 94, ¶ 60, 301 P.3d 1026. Therefore, it logically follows that the HOA would have to demonstrate original ownership of each unit or of all of the units affected by the alleged latent defects in order to demonstrate that the implied warranty of workmanlike manner and habitability is still in effect. *Davencourt* at ¶ 62 (stating that “the implied warranty does not abrogate the doctrine of caveat emptor in the sale of existing or used residences.”). The production of affidavits of only two homeowners is insufficient proof of such ownership and further, does not form an adequate basis to impute original ownership to the other homeowners.

Second, even if the Court found that the HOA met the requirements of a claim for implied warranty with respect to the first element, it has not met its burden of proof on the fifth element, since it has not demonstrated that the latent defects created a question of safety or made the house unfit for human habitation. In its Opposition, the HOA cites to two expert reports which it states establish “numerous examples wherein a question of safety or a condition that renders a unit unfit for human habitation exists,” namely its expert report from Western Architectural and from Nick Dente. (Opp. Ex. D and E).<sup>1</sup> Exhibit D is almost 1,000 pages long, and contains numerous alleged examples of alleged defects in the construction of The Gables. However, despite this level of detail, the Court can find only two references to safety: the potential for water intrusion and trapping inside the walls and on exterior surfaces, and the settling of parts of the concrete which could potentially lead to a tripping hazard and result in an improper stair riser height. While the Court agrees with the HOA that the specific words “safety” or “habitability” are not necessary to meet its burden, what is necessary is that the HOA provide evidence to support its contention that the residences were unsafe or unfit for habitation, and the two statements in Exhibit D are simply insufficient for that purpose.

In making this determination, the Court is mindful that it is required to view all facts and reasonable inferences in the non-moving party’s favor. However, the Court does not believe this standard requires the Court to infer causation on an issue for which expert testimony is required, by virtue of it being based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Simply put, because expert testimony in this case was required to demonstrate the existence and scope of latent defects and that those defects were caused by improper design, material, or workmanship, expert testimony is also required to show that the defects resulted in residences being unsafe or unfit for human habitation. As such, it is not reasonable for the Court to conclude or infer that evidence of water intrusion into a residence or common area, or concrete settling, created an unsafe or unfit dwelling.

Additionally, the affidavit of Nick Dente does not cure Plaintiff’s failure to set forth facts sufficient to establish the fifth element of its cause of action. In order to set forth materially disputed facts sufficient to survive summary judgment, affidavits opposing summary judgment

---

<sup>1</sup> As a point of clarification, all of the excerpted text actually appears to be taken from Ex. E and there are no direct references to Exhibit D cited by Plaintiff HOA in support of its Opposition.

must set forth "such facts as would be admissible in evidence." Utah R. Civ. P. 56(c). As set forth in the Court's February 13<sup>th</sup> Ruling and Order, Mr. Dente has not been designated as an expert witness in Plaintiff's case-in-chief, but solely as a rebuttal witness. His testimony, therefore, is limited to rebuttal of Defendant's case-in-reply, and cannot be used to establish elements of Plaintiff's case-in-chief. *See, e.g., Astill v. Clark*, 956 P.2d 1081, 1086 (Utah Ct. App. 1998)(discussing limitations on rebuttal expert's testimony). Therefore, because the issue of safety and habitability is a necessary element of Plaintiff's cause of action for implied warranty and must be proven in its case-in-chief to survive summary judgment, the evidence establishing that element must have been contained in the Western Architectural report. Absent such evidence, Plaintiff's claim fails as a matter of law.

IV. Conclusion

Third-Party Defendant B.A. Critchfield's Motion for Summary Judgment Against Plaintiff Homeowners Association is therefore GRANTED and Plaintiff's claim for breach of the implied warranty of habitability is DISMISSED as against Third-Party Defendants B.A. Critchfield Construction and R&JL Siding and Management.

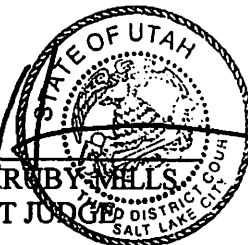
Additionally, based on the Court's ruling with respect to the lack of contractual privity as well as the failure to demonstrate all of the elements necessary to bring a claim of implied warranty of habitability, Critchfield's Motion for Summary Judgment Against Third-Party Plaintiffs and Third-Party Defendant Successor to Beus Roofing, Inc.'s Motion for Summary Judgment Against Third-Party Plaintiffs are GRANTED.

This is the Order of the Court and no further order is required.

DATED this 3 day of March, 2014.

BY THE COURT:

  
ELIZABETH A. HRUBY-MILLS  
DISTRICT COURT JUDGE





CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 100901740 by the method and on the date specified.

MAIL: TIM D DUNN 505 E 200 S 2ND FLR SALT LAKE CITY, UT 84102  
MAIL: SCOTT T EVANS 15 W S TEMPLE STE 800 SALT LAKE CITY UT  
84101  
MAIL: DOUGLAS P FARR 15 W S TEMPLE STE 1200 SALT LAKE CITY UT  
84101  
MAIL: ALBERT W GRAY 1218 E 7800 S STE 300 SANDY UT 84094  
MAIL: JERRY GRAY 1218 E 7800 S SANDY UT 84094  
MAIL: ANDREW R HALE 10 EXCHANGE PL 4TH FLR SALT LAKE CITY UT  
84111  
MAIL: PETER H HARRISON 602 E 300 S SALT LAKE CITY UT 84102  
MAIL: HEINZ J MAHLER 10 EXCHANGE PLACE 4TH FLR SALT LAKE CITY  
UT 84111  
MAIL: CHRYSTAL MANCUSO-SMITH 505 E 200 S 2ND FL SALT LAKE CITY UT  
84102  
MAIL: EDWARD W MCBRIDE 602 E 300 S SALT LAKE CITY UT 84102  
MAIL: ELISABETH M MCOMBER 15 W S TEMPLE STE 1200 SALT LAKE CITY  
UT 84101  
MAIL: JOSEPH E MINNOCK KEARNS BLDG 8TH FLR 136 S MAIN ST SALT  
LAKE CITY UT 84111-4707  
MAIL: ANNA NELSON 136 S MAIN STE 800 SALT LAKE CITY UT 84101  
MAIL: HOWARD B RINGWOOD 3 TRIAD CTR STE 500 SALT LAKE CITY UT  
84180  
MAIL: DOUGLAS C SHUMWAY 602 E 300 S SALT LAKE CITY UT 84102  
MAIL: A RICHARD VIAL 7000 SW VARNS ST PORTLAND OR 97223-8006  
MAIL: GABRIEL K WHITE 15 W S TEMPLE STE 800 SALT LAKE CITY UT  
84101

Date: 03/04/2014

/s/ SARA JOHNSON

Deputy Court Clerk



# REAL ESTATE PURCHASE CONTRACT FOR RESIDENTIAL CONSTRUCTION



This is a legally binding contract. Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

## EARNEST MONEY RECEIPT

Buyer Bob + Elaine Fairless offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$ 4,000<sup>00</sup> in the form of Personal CK which, upon Acceptance of this offer by all parties (as defined in Section 23) shall be deposited in accordance with state law.

Received by: Elaine Fairless on 3-5-07 (Date)

Brokerage: Cohwell Banker Phone Number 801-792-0101

## OFFER TO PURCHASE

### 1. PROPERTY:

1.1 Location. The Earnest Money Deposit is given to secure and apply on the purchase of a new Residence (the "Residence") described below to be constructed by Seller on a parcel of real property (the "Lot") located at: \_\_\_\_\_ in the City of San Jordan County of SALT LAKE State of Utah, more particularly described as Lot No. 8 in the \_\_\_\_\_ Subdivision, or alternatively as follows: Gables @ Sterling Village The Purchase Price for the Residence ☒ INCLUDES ☐ DOES NOT INCLUDE, the Lot.

1.2 Home Design. Seller shall construct the Residence and related improvements in accordance with the Plans & Specifications checked below and approved by Buyer as provided in Section 8. (check applicable box):

- ☒ 2 CAR - TYPE 1 House Plan  
☐ FHAVA Approved Plan No. \_\_\_\_\_  
☐ Plans and Declaration of Condominium (check one) ☐ AS RECORDED ☐ AS PROPOSED for Unit Number \_\_\_\_\_ of the \_\_\_\_\_ Condominiums  
☐ a Custom Home (specify) \_\_\_\_\_  
☐ Other \_\_\_\_\_

1.3 Improvements. Seller represents that the Residence will be connected to the utility service lines and serviced by the additional improvements identified below. (check applicable boxes):

#### (a) Utility Services

- ☐ well ☒ public water ☐ private water ☒ natural gas ☒ electricity ☒ telephone  
☒ public sewer ☐ septic tank ☐ other (specify) \_\_\_\_\_

#### (b) Additional Improvements

- ☐ dedicated paved road ☒ private paved road ☐ other road (specify) \_\_\_\_\_  
☒ curb & gutter ☐ rolled curb ☒ sidewalk ☐ irrigation water/secondary system - # of shares \_\_\_\_\_  
 Name of water company \_\_\_\_\_  
☐ other (specify) \_\_\_\_\_

1.4 Permit Fees. Seller agrees to pay for building permit fees, impact fees and all connection fees except the following: NONE

1.5 Survey. (Check applicable boxes): A survey ☐ WILL ☒ WILL NOT be prepared by a licensed surveyor. The Survey Work will be: ☐ Property corners staked ☐ Boundary Survey ☐ Boundary & Improvements survey ☐ Other (specify) \_\_\_\_\_. Responsibility for payment: ☐ Buyer ☐ Seller ☐ Buyer and Seller share equally. Buyer's obligation to purchase under this Contract ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the Survey Work. If yes, the terms of the attached Survey Addendum apply.



2. **PURCHASE PRICE.** The Purchase Price for the Residence is \$ 267,900

2.1 **Method of Payment.** The Purchase Price will be paid as follows:

\$ 1,000 (a) **Earnest Money Deposit.** Under certain conditions described in this Contract, THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.

\$ \_\_\_\_\_ (b) **Permanent Loan.** Buyer agrees to apply for a "Permanent Loan" as provided in Section 2.3 below. Buyer will apply for one or more of the following loans: ☐ FHA ☐ VA ☒ CONVENTIONAL ☐ OTHER (specify) \_\_\_\_\_

Buyer agrees to accept the Permanent Loan at the interest rate offered by Buyer's lender as of the date of Settlement. Buyer acknowledges that the loan interest rate at Settlement may exceed the rate quoted by the lender as of Loan Application.

\$ \_\_\_\_\_ (c) **Other (specify)** \_\_\_\_\_

\$ \_\_\_\_\_ (d) **Balance of Purchase Price in Cash at Settlement**

\$ 267,900 **PURCHASE PRICE. Total of lines (a) through (d)**

The Purchase Price may be increased if additional costs are incurred for extras as provided in Section 12. Buyer agrees to pay for the cost of all such extras as provided in Section 12.

2.2 **Financing Condition.** (check applicable boxes)

(a) ☐ a "Construction Loan" shall be obtained by ☐ Seller ☐ Buyer in the amount of \$ \_\_\_\_\_. Upon funding of the Construction Loan, progress payments shall be made in accordance with the requirements of the construction lender.

(b) ☐ the Permanent Loan shall be obtained by Buyer. Buyer's obligation to purchase the Residence **IS CONDITIONED** upon Buyer qualifying for the Permanent Loan and, if applicable, the Construction Loan. Those loans are collectively referred to as the "Applicable Loans." This condition is referred to as the "Financing Condition."

(c) ☐ Buyer's obligation to purchase the Residence **IS NOT CONDITIONED** upon Buyer qualifying for the Applicable Loans. Section 2.3 does not apply.

2.3 **Application for Loan.**

(a) **Loan Application.** No later than the Application Deadline referenced in Section 24(a), Buyer shall apply for the Applicable Loans at: \_\_\_\_\_. Loan Application occurs only when Buyer

has: (i) completed, signed, and delivered to the lender (the Lender) the initial loan application and documentation required by the Lender; and (ii) paid all loan application fees as required by the Lender. Buyer agrees to diligently work to obtain the Applicable Loans. Buyer will promptly provide the Lender with any additional documentation as required by the Lender.

(b) **Pre-Qualification Letter.** No later than the Pre-Qualification Deadline referenced in Section 24(b), Buyer agrees to provide to Seller a "Pre-Qualification Letter" from the Lender for the Applicable Loans. Buyer agrees to diligently work to obtain the Pre-Qualification Letter. The Pre-Qualification Letter shall state that: (i) the Buyer's credit report and income to debt ratios are satisfactory to the Lender; and (ii) subject only to verification of the information contained in the Loan Application, the Lender will grant the Applicable Loans.

(c) **Right to Cancel.** If the Lender fails to provide Buyer with a Pre-Qualification Letter, or if the Pre-Qualification Letter contains conditions other than those specified in Section 2.3(b), Buyer or Seller may cancel this Contract by providing written notice to the other party no later than three calendar days after the Pre-Qualification Deadline; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled as provided in this Section 2.3(c), Buyer and Seller shall be deemed to have waived any objections regarding the lack of, or any conditions contained in the Pre-Qualification Letter.

(d) **Funding of Construction Loan.** If Buyer is obtaining a Construction Loan and the proceeds of that loan are not available for disbursement by the Construction Loan Funding Deadline referenced in Section 24(c), Buyer or Seller may cancel this Contract by providing written notice to the other party no later than three calendar days after the Construction Loan Funding Deadline; whereupon the Earnest Money Deposit shall be released to Buyer.

2.4 **Non-Refundable Deposit.**

(a) **Pre-Qualification.** If this Contract is not canceled as provided in Sections 1.5, 2.3(c) or (d), or Section 8, then 100% of the Earnest Money Deposit shall be totally non-refundable to Buyer unless Seller fails to complete the Residence as provided under Sections 11 and 12.

(b) **Subsequent Disqualification.** If prior to Settlement, Buyer receives written notice from the Lender that the Lender does not approve the Permanent Loan (a "Loan Denial"), Buyer shall, no later than three calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three calendar days after Seller's receipt of such notice, cancel this Contract by providing written notice to the other party; whereupon the non-refundable portion of the Earnest Money Deposit shall be released to Seller and the refundable portion to Buyer.

3. **SETTLEMENT AND CLOSING.** Seller shall provide Buyer written notice of Substantial Completion of the Residence. Settlement shall take place on the Settlement Deadline referenced in Section 24(g), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/closing office), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office, as appropriate, in the form of collected or cleared funds; and (c) any moneys required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office, as appropriate, in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(g), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (a) the proceeds of any new loan have been delivered by the Lender to Seller (or to the escrow/closing office); and (b) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (a) and (b) of the preceding sentence shall be completed within four calendar days after Settlement.

3.1 **Walk-Through Inspection/Completion Escrow.** Not less than 17 DAYS [ ] DAYS prior to Settlement, Buyer may conduct a "walk-through" inspection of the Residence. If, as of Settlement, minor work remains to be completed, corrected or replaced on the Residence, then Buyer, pending completion of such work, may withhold in escrow at Settlement, a reasonable amount agreed to by Seller and Buyer (or such other amount as is required by the Lender) sufficient to pay for completion of such work. If such work is not completed within 30 DAYS [ ] DAYS after Settlement, the amount so escrowed may, at Buyer's option, be released to Buyer as liquidated and agreed damages for failure to complete. The failure of Buyer to conduct a walk-through inspection prior to Settlement shall not constitute a waiver by Buyer of the right to receive on the date of possession, the Residence as required under Section 12.

4. **POSSESSION.** Seller shall deliver physical possession to Buyer within: [ ] HOURS [ ] DAYS after Closing OTHER (specify) \_\_\_\_\_

5. **CONFIRMATION OF AGENCY DISCLOSURE.** At the signing of this Contract:

[ ] Seller's Initials GF BF Buyer's Initials

The Listing Agent Darren Mancini, represents ☒ Seller [ ] Buyer [ ] both Buyer and Seller  
As a Limited Agent  
The Selling Agent Elaine Fairless, represents [ ] Seller ☒ Buyer [ ] both Buyer and Seller  
As a Limited Agent  
The Listing Broker Coldwell Bank, represents [ ] Seller [ ] Buyer ☒ both Buyer and Seller  
As a Limited Agent  
The Selling Broker MA Thompson, represents [ ] Seller [ ] Buyer ☒ both Buyer and Seller  
As a Limited Agent

6. **TITLE INSURANCE.** Unless Buyer owns the Lot on the date of Acceptance Seller agrees to pay at Settlement for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Buyer acknowledges that additional title insurance coverage against mechanic's liens may be available, at Buyer's expense, through an extended coverage or plain language title policy. Buyer is advised to consult with a title insurance company during Buyer's Evaluations & Inspections regarding the availability and cost of such coverage.

7. **SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(d), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance (if the Buyer does not own the Lot);
- (c) a copy of the recorded CC&R's and Plat for the Development, if any;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental or other problems;
- (e) Plans & Specifications for the Residence, or reduction copies thereof (with each page initialed by Seller);
- (f) Name of contractor and contractor's license number;
- (g) Builder's Warranty (if different from Section 10.2); and
- (h) Other (specify) \_\_\_\_\_



**8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS.** Buyer's obligation to purchase under this Contract (check applicable boxes):

☒ IS ☐ IS NOT conditioned upon Buyer's approval of the content of each of the Seller Disclosures referenced in Section 7;  
☐ IS ☐ IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Lot: (specify)

If any of the above items are checked in the affirmative, then Sections 8.1, 8.2 and 8.3 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as the "Evaluations & Inspections." Unless otherwise provided in this Contract, the Evaluations & Inspections shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with the Evaluations & Inspections.

**8.1 Evaluations & Inspections Deadline.** No later than the Evaluations & Inspections Deadline referenced in Section 24(e), Buyer must: (a) provide Seller with written notice of Buyer's approval of the Evaluations & Inspections (including initialing each page of the Plans & Specifications provided by Seller under Section 7); or (b) provide Seller with written objections regarding the Evaluations & Inspections.

**8.2 Obligation to Approve or Object.** If, by the Evaluations & Inspections Deadline, Buyer fails to provide Seller with written notice of approval, or with written objections as required in Section 8.1, this Contract shall automatically be deemed canceled; whereupon the Earnest Money Deposit shall be released to Buyer upon receipt of written request from Buyer.

**8.3 Response to Objections.** If Buyer provides written objections to Seller, Buyer and Seller shall have 17 DAYS ☐ \_\_\_\_\_ DAYS after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Such writing must include Buyer's and Seller's initials on each page of the Plans & Specifications as submitted by Seller under Section 7, and as modified by Buyer and Seller under this Section 8.3. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections as provided in this Section 8.3 this Contract shall automatically be deemed canceled; whereupon the Earnest Money Deposit shall be released to Buyer.

**9. ADDITIONAL TERMS.** There ~~ARE~~ ☐ ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: Addendum No. 01  
☐ Survey Addendum ☐ Seller Financing Addendum ☐ FHAVA Loan Addendum ☐ Other (specify) \_\_\_\_\_

**10. SELLER WARRANTIES & REPRESENTATIONS.**

**10.1 Condition of Title.** Unless the Buyer owns the Lot on the date of Acceptance, Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. The Residence will be delivered to Buyer at Closing, free and clear of mechanic's liens and claims for mechanic's liens. Buyer agrees however, to accept title to the Property subject to: easements; deed restrictions; CC&R's (meaning covenants, conditions and restrictions), and rights of way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer agrees to be responsible for taxes, assessments, homeowner's association dues, utilities, and other services provided to the Property after Closing. If Seller owns the Lot, Seller will pay off by Closing, all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller agrees to pay current at Settlement all assessments and homeowners association dues.

**10.2 Condition of Property.** Unless Seller is providing an alternate Builder's Warranty under Section 7(g) (in which case this Section 10.2 shall not apply) Seller ~~does~~ ☐ does not warrant the heating, cooling, electrical, plumbing and sprinkler systems (including all gas and electric appliances), fixtures, and structural elements of the Residence (including the roof, walls, and foundation) against defects in material and workmanship for a period of one year after the Settlement Deadline. Seller further warrants that as of the date Seller delivers possession of the Residence to Buyer, any private well or septic tank serving the Residence shall have applicable permits and shall be in working order and fit for its intended purpose.

**11. SUBSTANTIAL COMPLETION.** The Residence shall be considered "Substantially Complete" when occupancy of the Residence is allowable under the rules, ordinances and laws of the appropriate civil jurisdiction in which the Residence is located. In the absence of such governmental regulations, Substantial Completion shall be when the Residence is ready for occupancy and only minor work remains to be completed, corrected or replaced. Subject to the exceptions referenced in Section 12, the Substantial Completion Deadline shall be as referenced in Section 24(f). Seller shall provide Buyer written notice of Substantial Completion of the Residence.

**11.1 CONSTRUCTION ACCESS.** Buyer agrees that during the period of construction Seller shall have the unrestricted right to access the Lot for the purpose of construction of the Residence and any necessary subdivision improvements. Buyer

shall have the right to reasonable inspection of the Residence. However, Seller reserves the right to limit Buyer's inspection of the Residence in order to not hinder, interfere, or delay the work. Buyer assumes all risks and liability associated with all such inspections.

**12. PLANS AND SPECIFICATIONS.** The Plans & Specifications contain descriptions of the type of materials to be used in finishing the Residence, a dollar allowance for specific items (including landscaping, if applicable), and copies of the floor plans and elevations for the Residence. Buyer's selection of color, grade and type of finishing materials (including appliances, floor coverings, fixtures, cabinets, etc.) may differ from the Plans & Specifications, and may change the Substantial Completion Deadline and the Purchase Price. No change shall be made to the Plans & Specifications except by a written Change Order signed in advance by Buyer and Seller which sets forth: (a) the change to be made; (b) any adjustment in the Purchase Price; and (c) any change in the Substantial Completion Deadline. All changes shall be paid for at the time of signing the Change Order or as mutually agreed in writing by the parties. Seller agrees to construct the Residence in substantial compliance with the Plans & Specifications. Buyer acknowledges that the Residence, upon Substantial Completion, may vary from exact dimensions shown on the Plans & Specifications. To the extent that a choice of color, grade, or type of material is required, Buyer shall notify Seller in writing of such selections no later than ~~10~~ **10 DAYS** [ ] **DAYS** after receipt of Seller's written request for such selections. If Buyer has not notified Seller in writing of such selections as set forth above, Seller shall have the right to make said selections, at Seller's sole discretion, reasonably exercised, to avoid delay in Substantial Completion of the Residence.

**12.1. CONSTRUCTION COMPLIANCE.** Construction of the Residence shall be in accordance with the standards and requirements of all applicable Federal, State, and Local governmental laws, ordinances and regulations, and in compliance with restrictive covenants applicable to the Lot. If any regulatory requirements for construction of the Residence change during the course of construction and result in an increase in the costs of labor and/or materials, the Seller reserves the right to adjust the Purchase Price for the Residence to correspond with such regulatory changes. In such event, the Seller shall provide the Buyer with a specific description of the regulatory change(s) and an itemization of the costs incurred to comply with the change(s).

**12.2. UNAVOIDABLE DELAY.** In the event the Residence is not Substantially Complete by the date provided in Section 24(f) of this Contract due to interruption of transport, availability of materials, strikes, fire, flood, weather, governmental regulations, acts of God, or similar occurrences beyond the control of the Seller, the Substantial Completion Deadline shall be extended, by written agreement, for a reasonable period based on the nature of the delay. Seller agrees to provide Buyer written notice of the nature of the delay no later than ~~15~~ **15 DAYS** [ ] **DAYS** after commencement of the delay.

**12.3 INSURANCE.** During the period of construction and until Closing, the Seller shall maintain in full force and effect, at the Seller's expense, an all-risk insurance policy for the full replacement value of all completed portions of improvements included in the Residence; and all construction materials located on-site; complete coverage workmen's compensation insurance to insure against all claims of persons employed to complete the Residence; and, unless otherwise provided herein, public liability insurance in an amount not less than ~~1~~ **\$500,000** [ ] **\$**\_\_\_\_\_.

**12.4 PROTECTION AGAINST LIENS AND CIVIL ACTION.** Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law, Buyer may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this Contract, if and only if the conditions required by law are satisfied, including the following: (a) Buyer must enter into a written contract with either an "original contractor" who is properly licensed or exempt from licensure, or with a "real estate developer," and (b) Buyer must pay Seller in full in accordance with this Contract and any written amendments to this Contract. Buyer must be the owner of an owner-occupied residence that is a detached single-family unit or duplex.

**13. AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

**14. COMPLETE CONTRACT.** This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

**15. DISPUTE RESOLUTION.** The parties agree that any dispute, arising prior to or after Closing, related to this Contract [ ] **SHALL** ~~MAY~~ (upon mutual agreement of the parties) first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party



agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

**16. DEFAULT.** If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. It is understood that denial of a loan application made by the Buyer is not a default and is governed by Section 2.4(b).

**17. ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

**18. NOTICES.** Except as provided in Section 23, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

**19. ABROGATION.** Except for the provisions of Sections 10.1, 10.2, 12, 12.1, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

**20. RISK OF LOSS.** All risk of loss to the Residence, including physical damage or destruction to the Property or its improvements due to any cause, except loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

**21. TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, receipt of the Seller Disclosures, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

**22. FAX TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

**23. ACCEPTANCE.** "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

**24. CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Contract:

|                                        |                                                                                     |        |
|----------------------------------------|-------------------------------------------------------------------------------------|--------|
| (a) Application Deadline               | <u>3/8/07</u>                                                                       | (Date) |
| (b) Pre-Qualification Deadline         | <u>3/14/07</u>                                                                      | (Date) |
| (c) Construction Loan Funding Deadline | <u>N/A</u>                                                                          | (Date) |
| (d) Seller Disclosure Deadline         | <u>3/14/07</u>                                                                      | (Date) |
| (e) Evaluations & Inspections Deadline | <u>TBD estimated mid-end</u>                                                        | (Date) |
| (f) Substantial Completion Deadline    | <u>TBD may 07</u>                                                                   | (Date) |
| (g) Settlement Deadline                | <u>7 days after the Buyer's receipt of written Notice of Substantial Completion</u> |        |

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 5 [ ] AM ☒ PM Mountain Time on March 07 (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

[Signature] 3/1/07 [Signature] 3/5/07  
(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

\_\_\_\_\_  
(Buyers' Names) (PLEASE PRINT) (Notice Address) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- [ ] ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.  
[ ] COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. \_\_\_\_\_.

\_\_\_\_\_  
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

\_\_\_\_\_  
(Sellers' Names) (PLEASE PRINT) (Notice Address) (Phone)

[ ] REJECTION: Seller Rejects the foregoing offer.

\_\_\_\_\_  
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

DOCUMENT RECEIPT

State law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures. (Fill in applicable section below.)

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

\_\_\_\_\_  
(Buyer's Signature) (Date) (Buyer's Signature) (Date)

\_\_\_\_\_  
(Seller's Signature) (Date) (Buyer's Signature) (Date)

B. I personally caused a final copy of the foregoing Contract bearing all signatures to be [ ] faxed [ ] mailed [ ] hand delivered on \_\_\_\_\_ (Date) postage prepaid, to the [ ] Seller [ ] Buyer. Sent/Delivered by (specify) \_\_\_\_\_

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 17, 1998. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.

Page 7 of 7 pages Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_ Buyer's Initials EF Date 3/5/07





Page 1 of 1

**ADDENDUM NO. 01  
TO  
REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ☒ **ADDENDUM** [ ☐ **COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of 3-5-07, including all prior addenda and counteroffers, between BOB & ELAINE FAIRLESS as Buyer, and \_\_\_\_\_ as Seller, regarding the Property located at LOT #8 Gables @ Sterling Village. The following terms are hereby incorporated as part of the REPC:

Buyer is licensed Real Estate Agent (Elaine)  
with Coldwell Banker Res Brokerage  
Buyers are pre-qualified with AXION  
FINANCIAL  
Phil Fidler

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☒ **REMAIN UNCHANGED** [ ☐ **ARE CHANGED AS FOLLOWS:** \_\_\_\_\_

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ Seller [ ☐ Buyer shall have until 5 ☒ AM ☐ PM Mountain Time on March 07 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Phil Fidler 3/5/07  
[ ☒ Buyer [ ☐ Seller Signature (Date) (Time)

Elaine Fairless 3/5/07  
[ ☒ Buyer [ ☐ Seller Signature (Date) (Time) 1 PM

**ACCEPTANCE/COUNTEROFFER/REJECTION**

CHECK ONE:

[ ☐ ] **ACCEPTANCE:** [ ☐ ] Seller [ ☐ ] Buyer hereby accepts the terms of this ADDENDUM.

[ ☐ ] **COUNTEROFFER:** [ ☐ ] Seller [ ☐ ] Buyer presents as a counteroffer the terms of attached ADDENDUM NO. \_\_\_\_.

(Signature) (Date) (Time) (Signature) (Date) (Time)

[ ☐ ] **REJECTION:** [ ☐ ] Seller [ ☐ ] Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE AUGUST 5, 2003. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.



## Additional Terms No. 1

Page 1 of 2

This is an Addendum to the REAL ESTATE PURCHASE CONTRACT (the "REPC") with an offer reference date of March, 2007, between BOB & Elaine Fairless as The Buyer (s), and Castlewood Builders as The Seller, regarding the Property located at: LOT #8 The Gables @ Sterling Village  
Home Plan: 2CAR Type 1

The following terms and requirements are hereby incorporated as part of the REPC:

1. PRE-CLOSING CONSTRUCTION WALKS. Prior to close of escrow, Buyer acknowledges that the Subdivision is a construction site with heavy machinery and equipment and construction personnel engaged in complex construction activities. Buyer agrees to the following with respect to pre-closing visits or walks of the Residence and the Subdivision prior to Closing: (1) Buyer will only enter the construction site accompanied by the Seller or Seller's sale agent or other Seller-designated representative; (2) Buyer agrees to indemnify and hold Seller, Seller's general contractor and any subcontractors harmless from any injury incurred by Buyer as the result of any and all pre-closing construction walks; and (3) Buyer agrees to refrain from giving direction or engaging in any form of dialogue with Seller's general contractor and any subcontractors.

2. TERMINATION. Seller may terminate the Contract for any cause or no cause, in its sole and absolute discretion, upon providing Buyer ten (10) days written notice and refunding Buyer's Deposit, or that portion thereof that has not been expended in Seller's performance of its obligations under this Contract. Whenever this Contract is terminated pursuant to a specific provision of the Contract: (a) Buyer shall forfeit all rights under the Contract and in the Residence; (b) Seller may immediately re-market and re-sell the Residence, without giving Buyer any further notice; and (c) all executory obligations of the parties under this Contract shall automatically terminate. A termination permitted to be made under this Contract shall be effective ten (10) days from the date that written notice of the termination is given, whether or not the recipient of the notice consents to the termination.

3. ON-SITE MARKETING BY BUYER. In the unlikely event that Buyer decides: (a) to re-market or sell the Residence, or (b) lease or rent the Residence, prior to every Lot in the Subdivision being sold and Escrow on such Lots being closed, Buyer shall not place any sales and marketing materials of any kind pertaining to said remarketing, sale, lease or rent activities anywhere on the Residence or in the Subdivision, including, but not limited to, any and all forms of signage. This condition of purchase will survive the Close of Escrow.

4. CLOSING DATE. Buyer and Seller shall close the sale of the Residence no later than the fifth (5<sup>th</sup>) calendar day after Seller notifies Buyer of Substantial Completion, or the next business day after such date if the date is not a business day. The time for Closing is strictly of the essence in this Contract. If Buyer does not Close by the Closing Date then, in Seller's sole and absolute discretion, either (a) Seller may postpone the Closing Date for one or more days by notifying Buyer of such extension, in which case Buyer shall pay Seller an amount not less than \$75.00 nor more than \$150.00, as determined by Seller, in its sole and absolute discretion, for each day or part of a day beyond the Closing Date, which amount shall be in addition to the Purchase Price and shall be non-refundable upon payment; or (b) Buyer shall be in default under this Contract, and Seller may exercise its remedies under paragraph \_\_\_\_.



5. **COST INCREASES.** Seller and Buyer understand and agree that the proposed closing will not occur for several months and that during this time substantial building material and labor cost increases may occur. In the event Seller incurs increases in the construction of this Home during the time, Seller may at Seller's sole discretion, cancel this contract by providing Buyer written notification of such cancellation or Buyer may elect to purchase with the increased incremental cost added to price of home. In the event Seller cancels this Agreement or Buyer elect not to purchase based on price increase, Seller shall return all deposit's hereunder to Buyer without interest or deduction and this Agreement shall be null and void and the parties are thereby mutually released with no resultant liability to either party.

6. **CONSTRUCTION COMPLETION.** Construction of Buyer's Residence is estimated to be substantially completed on or about the stated completion date. Substantial completion may occur before, on or after that date. Seller will not be liable for any delay in construction and Closing caused by any reason beyond its control, including, but not limited to, government order of action, theft, lack of supply of labor or material, labor trouble, acts of neglect by Buyer, the land developer or others, adverse or inclement weather, or other casualty, disaster or act of God.

Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer Signature: Ernie Faulers Date: 3/5/07

Seller Signature: \_\_\_\_\_ Date: \_\_\_\_\_





ADDENDUM NO. 02  
TO  
REAL ESTATE PURCHASE CONTRACT

Page 1 of 1



THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of March 5 2007, including all prior addenda and counteroffers, between Bob & Elaine Fairless as Buyer, and Castlewood Builders as Seller, regarding the Property located at 556 W. Birch Park Dr Lot #8 South Jordan, UT 84095. The following terms are hereby incorporated as part of the REPC:

Title + Ref. to be changed from:  
Bob & Elaine Fairless

To:  
Bob Fairless & PK  
Bobby L. Fairless

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ Seller ☐ Buyer shall have until 12:00 ☐ AM ☒ PM Mountain Time June 27 2007, to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Bobby L. Fairless 6/26/07 Elaine Fairless 6/26/07  
☒ Buyer ☐ Seller Signature Date Time ☒ Buyer ☐ Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ ACCEPTANCE: ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM.

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. \_\_\_\_.

Dan Lyddell  
(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL, EFFECTIVE JUNE 12, 1998. IT REPLACES AND SUPERSEDES ALL PREVIOUSLY APPROVED VERSIONS OF THIS FORM.





ADDENDUM NO. 02  
TO  
REAL ESTATE PURCHASE CONTRACT

Page 1 of 1



THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of March 5, 2007, including all prior addenda and counteroffers, between Bob & Elaine Fairless as Buyer, and Castlewood Builders as Seller, regarding the Property located at 556 W. Birch Park Dr Lot #8.  
The following terms are hereby incorporated as part of the REPC: South Jordan, UT 84095

Title & Rep to be changed from:  
Bob & Elaine Fairless

To:  
Bob Fairless & PS  
Bobby L. Fairless

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☒ Seller ☐ Buyer shall have until 12:00 ☐ AM ☒ PM Mountain Time June 27, 2007, to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Bobby L. Fairless 6/26/07  
☒ Buyer ☐ Seller Signature Date Time

Elaine Fairless 6/26/07  
☒ Buyer ☐ Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ ACCEPTANCE: ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM.

☐ COUNTEROFFER: ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. \_\_\_\_.

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

## **ADDENDUM 14**



IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH  
SALT LAKE DEPARTMENT

GABLES AT STERLING VILLAGE  
HOMEOWNERS ASSOCIATION, a Utah  
nonprofit corporation,

Plaintiff,

v.

CASTLEWOOD-STERLING VILLAGE I,  
LLC, a Utah limited liability company, et al.,

Defendants.

CASTLEWOOD-STERLING VILLAGE I,  
LLC, a Utah limited liability company, et al.,

Third-Party Plaintiffs,

v.

TRICOR, a Utah corporation, et al.,

Third-Party Defendants.

**RULING AND ORDER**

Case No. 100901740

Judge Elizabeth A. Hruby-Mills

DATE: October 19, 2015

Introduction

Before the Court are several motions for a directed verdict filed by Defendants Castlewood-Sterling Village I, LLC, Jeffrey Duke, Castlewood Development, LLC, Castlewood Development Inc. and Castlewood Builders, LLC (collectively "Castlewood" or "the Castlewood Defendants") dated October 15, 2015. Plaintiff filed its Opposition on October 16<sup>th</sup> and Defendants filed their Reply on October 17<sup>th</sup>. Now, having considered the briefing, counsels' arguments and relevant law, the Court hereby grants Defendants' Motion and hereby rules as follows:

09818

### Directed Verdict Standard

A trial court may grant a directed verdict “only if, examining all evidence in a light most favorable to the non-moving party, there is no competent evidence that would support a verdict in the non-moving party's favor.” *Riggs v. Asbestos Corp.*, 2013 UT App 86, ¶ 31, 304 P.3d 61 quoting *Merino v. Albertsons, Inc.*, 1999 UT 14, ¶ 3, 975 P.2d 467.

### Defendants' Motions

Castlewood asserts six theories under which a directed verdict is appropriate as a matter of law, to wit: (1) that Plaintiff has not met its burden to prove that a causal nexus exists between the alleged breach of the limited fiduciary duties and the damages stemming from the construction defects; (2) that Plaintiff has not proven that Castlewood breached its fiduciary duties to the Association; (3) that expert testimony is required to establish the standard of care but Plaintiff has failed to produce an expert or provide any such testimony to establish the standard of care; (4) that all claims for breach of fiduciary duties may only be made against the developer corporate entity Castlewood-Sterling Village I, LLC and that all other claims against all other corporate entities should be dismissed; (5) that holding Castlewood Development LLC and its successor Castlewood Development Inc. liable under Plaintiff's joint venture claim violates Utah law because the alleged torts did not occur until after the formation of the LLC; and (6) Plaintiff's claim for joint venture fails as to Castlewood Builders because this claim was not properly raised in the Complaint and Castlewood Builders has been effectively dismissed from this case.

### Standard of Care

Castlewood's standard of care argument can be broken into two separate theories: (1) that the Association has not provided the required expert testimony to establish the standard of care, and (2) that even if expert testimony were not required to prove the standard of care, no evidence has been provided to the jury to enable it to determine whether that standard was breached. The Court agrees with Castlewood that expert testimony is required to establish the standard of care owed by a developer to a homeowners association and that Plaintiff has not provided the required expert testimony in its case in chief.

In *Davencourt*, the Utah Supreme Court found that a developer owes certain limited fiduciary duties where it establishes and initially controls a homeowners association. As cited in *Davencourt*, these duties include:

- (1) to use reasonable care and prudence in managing and maintaining the common property;
- (2) to establish a sound fiscal basis for the association by imposing and collecting assessments and establishing reserves for the maintenance and replacement of common property;
- (3) to disclose the amount by which the developer is providing or subsidizing services that the association is or will be obliged to provide;
- (4) to maintain records and to account for the financial affairs of the association from its inception;



- (5) to comply with and enforce the terms of the governing documents, including design controls, land-use restrictions, and the payment of assessments;
- (6) to disclose all material facts and circumstances affecting the condition of the property that the association is responsible for maintaining; and
- (7) to disclose all material facts and circumstances affecting the financial condition of the association, including the interest of the developer and the developer's affiliates in any contract, lease, or other agreement entered into by the association.

*Davencourt at Prilgrims Landing Homeowners Ass'n v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65, ¶ 35, 221 P.3d 2334 (2009) quoting Restatement (Third) of Property: Servitudes § 6.20 (2000). As such, the Association may bring tort claims against the Developer "that stem from this independent, limited fiduciary duty." *Id.* ¶ 36. In this case, the claims were brought for both negligence and negligent misrepresentation related to the breach of the *Davencourt* fiduciary duties.

"In Utah, a negligence claim requires the plaintiff to establish four elements: that the defendant owed the plaintiff a duty; that defendant breached the duty (negligence); that the breach of the duty was the proximate cause of plaintiff's injury; and that there was in fact injury." *Steffensen v. Smith's Mgmt. Corp.*, 820 P.2d 482, 486 (Utah Ct. App. 1991) *aff'd*, 862 P.2d 1342 (Utah 1993) quoting *Reeves v. Gentile*, 813 P.2d 111, 116 (Utah 1991). While the issues of negligence and breach is normally a fact for the jury, "[a] plaintiff must submit sufficient evidence to establish a prima facie case against the defendant in order to have his cause submitted for consideration by the jury" and the failure to do so will entitle a defendant to a directed verdict. *Lindsay v. Gibbons & Reed*, 497 P.2d 28, 30 (1972).

Similarly, to prevail in an action under a theory of negligent misrepresentation, a plaintiff must either make an affirmative misstatement or assertion which is false, or omit a material fact where there exists a duty to disclose. *Smith v. Frandsen*, 2004 UT 55, ¶¶ 10-13, 94 P.3d 919; *see Sugarhouse Fin. Co. v. Anderson*, 610 P.2d 1369, 1373 (Utah 1980) ("Misrepresentation may be made either by affirmative statement or by material omission, where there exists a duty to speak."); *also DeBry v. Valley Mortgage Co.*, 835 P.2d 1000, 1008 (Utah Ct.App.1992) (denying liability for an "implied" misrepresentation where the defendant mortgage company owed no duty to disclose information to purchasers of real property).

Generally, the standard of care in a negligence action is often a question of fact for the jury. *Graves v. North Eastern Services, Inc.*, 2015 UT 28, ¶ 37, 345 P.3d 619 (reasoning that a layperson is the best judge of the standard of care because "the essential question is the care that a reasonable person would undertake in the defendant's circumstances"). The exception to this general rule is in cases involving trades or professions that require "specialized knowledge," "such as medicine, architecture and engineering." *Townhomes at Pointe Meadows Owners Ass'n v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52, ¶ 20, 329 P.3d 815 quoting *Ortiz v. Geneva Rock Prods., Inc.*, 939 P.2d 1213, 1217 n.2 (Utah Ct.App.1997). In such cases, the standard of care must be established by a witness within the specific profession and the absence of such testimony will prove fatal to the cause of action. *Id.*

In this case, Plaintiff has not set forth any evidence from other developers that manage homeowners associations similar to the case at bar, nor established what the standard of care is for a developer when managing a homeowners association. Such evidence and expert testimony is, however, required as a matter of law for Plaintiff to demonstrate the appropriate standard of care and duties owed by a developer where it establishes and initially controls a homeowners association. In so holding, the Court rejects Plaintiff's arguments that both *Davencourt* and *Pointe Meadows* only require evidence of underlying construction defects in order to prevail on its claims. In *Pointe Meadows*, the Court of Appeals agreed that summary judgment was appropriate where a homeowners association failed "to prove the existence and nature of the alleged [construction] defects in order to establish that the Developer was negligent." *Pointe Meadows*, ¶ 21. The Court explicitly did not reach the issue raised by the homeowners association of whether expert testimony "is necessary to establish the standard of care a developer must observe in discharging [its] duties." *Id.*, ¶ 19. Similarly, while *Davencourt* established the legal duties owed by a developer when managing a homeowners association, *Davencourt* did not address the issue of whether expert testimony was required to determine whether the standard of care was breached in the exercise of those duties, as that issue was not before the Court. *Davencourt*, ¶ 35.

This Court also rejects Plaintiff's argument that it is within the common knowledge of a lay juror as to the standard of care owed by a developer under *Davencourt*. While the average homeowner may have knowledge regarding issues common to home ownership or even may be a member of a homeowners association, this case presents a situation that involves determining whether a member of a professional trade (a property developer) breached specific fiduciary duties to the homeowners association. It is outside of the realm of experience of a lay person to know the professional/industry standard for other developers acting in this role and whether the developer acted reasonably in exercising these duties in light of the industry's standard of care. For example, what actions are considered "reasonable" in the industry for a developer who is required "to use reasonable care and prudence in managing and maintaining the common property" as required under *Davencourt*.

Similarly, Plaintiff does not establish the industry standard for what information would be typically disclosed at turnover. Therefore, the jury cannot determine whether the standard of care was breached by Defendants' alleged failure "to disclose all material facts and circumstances affecting the condition of the property that the association is responsible for maintaining; and to disclose all material facts and circumstances affecting the financial condition of the association, including the interest of the developer and the developer's affiliates in any contract, lease, or other agreement entered into by the association" as required under *Davencourt*.

Simply put, both of the above examples fall precisely within the realm of "specialized knowledge" which is specific to a trade or profession must be established by a witness within the specific profession and the failure to do so is fatal to Plaintiff's case. *Pointe Meadows*, ¶ 20.

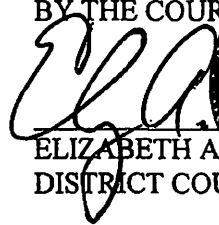
#### Conclusion


Therefore, for the reasons set forth above, the Castlewood Defendants' Motion for a



Directed Verdict is hereby GRANTED.<sup>1</sup>

SO ORDERED this 20 day of October, 2015.

BY THE COURT  
  
ELIZABETH A. HRUSCHKA  
DISTRICT COURT



---

<sup>1</sup> Because the Court is granting a directed verdict on the issue of Plaintiff's failure to present expert testimony as to the standard of care, and because the Court has determined that that failure is dispositive of Plaintiff's case, the Court does not address the other bases set forth by Defendants in support of their Motion.



09823



The Order of Court is stated below:

Dated: November 26, 2013  
10:52:38 AM

/s/ Keith Kelly,  
District Court Judge



**Prepare and Submitted by:**

Michael W. Homer (#1535)  
Jesse C. Trentadue (#4961)  
Noah M. Hoagland (#11400)

*Suitter Axland, PLLC*

8 East Broadway #200

Salt Lake City, UT 84111

Telephone (801) 532-7300

*Attorneys for SGD Equimark, LLC; SGD Investments, Inc.; Jerry Banks; and Allan Lozier*

David B. Wiles (#13611)

Dipendra Rana (#14098)

Chris T. Michali (#10496)

*Wiles Law Group, LLC*

510 SW 5th Avenue, Sixth Floor

Portland, OR 97204

Telephone (503) 226-3515

*Attorneys for Defendants and Third-Party Plaintiffs*

Robert Janicki

Strong & Hanni

9350 South 150 East, Suite 820

Sandy, UT 84070

Telephone: (801) 532-7080

*Attorneys for SGD Investments, Inc.*

Scott T. Evans (#6218)

Stephen D. Kelson (#8458)

Christensen & Jensen, P.C.

15 South Temple, Suite 800

Salt Lake City, UT 84101

Telephone: (801) 323-5000

*Attorneys for SGD Investment, Inc. and Jerry Banks*

---

**THIRD JUDICIAL DISTRICT COURT, STATE OF UTAH**

**SUMMIT COUNTY, SILVER SUMMIT DEPARTMENT**

---

FOX POINT AT REDSTONE ASSOCIATION,  
INC.,

Plaintiffs,

vs.

SGD-EQUIMARK DEVELOPMENT, L.C. *et al.*,

Defendants.

**ORDER RE: DEVELOPER  
DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
RE: PLAINTIFF'S BREACH OF  
LIMITED FIDUCIARY DUTY**

Civil No. 070500516

Judge Keith A. Kelly

SGD-EQUIMARK, L.L.C., et. al

Third-Party Plaintiffs,

v.

PENTALON CONSTRUCTION, INC., *et al.*,

Third-Party Defendants.

PMI CONSTRUCTION, L.L.C.,

Third-Party Plaintiff,

vs.

COMMERCE MECHANICAL, LLC, *et al.*,

Third-Party Defendants.

McCULLOUGH       ENGINEERING       &  
CONTRACTING, *et al.*,

Third-Party Plaintiff,

vs.

TNT ROOFING, LLC, *et al.*,

Third-Party Defendants.

BURTON LUMBER AND HARDWARE CO., a  
Utah Corporation;

Third-Party Plaintiff,



vs.

TOP-LINE BUILDERS, *et al.*,

Third-Party Defendants.

J.Z. CONSTRUCTION, INC.,

Third-Party Plaintiff,

vs.

FOUR CORNERS CONSTRUCTION, INC.,

Third-Party Defendants.

PENTALON CONSTRUCTION, INC.,

Third-Party Plaintiff,

vs.

HEATON BROTHERS ROOFING, INC., *et al.*,

Third-Party Defendants.

ALL PURPOSE, INC., a Utah corporation,

Third-Party Plaintiff,

vs.

R&R CONSTRUCTION AND EXCAVATION,  
LLC, *et al.*,

Third-Party Defendant

QUAD C, INC., *et al.*,

Third-Party Plaintiffs,

v.

LPS CONSTRUCTION, INC

Third-Party Defendants.

BLAINE DALTON CONSTRUCTION, INC., a  
Utah corporation,

Third-Party Plaintiff,

v.

AVS CONTRACTORS, INC., *et al.*,

Third-Party Defendants.

---

On October 24, 2013, the Court held a hearing on the Developer Defendants' *Motion for Partial Summary Judgment re: Plaintiff's Breach of Limited Fiduciary Duty*. Plaintiff was represented by Richard Vial of Vial Fotheringham, LLP, and Defendants were represented by Noah M. Hoagland of Sutter Axland, PLLC.

Based on the *Motion* and related filings, the argument of counsel at hearing, and for good cause, the Court hereby ORDERS, ADJUDGES, AND DECREES, as follows:

First, Defendants move for summary judgment on Plaintiff's claim that the Developers had a duty to construct the project without negligence in the first instance. This claim is based on paragraphs 48 and 49 of the *Sixth Amended Complaint*. Defendants argue that under *Davencourt at Pilgrims Landing Homeowners Association v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65, 221 P.3d 234, there is no duty to construct without negligence. Plaintiff conceded this point in its *Opposition Memorandum*, but argued at hearing that the Developer-controlled HOA had a duty to monitor construction to determine that the project was properly constructed.



The Court hereby GRANTS, Defendants' *Motion for Partial Summary Judgment* with respect to Plaintiff's claim that the Developers owed a duty to construct without negligence in the first instance. Pursuant to paragraphs 34-40 of *Davencourt*, Defendants do not owe a duty to construct without negligence in the first instance. As such, the claims asserted in paragraphs 48 and 49 of the *Sixth Amended Complaint* are hereby dismissed, with prejudice.

Second, Defendants argue that Plaintiff failed to meet its burden of proof on summary judgment on its claim that the Developers failed to establish a sound fiscal basis for the HOA. Defendants argue that Plaintiff needed to establish this claim through expert testimony since the issue of whether the Developers set sufficient HOA reserves and assessment levels is beyond the knowledge of a lay juror. Plaintiff asserts that the *Utah Condominium Act*, Utah Code section 57-8-7.5, specifically allows HOA boards to conduct reserve studies without hiring an expert, which indicates that no expert testimony is needed to prove this portion of Plaintiff's breach of limited fiduciary duty claim.

The Court DENIES this argument in Defendants' *Motion for Partial Summary Judgment* and holds that there are disputed issues of fact concerning whether the Developers established a sound fiscal basis for the HOA. Additionally, the Court is persuaded that the *Utah Condominium Act* allows an HOA to conduct its own reserve studies, which indicates that no expert testimony is needed for Plaintiff to prove this portion of its claim.

DATED this \_\_\_\_ day of \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
Honorable Judge Keith A. Kelly

**Approved as to form and content:**

A. Richard Vial  
Vial Fotheringham, LLP  
*Attorneys for Fox Point at Redstone Association, Inc.,*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the [Proposed] ORDER RE: DEVELOPER DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT RE: PLAINTIFF'S BREACH OF LIMITED FIDUCIARY DUTY to be delivered via email to the following this 31st day of November, 2013:

A. Richard Vial  
Edward W. McBride, Jr.  
Peter H. Harrison  
Tyler LaMarr  
Vial Fotheringham SG, LLP  
602 East 300 South  
Salt Lake City, Utah 84102  
[arv@vf-law.com](mailto:arv@vf-law.com)  
[ted.mcbride@vf-law.com](mailto:ted.mcbride@vf-law.com)  
[tsl@vf-law.com](mailto:tsl@vf-law.com)  
[phh@vf-law.com](mailto:phh@vf-law.com)  
*Attorneys for Fox Point At Redstone Association, Inc.,  
and Pentalon Construction*

David B. Wiles  
Wiles Law Group, LLC  
510 SW 5th Avenue, Sixth Floor  
Portland, Oregon 97204  
[dbwiles@wileslawgroup.com](mailto:dbwiles@wileslawgroup.com)  
*Attorney for EQUIMARK DEVELOPMENT LC, SGD-EQUIMARK LLC; EQUIMARK FINANCIAL CORPORATION; FOX POINT AFFORDABLE HOUSING LC; EASTMONT ENTERPRISES; EQUIMARK PROPERTIES INC; SGD-INVESTMENTS; SGD-EQUIMARK LLC; CRAIG BURTON; MARK MILLBURN; JERRY BANKS; and ALLAN LOZIER*

Heinz J. Mahler  
Andrew Hale  
Kipp & Christian, P.C.  
10 Exchange Place, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
[hjmahler@kipppandchristian.com](mailto:hjmahler@kipppandchristian.com)  
[ahale@kipppandchristian.com](mailto:ahale@kipppandchristian.com)  
*Attorney for MCCULLOUGH ENGINEERING & CONTRACTING*

Jason E. Greene  
Steven W. Dougherty  
Anderson & Karrenberg  
50 West Broadway, Suite 700  
Salt Lake City, UT 84101-2035  
[jgreene@aklawfirm.com](mailto:jgreene@aklawfirm.com)  
[sdougherty@aklawfirm.com](mailto:sdougherty@aklawfirm.com)  
*Attorney for BLAINE DALTON CONSTRUCTION INC*

Robert W. Thompson  
Christopher W. Droubay  
Snow, Christensen & Martineau  
10 Exchange Place, 11<sup>th</sup> Floor  
Salt Lake City, UT 84111  
[rthompson@scmlaw.com](mailto:rthompson@scmlaw.com)

Robert Janicki  
Strong & Hanni  
9350 South 150 East, Suite 820  
Sandy, UT 84070  
[rjanicki@strongandhanni.com](mailto:rjanicki@strongandhanni.com)  
*Attorney for SGD-Investments*



[cwd@scmlaw.com](mailto:cwd@scmlaw.com)

*Attorney for PMI CONSTRUCTION LLC*

Scott T. Evans  
Stephen D. Kelson  
Christensen & Jensen, P.C.  
15 South Temple, Suite 800  
Salt Lake City, UT 84101

[scott.evans@chrisjen.com](mailto:scott.evans@chrisjen.com)

[steve.kelson@chrisjen.com](mailto:steve.kelson@chrisjen.com)

*Attorney for SGD-Investments and Allan Lozier*

Albert W. Gray  
Jerry M. Gray  
Smith & Glauser, P.C.  
1218 East 7800 South, Suite 300  
Sandy, Utah 84094

[awg@smithglauser.com](mailto:awg@smithglauser.com)

[jmg@smithglauser.com](mailto:jmg@smithglauser.com)

*Attorney for DBA ALLAN DARGER MAS ALLAN  
DARGER CONSTRUCTION*

William H. Pruitt  
Barron & Pruitt, LLP  
3890 West Ann Road  
North Las Vegas, Nevada 89031  
[bpruitt@lvnlaw.com](mailto:bpruitt@lvnlaw.com)

*Attorney for EASTWOOD CONSTRUCTION  
COMPANY.*

James T. Dunn  
1108 West South Jordan Parkway, Suite A  
South Jordan, Utah 84095  
[jamesdunnlaw@earthlink.net](mailto:jamesdunnlaw@earthlink.net)

David G. Gill  
DAVID G. GILL CONSTRUCTION d/b/a  
RAFTER RATS, INC.  
1216 Luakalali Street  
Kapolei, Hawaii 96707-4503

T:\1000\1400\477\PROPOSED ORDER RE ALLAN LOZIER MSJ.wpd