B. TERMINATION

Either Client or Architect may terminate this Agreement on seven (7) days' written notice provided that Client will compensate Architect as provided in Article VI. In the event Client stops work prior to completion of the Agreement, Architect will bill on the basis of percentage of completion of the total Agreement, but not to exceed the agreed design fee.

Client may terminate this Agreement at any time Client determines in its sole discretion to abandon the project. Also, either party may terminate this Agreement by giving written notice to the other provided only that such notice is based upon a good faith belief that the other party has materially breached this Agreement and failed or refused to remedy that breach pursuant to the terms of this Agreement. Further, Architect may suspend its performance under this Agreement, withhold any instruments of service called for by this Agreement, and/or terminate this Agreement and its related obligations to Client with no liability for doing so at any time if Client allows an invoice to become delinquent pursuant to the compensation provisions of this Agreement.

C. MODIFICATIONS

Neither Architect, Client, nor or any third party has the authority to make any agreement, representation or warranty, or to modify this Agreement or any part thereof, unless such change or modification is in writing and signed by Client and Architect.

D. SOLE AGREEMENT

This Agreement supersedes any previous discussions and it is specifically agreed to that no representations of any character not contained herein have been made by Client and Architect.

E. INSURANCE

Architect shall at all times carry on all operations hereunder the following insurance during the term of this Agreement:

<table>
<thead>
<tr>
<th>Insurance</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workmen's Compensation Insurance</td>
<td>Statutory</td>
</tr>
<tr>
<td>Comprehensive General Liability &amp; Property Damage Insurance</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Automotive Liability &amp; Property Damage Insurance</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Certificates of such insurance shall be delivered upon request to Client before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.

Client shall cause Architect to be named as an additional insured on all policies of public liability and property damage insurance carried by Client with respect to the project. Certificates of such insurance shall be delivered upon request to Architect before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.
F. **PUBLICITY**

Publicity releases by Architect shall give proper credit for the project to Client. Client shall endeavor to identify Architect in press releases, brochures or project signs.

G. **OWNERSHIP OF DOCUMENTS**

Plans and construction documents (drawings and specifications) as instruments of service are and shall remain the property of Architect whether the project for which they are made is executed or not. They are not to be used by Client on other projects and are limited to this site only, except by agreement in writing and with appropriate compensation to Architect.

The drawings are not to be copied or reproduced either directly or indirectly.

H. **DELIVERY OF CADD FILES**

Upon request of Client, Architect will deliver to Client, subsequent to the completion of the project, a hard-disk copy of the electronic CADD file generated by Architect for the project. In accepting and utilizing this electronic media provided by Architect, Client covenants and agrees that all such drawings and data available through this electronic file have the same ownership and copyright status as all other plans and construction documents as provided for in this Agreement.

The electronic file, if requested by Client, is provided to Client for informational purposes only and is confidential in nature. Client agrees and covenants that such information provided by Architect will not be copied or altered in any way.

Failure to abide by this provision by Client, his successors, or his agents will immediately cause to occur a blanket or total indemnification of Architect and his consultants. Further, Client will pay all defense costs for negligence, error, or omission of Architect, either alleged or actual, unless a court of competent jurisdiction determines that Architect is guilty of sole negligence or willful misconduct.

It is clearly understood by Client that, while Architect may provide the electronic file after the completion of the project, the drawings and data provided within that media make up only a portion of the project's construction documents, and they do not necessarily represent as-built documents. Bulletins, change orders, responses to Requests for Information by the project's general contractor, and other clarifications provided during the construction phase of the project may not be a part of the electronic CADD file.

Upon completion of the work, Architect may compile for and deliver to Client a reproducible set of record documents conforming to the marked-up prints, drawings, and other data furnished to Architect by the contractor. This set of record documents will show the reported location of the work and significant changes made during the construction process. Because these record documents are based on unverified
information provided by other parties which will be assumed reliable, Architect cannot and does not warrant their accuracy. Architect will provide these record documents to Client on a time and materials basis.

I. PROJECT SUSPENSION

If the project is abandoned in whole or in part or suspended at any time, Architect shall be paid its compensation for services performed prior to written notice from Client of such suspension or abandonment, together with reimbursable expenses.

In the event that the project is for any reason suspended for more than sixty (60) days, then upon resumption, an additional five (5) percent to accommodate the resulting demobilization and re-mobilization costs will be added to Architect’s fee for the phase of work which was suspended. This additional percentage will be cumulative for each occurrence of suspension and subsequent resumption.

J. INDEMNIFICATION

Architect shall hold harmless and indemnify Client against or on account of any alleged infringement of patent rights or copyrights in connection with performance of this Agreement, and Architect shall, at its expense, defend any action brought against Client on account of any claim of infringement.

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Architect’s negligent acts, errors or omissions in the performance of professional services under this Agreement.

The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect and its Consultants harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Owner's negligent acts, errors or omissions and those of his or her contractors, subcontractors or agents. The Architect is not obligated to indemnify the Owner in any manner whatsoever for the Owner's own negligence.

The Owner agrees to limit the Architect's and its Consultant's liability to Owner, and to all construction contractors and subcontractors on the project, due to the Architect's or its Consultant's negligent acts, errors or omissions such that the total aggregate liability of the Architect to all those named above shall not exceed the limits of agreed insurance policy limits.

The sole and exclusive remedy shall be against the Architect (not its officers or shareholders) and its corporation assets; no officer or shareholder of Architect shall be sued or named as a party in any suit or action; no judgement shall be taken against any officer or shareholder of the Architect.

If a dispute arises out of or relates to this Contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by JAMS/Endispute under its commercial mediation rules.
It is understood by both Client and Architect that the project is to be designed as an apartment development. In the event the project is converted to a for-sale or condominium project, Client agrees to indemnify in total Architect against any alleged errors or omissions brought about by any homeowner (individually or in association), any company related in any way to Client, or any third party unless the alleged errors or omissions are determined by a court of competent jurisdiction to be the sole responsibility of Architect.

K. LIABILITY INSURANCE AND LIMITATION OF LIABILITY

Architect agrees to obtain and maintain errors and omissions insurance on a claims-made basis, naming Client as a certificate holder, upon Client’s written request in the combined amount in the aggregate per calendar year (as opposed to each occurrence) of Five Million Dollars ($5,000,000) until the date three years following the issuance of the final certificate of occupancy on the project or, in the event of termination, the date of termination, whichever occurs first. The additional premium increasing the firm’s practice limits to Five Million Dollars ($5,000,000) will be shared equally between the Architect and Owner.

The total liability of the firm for all damages (regardless of the number of clients under this provision, persons or organizations claiming injury or damage or claims for all damages) shall not exceed Five Million Dollars ($5,000,000) in the aggregate. The aggregate shall mean the total of all damages paid by Architect and/or insurance company for all claims and "allocated claims expense" made during the same year prior to the filing of the claim against Architect by Client. "Allocated claims expense" shall mean litigation expenses, excluding the cost of investigation and adjustment of claims by salaried employees of Architect and by independent adjusters, but including attorneys’ fees, arbitrators’ fees, arbitration costs, court costs, expenses incurred in obtaining expert testimony and consultant opinions and the attendance of witnesses, provided that only those items of expense which can be directly allocated to a specific claim shall be included.

Certificates of such insurance shall be delivered upon request to Client before Architect performs any work at, or prepares or delivers any materials or equipment to, the site of construction.

As long as Architect maintains the above-described insurance through an insurance carrier or through self-insuring, Client agrees to limit Architect’s liability to Client due to Architect’s negligent acts, errors or omissions, such that the total aggregate liability of Architect to all those named shall not exceed the residual insurance amount.

L. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary set forth herein, it is hereby agreed, with respect to any claims and liability of Architect, hereunder and under any specific agreement between Owner and Architect that:

1. The sole and exclusive remedy shall be against Architect (not its officers or shareholders) and its corporate assets;
2. No officer or shareholder of Architect shall be sued or named as a party in any suit or action;
3. No judgment shall be taken against any officer or shareholder of Architect;
4. No writ of execution will ever be levied against the assets of any officer or shareholder of Architect;

5. The covenants and agreements contained in this Section are enforceable by Architect and also by any of Architect's officers or shareholders. The provisions of this paragraph shall not apply if Architect, or an officer, or a shareholder, shall engage in action to deprive Architect of assets by unlawful means, such as a fraudulent conveyance.

M. ATTORNEY'S FEES

In the event suit shall be brought to enforce any of the terms and conditions of this Agreement, the prevailing party in such litigation shall be entitled to and shall have judgment against the other party for reasonable attorney's fees, costs and expenses.

N. ASBESTOS/HAZARDOUS WASTE

Nothing in this Agreement shall impose liability on Architect/engineer for claims, lawsuits, expenses or damages arising from, or in any manner related to, the exposure to, or the handling, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the Environmental Protection Agency.

O. ENTIRE AGREEMENT

This instrument contains the entire Agreement between Client and Architect with respect to this project, and any agreement or representation respecting said project or the duties of either Client or Architect in relation thereto not expressly set forth in this instrument is null and void. If any term or provision of this Agreement or application thereof is held invalid or unenforceable as to any party, the balance of the Agreement shall not be affected thereby, and each remaining term and condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Client and Architect agree that all disputes arising out of or in any way connected to this Agreement, its validity, interpretation and performance and remedies for breach of this Agreement, or any other claims related to this Agreement shall be governed by the laws of the United States of America.

It is further agreed that any suit, claim, or legal proceeding of any kind between Client and Architect shall be brought in a court of competent jurisdiction in Southern California, U.S.A. [Signature]
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first above written.

Approved and Accepted:

MCLARAND, VASQUEZ & PARTNERS, INC.

[Signature]

Anestor M. Vasquez, AIA
Managing Principal

Approved and Accepted:

CILKER ORCHARDS

[Signature]

William H. Cilker
By: William H. Cilker
Title: Owner
Date: 8-12-98
CONTRACT ADDENDUM NO. 1

Between: McLarand Vasquez Emsiek & Partners, Inc.
1900 Main Street, 8th Floor
Irvine, California 92614
(hereinafter referred to as "Architect")

and:
Cilker Orchards
1631 Willow Street, Suite 225
San Jose, CA 95125
Attention: Bill Cilker
(hereinafter referred to as "Client")

Contract Dated: January 27, 1998
Revised August 26, 1998

Addendum Dated: January 16, 2002

Project: One Pearl Place
Revised Garage and Unit Plans for Building B

Job No.: 97-229.85

This contract addendum amends and modifies the above-referenced consultant contract as delineated below. All other terms of the original contract shall remain the same except as indicated.

It is expressly understood that the requirements of Section 5536.22 of the Business and Professions Code of the State of California requiring mutual written agreement by parties prior to proceeding with the work are met by this contract addendum. It is further understood that this authorization to proceed is limited to the terms and conditions set forth herein.

1. At the request and direction of Client, Architect and Architect’s Consultants will revise garage and unit plans for Building B to accommodate the emergency power generator room, provide shaft for the exhaust to the roof, and coordinate with consultant team as required.

2. Architect shall be compensated for these additional services in accordance with the original contract referenced above with an hourly allotment of Three Thousand Two Hundred Fifty Dollars

EXHIBIT 222
REPORTER Keyword
DEPONENT G. McLarand
DATE 9-24-15
($3,250). This is not to be construed as a guaranteed maximum; but in no case, shall said allotment be exceeded without prior authorization of Client.

3. Reimbursable expenses and additional services of consultants will be invoiced per the original contract referenced above and are not covered by the above-stated allotment.

If the foregoing meets with your approval, please sign and return an original of this addendum.

Approved and Accepted:

McLarand Vasquez Emsiek & Partners, Inc.

[Signature]

Ernesto M. Vasquez, AIA
Managing Principal

Approved and Accepted:

Cilker Orchards

See Signed Authorization To Proceed, Attached
By: W.H. Cilker
Title: [Blank]
Date: January 15, 2002
MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is entered into by and among, on the one hand, Madera Construction, Inc., a California corporation ("Madera Construction") and Madera Framing, Inc., a California corporation ("Madera Framing"), collectively referred to herein as "Madera," and on the other hand, Western National Construction, a California corporation ("WNC"), Insurance Company of the West, an entity authorized to transact business as a surety in California ("ICOW"), Western Surety Corporation, an entity authorized to transact business as a surety in California ("Western Surety"), and Cilker Apartments, LLC, a California limited liability corporation ("Cilker") (all of the parties set forth above are sometimes hereinafter collectively referred to as the "Settling Parties"), based upon the following understandings:

A. Madera, as a subcontractor, supplied and furnished certain labor, equipment, materials, and services to, and performed certain rough framing and carpentry work for WNC, as general contractor, pursuant to a written subcontract between Madera and WNC for the performance of the work of improvement known as the One Pearl Place, located at 5210 Terner Way, San Jose, California (hereinafter referred to as the "Project"). Specifically, Madera subcontracted with WNC to perform rough framing and carpentry re-work and/or work arising from and necessitated by the alleged abandonment of the Project by WNC's previous framing subcontractor, Multi-Building Structures, Inc. ICOW issued a mechanics' lien release bond on behalf of Cilker and City National Bank ("City National"), the owners of the Project. Western Surety issued WNC's contractor's license bond.

B. During the course of the Project, Madera recorded a mechanics' lien against the Project with the Santa Clara County Clerk-Recorder as document number 17459021 in the amount of $286,675.00 for outstanding sums claimed due and owing to Madera upon the Project.

C. Disputes arose between the parties arising out of Madera's work on the Project, including but not limited to, Madera's claims for extra work and related costs and subcontract balance and WNC's claims that Madera performed Project work in an untimely, deficient and defective manner. With respect to those disputes, Madera filed a complaint against WNC, Cilker, City National, and Western Surety on December 1, 2003, Case No. CV010004 in Santa Clara County Superior Court, which alleged causes of action for Breach of Contract, To Foreclose on Mechanics' Lien, on Common Counts, for Statutory Penalties, and on Contractor's License Bond. Madera filed a first amended complaint on January 14, 2004 which substituted ICOW for the Project owners, and which amended the cause of action to foreclose on mechanics' lien to an action to foreclose on mechanics' lien release bond. On or about February 24, 2004 WNC, Western and ICOW filed answers asserting general denials, affirmative defenses and offsets to Madera's first amended complaint. The first amended complaint and all responsive pleadings, including all answers and cross-complaints, shall be referred to herein as the "Action."
D. All of the Settling Parties to this Agreement deny any liability in connection with the various claims alleged in the Action and wish to reach full and final settlement of the respective disputes between them and to avoid further litigation.

In consideration of the mutual covenants set forth below, the Settling Parties agree and stipulate as follows:

1. In consideration for all Settling Parties' signatures on this Agreement and the dismissal of the entire Action with prejudice, Cilker has agreed to pay to Madera the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) as follows:

(a) Cilker, through its counsel, David W. Mitchell at Hoge, Fenton, Jones & Appel, Inc., shall deliver a check, payable to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera's counsel, in the sum of Two Hundred and Fifteen Thousand Dollars and No Cents ($215,000.00) within five (5) business days after receipt by counsel for WNC, Michael T. Taurek of Green & Hall, and counsel for Cilker of an executed copy of this Agreement by Madera (the "settlement check"). The settlement check shall be deposited into the trust account of Murphy Austin Adams Schoenfeld LLP, but said funds shall be held in trust and not distributed to Madera until Madera delivers to counsel for Cilker and WNC the documents described below in paragraph 1(b). Upon delivery of said documents described below in paragraph 1(b) to counsel for Cilker and counsel for WNC, Madera's counsel shall remit to Madera the sums from the settlement check held in its trust account.

(b) Within three (3) business days after receipt of the settlement check and a fully executed Agreement, counsel for Madera shall deliver to counsel for Cilker a fully executed and notarized release of Madera's mechanic's lien, recorded with the Santa Clara County Clerk-Recorder as the document number 17459021 in the amount of $286,675.00, in a form suitable for recording, and counsel for Madera shall also deliver to counsel for WNC (i) a Request for Dismissal, with prejudice, of the Action; and (ii) a conditional waiver and release upon final payment, using the form published as Civil Code Section 3262(d)(3), with the phrase "zero" typed in the lower blank on the form as to reserved/unresolved claims. Counsel for Cilker and counsel for WNC agree to hold in trust and not negotiate, record or file the lien releases or Request for Dismissal until counsel for Madera provides written confirmation via facsimile (to counsel for Cilker and counsel for WNC) that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP.

(c) Upon receipt of written confirmation via facsimile that the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld
LLP, counsel for Cilker may record the lien release and counsel for WNC may file the Request for Dismissal, with prejudice, of the entire Action. WNC, ICOW, Cilker, City National, and/or Western Surety shall also sign the Request for Dismissal with prejudice if necessary to dismiss the Action in its entirety with prejudice.

(d) Within three (3) business days after the settlement check has posted to the trust account of Murphy Austin Adams Schoenfeld LLP, Madera shall also provide counsel for WNC an unconditional waiver and release upon final payment, using the form published as Civil Code section 3262(d)(4), with the phrase “zero” typed in the lower blank on the form as to reserved/unresolved claims and extra work.

2. The Settling Parties on behalf of themselves, their heirs, executors, administrators and assigns, hereby release and forever discharge each other, and their respective predecessors, heirs, executors, partnerships, administrators, successors and assigns, and each of their respective past, present and future employees, attorneys, insurers, sureties, agents, representatives, partners, officers, directors and stockholders, from any and all claims, demands, arbitrations, actions, or causes of action, that arise out of or relate to the claims alleged in the Action, or which could have been alleged in the Action, whether known or unknown, and agree that no further litigation will occur with respect to these disputes except as may be provided in paragraph 3 herein. Also, this release does not apply to any claims Cilker and WNC have against each other regarding which party is ultimately responsible for this settlement payment.

3. Notwithstanding the mutual release set forth above, the Settling Parties agree to expressly except from this Agreement, and shall continue to retain any and all claims, rights and defenses concerning, responsibility for future claims by third parties for personal injury, construction defects and/or resultant property damage occurring at the Project or arising out of the work related to the Project, but only to the extent such claims arise out of conditions that were unknown to WNC or Cilker and not apparent by reasonable inspection as of the date this Agreement became fully executed. Each of the settling parties represent that they are currently unaware of any such claim(s) or contention(s).

4. The releases described above are full and final releases applying to all losses, except as stated in paragraphs 2 and 3 above, including but not limited to damages, costs, expenses, and attorneys’ fees, incurred by said parties, arising out of or in any way connected with the above-described matters. It is the intention of the releasing parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, and cause of action, by said parties based upon the above-described matters, except as provided in paragraphs 2 and 3 above, and said Settling Parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of section 1542 of the California Civil Code which states at follows:
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with the debtor.

The Parties to this Agreement expressly consent that, notwithstanding section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those related to unknown and unsuspected claims, demands, and causes of action, except as provided in paragraphs 2 and 3 above. The Settling Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into.

5. The Parties to this Agreement have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this Agreement and understand and acknowledge the significance and consequences of it. The signor of this Agreement hereby represents and covenants that he or she is authorized to execute this agreement on behalf of the party for which he or she is signing.

6. This Agreement is binding upon all of the Settling Parties, as well as their past and present subsidiaries, parents, divisions, affiliates, partners, successors, assigns, officers, directors, agents, servants, employees, attorneys, representatives, and beneficiaries.

7. Each of the undersigned warrants that he or she is of legal age, legally competent to execute this Agreement, and has authority of the party for whom the undersigned is executing this Agreement.

8. Each party to this Agreement is to bear its own costs and attorneys' fees.

9. This Agreement contains the entire agreement between the Parties hereto. The terms of this Agreement are contractual in nature and not a mere recital. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of damages or legal liability therefor, and the signor of this Agreement has carefully read and understood the contents of this Agreement and signs the same as his or her own free act.

10. Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law.

11. If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect.

12. This Agreement may be executed in one or more counter parts and, when said counter parts are taken together, shall constitute one original Agreement.
13. Each Party hereto has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party.

14. All Parties hereto agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of the Agreement. Time is of the essence in this Agreement, and all transactions contemplated hereby.

DATED: July 7, 2004

MADERA CONSTRUCTION, INC., a California corporation

BY

Its Secretary

DATED: July 7, 2004

MADERA FRAMING, INC., a California corporation

BY

Its U. P.

[SIGNATURES MAY BE IN COUNTERPART.
SIGNATURES CONTINUED ON NEXT PAGE.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY

Its Chief Financial Officer

DATED: July ___, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY____________________

Its____________________

DATED: July ___, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY____________________

Its____________________

DATED: July ___, 2004

WESTERN NATIONAL SURETY,
a California surety

BY____________________

Its____________________

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July __, 2004

WESTERN NATIONAL CORPORATION,
a California corporation

BY _______________________________________

Its______________________________________

DATED: July __, 2004

CILKER APARTMENTS, LLC,
a California limited liability
corporation

BY _______________________________________

[Signature]

DATED: July ____, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY _______________________________________

Its______________________________________

DATED: July ____, 2004

WESTERN SURETY CORPORATION,
a California surety

BY _______________________________________

Its______________________________________

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July 7, 2004

WESTERN NATIONAL CONSTRUCTION
a California corporation

BY
Its Chief Financial Officer

DATED: July ___, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY
Its

DATED: July 12th, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY
Its Surety Claim Representative

DATED: July ___, 2004

WESTERN NATIONAL SURETY,
a California surety

BY
Its

[SIGNATURES MAY BE IN COUNTERPART.]
DATED: July 12, 2004

WESTERN NATIONAL CORPORATION,
a California corporation

BY

Its

DATED: July 12, 2004

CILKER APARTMENTS, LLC,
a California limited liability corporation

BY

Its

DATED: July 12, 2004

INSURANCE COMPANY OF THE WEST,
a California surety

BY

Its

DATED: July 12, 2004

WESTERN SURETY CORPORATION,
a California surety incorrectly named as WESTERN SURETY CORPORATION

BY

Robert L. Morgan

[signature]

[Signatures may be in counterpart.]
ITEM 53
Memorandum of Understanding

Between

John Atherton, Scott Buerger and Bill Cilker

January 3rd, 2002

Scott Buerger has had conversations with Mark Stevens of Multi Building Structures (MBS) and has established a level of trust and confidence with Mark and his company. It is Mark's desire to complete the work and, in so doing, raise the quality of construction to the standards demanded by WNC and the Owners. The additional costs, if any, will be modest.

It is understood that should the work be completed by a framor other than MBS, the resulting costs should be expected to be considerably greater.

John Atherton is agreeable to having Scott and Bill Cilker meet with Mark and Kent Donglar to discuss how to establish a close working relationship and the required level of trust to complete the job. This includes correcting the items to be itemized by Jitu Mehta and Scott in a timely manner so that the apartments can be under cover by, approximately, March 18th, 2002.

John agrees to be the WNC point person and will accord One Pearl Place high priority on any items necessary to meet the above date.

John and Bill understand that the framing cost may increase moderately due to the many delays to date. This increase will be shared by WNC and the Owners on a basis to be mutually agreed upon.

If Scott, John and Bill decide to continue MBS's contract, MBS will be paid under the requirements of WNC's standard payment process but at two week intervals.

John C. Atherton
Scott Buerger
Bill Cilker, Sr.
Cilker Orchards Memorandum

Date: March 15, 2002
To: John Atherton, Jim Nichols, Beth, and Carl
From: WHC
Re: Analysis of additional payment to WNC for cost overruns such as trailer rent, utilities, security, MDE, etc.

Reasons not to pay additional:

1. Charlie was a poor superintendent. I warn them that he was an alcoholic and had poor performance but it took them 9 months to fire him. He made many mistakes which delayed us many months. He frequently left the job mid-day and subs could not get answers. WNC did not follow our agreement procedure allowing Owner to interview the project manager before a superintendent is hired.

2. The second project superintendent shared his time between One Pearl Place and Utah. He never really gets his arms around the problems.

3. The third project superintendent was an expeditor not a problem solver. He made many mistakes such as blowing insulation foam on the steel beams ahead of schedule and now must be stripped. He accepted a poor framing job which cost time to correct. Tom only worked 3 ½ days a week at the site.

4. Our project manager was a procrastinator and a poor communicator with the superintendents and Owners.

5. WNC has had a high turnover of office staff. Members did not communicate with or transfer records to others when they departed. The Owners had to answer and reanswer the same questions.

6. WNC did not perform adequate value engineering. Costly architecture designs were not picked up during the detailing phase such as the small pie shape spaces in Bldg. A.

7. Communication between Irvine and on-site management and Owner frequently required weeks to receive simple answers.

8. Charlie Martin miscalculated the number of workers and parking spaces required. We spent approximately $28,000 for spaces at Oakridge which were never used.
9. WNC allowed the rough framer to pre-order lumber too early. The $1.3 million cost harmed the Owners by deterioration of wood and added interest cost.

10. WNC inadequate supervision of the framer resulted in poor workmanship, delayed payment, and MBS moving off the job. Owners cost was $50,000 to bring them back.

11. WNC poor supervision of Pyramid’s concrete work resulted in costly errors in the placement of hold-down bolts, position of moment frames, and location of hold-down rods.

12. WNC poor coordination between Jitu and the rebar placement caused weeks of delay.

13. WNC delay of construction necessitated payment of storage for furniture, and about $8,000 for premature advertising.

14. Delays in construction and turnover of superintendents resulted in additional time and fees for the architects and Jitu.

15. WNC did not verify the building B wall location next to Pearl Ave. after considerable rebar was in place. The Owner had to bring in a second engineering firm to correct the problem.

16. Delays in removing old pipe and debris along the fences showed the pace of construction.

17. WNC did not keep the job clean or safe until the Owner brought in Chuck Olivia.

18. WNC allowed overpayment of the framer relative to the job completion until the bank inspector caught it.

19. WNC did not protect wood and doors caused deterioration.

20. Delay in applying stain to the trellis caused excessive wood shrinkage and repair oil.

21. The lease month changed during the year delay in completion. Vacancies are high and rents lower. This will have a significant impact on our cash flow.

22. Other added expenses due to the delay:
   a. Added fire insurance premium
   b. Additional interest and inspection fees
   c. Additional cost for security
   d. Additional cost for the Cilker Orchards administration

**Delays beyond WNC control:**

1. Unusual long time to gain approval of drawings.

2. The project went to bid during a very busy construction time.

**Changes to date in the budget:**

1. WNC and Owner agreed that the approximately $140,000 of WNC construction fees will be added to the 4,000 general condition items which have been capped.
2. WNC was skillful in obtaining a lower-than-expected price for the stucco from Fitch of $149,000. This amount was reduced from the guaranteed maximum price.

3. The budget has been increased by $169,000 to cover increased cost.

4. The contingency fee should not be used for added costs due to WNC poor performance.
ITEM 55
June 16, 2003

John Atherton
Western National Construction
8 Executive Circle
Irvine, CA
92614-6746

Dear John:

Don White and I have discussed at numerous times the performance of your superintendent, Gary Eckley. We believe that he has been responsible for mismanagement on many instances. For example, WNC and MVP approved the moment frames at the entry to the car court as twenty feet. This overlooked the fact that they are mounted at a height of six inches. As a result, the ceilings of the apartments above are six inches lower than our normal nine-foot height. Furthermore, the corrections to be made to the trusses were not incorporated on schedule and this has resulted in expensive corrections after they were installed. There are many others.

In our construction agreement, Page 13, Paragraph II.3, "Contractor's Personnel", the last sentence states "Any employee of Contractor or any Subcontractor working on the Project who, in the opinion of the Owner, does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or Intemperate manner shall, at the written request of Owner, be removed from the Project immediately." We, hereby ask you to remove Gary Eckley from the project no later than June 20, 2003. If you have any questions, do not hesitate to get in touch with me.

Yours truly,

[Signature]

William H. Cilker, Sr.

cc: Mike McSweeney, HFJA
ITEM 56
December 19, 2002

John Atherton  
Western National Construction  
8 Executive Circle  
Irvine, CA  92614

Dear John,

Thank you for mailing Carl the letter prepared by Scott Buerger. As usual, Scott’s letter does not address my question how the cost increased by over $351,000.00 without notice be given to Cilker Orchards. The bulk of this letter incorrectly characterizes the August 15th event and incorrectly characterizes the understanding of the Madera contract. As you observe on my 30A application, I am willing to make payment per Madera’s latest request as we need to move ahead and finish the job. I look forward to solving many issues in our meeting tomorrow.

Regards,

Bill

Bill Cilker

cc: Mike  
Carl

EXHIBIT  
11-4-15
ITEM 57
MEMO

Date: March 28, 2001
To: Charlie Martin, Gary Penman, Jim Egner, Beth, and Carl
From: Bill Cilker
Re: Telephone to Gary Penman

- Ernie was no show for 4:00 p.m. meeting at OPP. What happened? He will advise. Jim Chadwick, Charlie, Beth, and I were there until 6:00 p.m.

- Car gate: meeting with Ron Eddow
  - He thought it was a pedestrian gate. He and Planning Dept. are against car gates as per their handbook on apartments, copy attached.
  - If we want to pursue this, we need pictures and valid reasons why gates at the garage and pedestrians entries are not adequate.

- Secondary sandcrete pour on podium as designed by Gary is okay with San Jose Bldg. Dept. except stucco must be 1" minimum above the pavers, not ¾" as shown.

- Mock-up
  - Why stucco window trim? This has been studied detail for many years as wood sprints and water enters.
  - We think stucco can be made smoother. We have requested smoother stucco for Monto, but we are not satisfied. He will check.
  - Bottom horizontal window trim A.6 - 3.2 #2 is 8" high and below the small windows. In opinion of Beth, Jim Chadwick, and myself this is too high for the small windows. Gary
will recommend a new bottom trim piece for the small windows.

- The decorative foam eave (detail) piece on A.6 - 3.3 nos.1 $6.00 is not per the details. Locking is the approximate 1" horizontal recess between the 7/8" vertical exterior cement plaster fascia and the foam eave. Charlie will have this corrected.
ITEM 58
MEMO

Date:        April 4, 2001
To:          Charlie, Jim Egner, Beth, Bill Jr., and Carl
From:        WHC
Re:          Agenda and notes for OPP Meeting with Ernie, Gary, Jim C., Jan, Beth, and WHC

1. Our agreement for construction liaison, etc. of $60,000.00 so far spent about $31,500.00. We want this to stay on budget but we need more time. Ernie showed me their total costs to date of about $730,000.00. I agreed to pay $7,500.00 on redesign of rec. bldg.

2. Security Gate is not discussed because it is no longer priority.

3. Rec. landscape plans:
   - Ernie favors the traditional design like C&T.

4. Fountains and noise:
   - Ernie strongly favors falling water sound to mask freeway noise.
   - Fountains also in 3 corridors in the gardens.

5. Electrical:
   - 3-way switches are desirable.
   - Recessed vs floating cloud (flush) fixtures - Quality apartments and condos use recessed.
   - Light over kitchen sink - YES.

6. Appliances:
   - High energy efficiency washer and dryer are very desirable, use maximum number we can afford.
   - Side by sides are preferred over stacked unless storage space is a premium.

7. Kitchen cabinets:
   - Wood veneer - People will not pay more for veneer.

8. Other upgrades for highly competitive market - Look at condos units.
9. Consider Italian Cypress, Lombardi Popular trees next to freeway - See 1st St. North of Monique Road.

10. Chase for future solar panels - not discussed.

11. Stucco finish:
   * Ernie thinks the building portion is okay. Use very smooth stucco around the windows and doors.

12. Eve design:
   * Shingles extend out further? Ernie is positive it will look okay as it is.

13. Height of panel below small windows should be reduced to about 1/4.

14. Color of eve fascia is okay.

15. Change order process (FRI) - Not discussed.

16. Smoke detectors and carbon Monoxide alarms - Not discussed.

17. Slope in sand for pavers - Not discussed.

18. Sound system for rec. bldg. - Not discussed.

19. Ernie prefers a rectangular shape pool.

20. Ernie would not have a BBQ or picnic areas. Discuss with WNM.

21. Other uses for extra storage space:
   * Hobby area - OK.
   * Movie area - OK. Lee doubts it as DVDs and videos are very common.
   * Bicycle storage - OK.

22. MVP rework our landscape plans? Their insurance would not allow it liability.

23. Color of roofing tile:
   * Beth et al. picked out 2 colors.
   * Charlie put the others away.

24. Suggestions on garage - Not discussed.

25. Shower door - Not discussed.
January 31, 2002

Mr. Gary Penman
McLarand, Vasquez, Emsiak & Partners
1900 Main St., 8th Floor
Irvine, CA 92614

Re: Your fax of January 28, 2002

Dear Gary,

With considerable reluctance, I accept your estimate of 40 hours for MVE&P to make the corrections to your architectural plans. My reluctance is really two-fold:

1. Our architectural expenses on this job have been horrendous.
2. I get feedback from Bill Moffett and many others on the quality of the drawings. The consensus seems to be that they are only average or fair. On framing particularly there are many questions.

For the amount that we have paid your firm I certainly expected better drawings. Some of these corrections may well be due the fact that the drawings are only fair. I know no one likes to hear their work criticized but because I have heard this from many people I think this should be passed on to MVE&P. Are some of these caused by upgrade on moment frames to the 1997 code?

We had a good meeting yesterday with Jitu, Mike, Gary, and Joe. Jitu will be coming up again Wednesday, February 5 and then every week or two as the work requires. Since many of the questions pertain to engineering, we will not schedule you for this meeting. We will let you know in advance when your presence is required.

I talked to Jim Nichols at City National Bank and they do not require “as built drawings”, only an “as built survey”. Do not make any drawing changes for the bank, just for construction.

Yours truly,

[Signature]
William H. Cilker

cc: Ernie Vasquez
    John Atherton
ITEM 60
TO: Gary Penman, Jitu Mehta

COMPANY: MVP, Group M Engineer

FAX NO: (949) 808-3360, (818) 313-9661

COPIES: John Atherton, WNC, Scott Buerger, WNC, and Gary Eckley, WNC

DATE: June 11, 2003

FROM: Bill Cilker

I understand from Gary Eckley that good progress was made in resolving the type location and number of hold downs throughout our project. WNC and I have suffered serious financial cost during the past six months because this issue has not been settled. I sincerely ask you to complete this information on the special drawings Gary provided for this purpose and that you jointly signed off this week on all matter pertaining to the hold downs.

Bill Cilker
ITEM 61
June 25, 2002

Ernie Vasquez
McLarand, Vasquez & Associates
1900 Main St., 8th Floor
Irvine, CA 92614

Dear Ernie,

Our meeting on Wednesday, June 19 was a step in resolving some of the many problems that exist between your firm and the construction of One Pearl Place. It is imperative that the remaining many issues be resolved as soon as possible. The passed delays have been extremely costly to both Western National Construction and Cilker Orchards.

I would like to affirm in writing what John and I believe you offered to do during this meeting. McLarand Vasquez and Associated will provide at no charge to Cilker Orchards or Western National Construction one week (about 40 hours) of time by both MVP and Jitu. Most of this work will be carried out during the coming week.

Please coordinate the schedule with Scott Buerger so that work will be done expeditiously and construction can proceed at a faster pace.

Sincerely,

William H. Cilker

Cc: John Atherton, WNC
Scott Buerger, WNC
ITEM 62
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and among Cliko Apartments, LLC, William H. Cliko, Sr., Carl A. Cliko, and Elizabeth Cliko Smith, (collectively referred to hereinafter as "Cliko" or "the Clikos"), and Michael K. Hayes ("Hayes"), the Non-Exempt QTIP Marital Trust of the Glass Family Trust Dated February 18, 1982 (the "Glass Trust"), and Western National Construction, a California corporation ("WNC"). Hereinafter Hayes, the Glass Trust and WNC shall be collectively referred to as the "Defendants."

RECITALS

A. The Clikos. The Clikos are the owners of the Premises, as defined below.

B. The Defendants. The Defendants are individuals and entities who were consulted by and/or contracted with the Clikos in connection with the construction of the Premises.

C. Related Parties. As used in this Agreement, the term "Related Parties" shall mean any heir, executor, administrator, successor, successor-in-interest, affiliate, assignor, assignee, related company, vendor, lessee, subsidiary, agent, employee, former employee, officer, former officer, director, member, shareholder, trustee, beneficiary, owner or alter ego of the party referred to. Specifically included within this definition of Related Parties are all of those entities which comprise the Western National Group and are in any way related to Western National Properties.

D. The Premises. As used in this Agreement, the Premises shall mean the real property, structures and improvements commonly known as the One Pearl Place Apartments in San Jose, California, consisting of an apartment complex with recreation building, patio, pool, landscaping and parking structure. More particularly, the Premises consist of Parcel 2 as described in that certain map, filed for record in Book 672 at Page 15, Santa Clara County Records - APN 458-11-016.

E. The Dispute. As used in this Agreement, the Dispute means claims for damages made by the Clikos against the Defendants for losses sustained during and as a result of the consultation concerning and construction of the Premises, including claims arising out of alleged personal guarantees (the "Guarantees") by Hayes and Mr. Glass, and alter ego claims allegedly arising out of the relationships of the Defendants with one another.

More particularly, the Clikos contend that WNC agreed in writing on July 11, 2000 to construct the One Pearl Place Apartments for a guaranteed maximum price (the "Contract"). The Clikos also allege that certain material inducements and promises were made by Hayes and Mr. Glass, including an alleged promise to personally guarantee any cost overruns on the project. WNC contends that the contract was cost-plus, not guaranteed maximum, and both Hayes and the Glass Trust (on behalf of Mr. Glass) dispute that they made any personal promises or inducements to the Clikos. Before, during, and now after completion of the Premises, the Clikos have made claims against the Defendants for losses attributable to poor design, delay in...
construction, defective work, and cost overruns in an amount exceeding fourteen million dollars ($14,000,000). The Defendants dispute that they are responsible for any such claims.

F. Settlement of Dispute. The parties hereby desire to settle the Dispute and therefore have agreed as set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, covenants, conditions and payments as set forth herein, the parties agree to all the terms of this Settlement Agreement and Release.

1. SETTLEMENT AND RELEASE

In consideration of the payment by the Glass Trust of One Million Dollars ($1,000,000) to the Clinkers, payable as set forth in paragraph 2 below:

A. Except as set forth in subparagraph 1.B, below, each party for themselves and all Related Parties does hereby forever release, waive and discharge each other party and their respective Related Parties, from any and all claims, demands, obligations, actions, causes of action, damages, losses, costs or expenses, of any nature whatsoever, known or unknown, past or present, asserted or unasserted, suspected or unsuspected, existing or claimed to exist, which they, their Related Parties, or any of them have had, now have, or may hereafter have against each other, which arise out of or are in any way connected with: (1) any act, cause, matter or thing claimed in the Dispute; (2) the Contract; (3) the Guarantees, or which may be based upon, related to, or connected with any of the matters related to the Dispute, Contract or Guarantees. This includes, but is not limited to, any claim which could ever be asserted by the Clinkers against any Defendant herein with the exception of claims against the insurance policies of WNC alone, as more particularly set forth in subparagraph 1.B.

B. Excepted from this Settlement and Release are any and all claims that exist or may arise out of defects in the design or construction of the Premises against WNC only ("Excepted Claims"), which claims shall not be and are hereby not released or waived. Such Excepted Claims are expressly released and waived against all Defendants and their respective Related Parties other than WNC. However, any damages based on such Excepted Claims shall be strictly limited to insurance proceeds paid under any insurance policies issued to WNC and/or its subcontractors (collectively "WNC Policies"). Any amount of damages in excess of or excepted from coverage under the WNC Policies is hereby released and waived. The Clinkers hereby expressly agree to and warrant that they will never attempt to pursue any of the Defendants or their Related Entities (other than WNC alone) for any such Excepted Claims, and with respect to WNC, hereby expressly warrant and agree that they will never pursue any claim against WNC directly which is not covered by WNC Policies. This includes any express warranty and agreement that if the Clinkers pursue any such matter to judgment, they will never attempt to levy upon any assets of WNC.

2. PAYMENT FORM

Payment to the Clinkers shall be made by cashiers' check payable to "Clinker Apartments, LLC," which check shall be delivered to Hoge, Fenton, Jones & Appel, Inc. ("Hoge,
3. **ACKNOWLEDGMENT OF COMPROMISE**

All parties acknowledge and agree to this Agreement as a complete compromise of matters involving disputed issues of law and fact and fully assume the risk that the facts or laws may be other than they believe.

4. **DENIAL OF LIABILITY**

Each party denies liability in connection with and as a result of the Dispute. Each party, however, desires to resolve the claims between and among them arising out of the Dispute without the necessity of litigation between and among them. This Agreement is a compromise of disputed claims and does not and shall not constitute an admission of liability or wrongdoing.

5. **WAIVER OF FUTURE CLAIMS**

Subject to the limitations set forth in subparagraph 1.B. above, the release set forth herein is a full, final and general release of any and all claims, demands, obligations, actions and causes of action relating to, or arising out of, or in any way connected with the Contract, the Personal Guarantees, and the Premises, including but not limited to the facts and events giving rise to the Dispute, whether or not now known or suspected to exist, or whether or not specifically or partially described herein. Each party expressly waives, for themselves and their Related Parties, any right or claim of any right to assert hereafter that any claim, demand, obligation or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Release. Subject to the limitations set forth in subparagraph 1.B. above, each party expressly waives any right or claim of right they may have under the provisions of California Civil Code Section 1542, which they understand provides as follows:

- A general release does not extend to the claims which the creditor does not know or expect to exist in his or her favor at the time of executing the release, which is known to him or her must have materially affected his or her settlement with the debtor.

It is acknowledged and understood by the parties that the foregoing waiver of the provisions of section 1542 of the California Civil Code was separately bargained for. They agree that this release shall have full force and effect in accordance with each and all of the expressed terms and provisions including those terms and provisions relating to unknown and unsuspected claims to the same extent as those terms and provisions relating to other claims herein specified.

6. **RELIANCE ON OWN JUDGMENT**

Each party relies wholly on his, her or its own investigation and respective judgment as to the extent of any damages any of them have sustained or may sustain in the
future. No party to this Agreement has been influenced by any statement by any other party to this Agreement and no party has made any representation upon which another has relied in entering into this Agreement, other than as set forth in this Agreement.

7. UNDERSTANDING OF AGREEMENT

Each party affirms and acknowledges that each has read this Agreement and has it fully explained by counsel of choice, and that each fully understands and appreciates the words and terms used in this Agreement and their effect, and that this is a full and final compromise, release and settlement of all claims, demands, actions or causes of action, known or unknown, suspected or unsuspected, and that each signs this Agreement of their own free will.

8. REPRESENTATIONS AND WARRANTIES

As an integral and material part of this Agreement, each party represents and warrants as follows:

A. That to the best of their knowledge they are the sole owners of each and every action, cause of action, claim, demand, damage or controversy which is described in this Agreement as the Dispute.

B. That each signatory hereto is duly authorized to execute this Agreement for himself, herself, and any entity upon whose behalf they sign, and that this Agreement as so executed will be binding upon each party and all Related Parties, as defined above.

C. That to the best of their knowledge the Dispute, causes of action, claims, demands, damages and controversies which are described in this Agreement are free and clear from any pledges, charges, equities, claims, covenants, liens or encumbrances.

D. That there are no persons or entities other than the parties hereto who now have any action, cause of action, claim, demand, damage or controversy arising out of or relating in any manner to any injuries or damages sustained by any party as a result of the Dispute.

E. That this Settlement Agreement constitutes a legal, valid and contractual obligation binding on each party hereto and all Related Parties, and is enforceable in accordance with its terms.

F. The representations and warranties set forth above shall endure forever and shall survive any investigation made by or on behalf of any party, regardless of any actual or constructive knowledge on the part of any such party with respect to the truth or accuracy of any such representation or warranty.

9. GOVERNING LAW

This Settlement Agreement and Release shall be governed by and construed in accordance with the laws of the State of California. In the event that it shall be necessary for any party hereto to institute legal action to enforce any of the terms and conditions or provisions
contained herein, or for any breach thereof, the prevailing party in such action shall be entitled to costs and reasonable attorney’s fees.

10. **PARTIAL INVALIDITY**

Should any part, term, provision or portion of this Agreement be declared by a court to be illegal or in conflict with any law of the State of California or the United States, or otherwise be rendered unenforceable or inapplicable, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions and provisions shall be construed in substance to constitute the agreement that the Clikers and the Defenders intended to enter into in the first instance, as hereinabove described.

11. **ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements and understandings, whether written or oral, of the parties hereto relating to the subject hereof and incorporates the entire understanding of the parties with respect thereto. This Agreement may be amended and any right or condition hereunder waived only by a written instrument signed by the party against whom such amendment or waiver is sought to be enforced. In the event of any uncertainty with regard to any terms of this Agreement, such uncertainty shall be resolved fairly and in accordance with the intent of the parties as set forth herein, and without regard to which party caused such uncertainty to exist, or which party drafted the Agreement. Each party and counsel for each party have reviewed and revised this Agreement and Release, and the normal rule of construction that any ambiguities in this Agreement and Release are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement and Release.

12. **COUNTERPART SIGNATURES**

This Agreement may be executed in any number of counterparts, with the same effect as if all parties have signed the same document, and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same instrument. True and correct copies may be used in lieu of the original.

**IN WITNESS WHEREOF,** each of the parties hereto have executed this Settlement Agreement and Release of all claims on the day and year written before.

Cliker Apartments, LLC

By: William H. Cliker, Sr., Manager

Dated

William H. Cliker, Sr.

Dated

Carl A. Cliker

Dated
excluded hereby, or for any breach thereof, the prevailing party in such action shall be entitled to costs and reasonable attorney's fees.

10. PARTIAL INVALIDITY

Except as may now, hereinafter, provisions of this Agreement be declared by a court to be illegal or unenforceable with any law of the State of California or the United States, or otherwise harassment unreasonable manner, the provisions of such Agreement shall be construed and enforced to the extent that they are declared by said court to be valid, legal and enforceable. In the event that any portion of the Agreement is held invalid or unenforceable by reason of any provision or parts thereof, then such provision or parts thereof shall be deemed invalid or unenforceable and such invalid or unenforceable provision or parts thereof shall not prevent the enforcement of the remaining provisions or parts thereof, so that the parties intend to enter into this Agreement, as hereinafter described.

11. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements and understandings, whether written or oral, of the parties hereto relating to the subject matter and incorporates the entire understanding of the parties with respect thereto. This Agreement may be amended and any right or condition hereunder waived only by a written instrument signed by the party against whom such amendment or waiver is sought to be enforced. In the event of any ambiguity with regard to any term of this Agreement, such ambiguity shall be resolved solely and in accordance with the intent of the parties as set forth herein, and without regard to which party caused such ambiguity to exist, or which party drafted the Agreement. Each party and intended for each party hereto and intended for this Agreement and Release to be construed against the drafting party shall not be employed in the interpretation of this Agreement and Release.

12. COUNTERPART SIGNATURES

This Agreement may be executed in any number of counterparts, with the same effect on all parties to the same document, and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same document. This shall not affect the enforceability of this Agreement and Release.

IN WITNESS WHEREOF, each of the parties hereto have executed this Settlement Agreement and Release of all claims on the day and year written before.

[Signatures]
Western National Construction, a California corporation

By: James Gilby, President

DATED

ATTORNEYS FOR PLAINTIFFS

ROOS, PENTON, JONES & ATTEL, INC.

By: [Signature]

DATED_07/17/90

GREEN & HALL

By: [Signature], Attorney for Plaintiff

DATED

LE Original
Elizabeth Cifor Smith

Michael K. Hayde

Dated

Dated 09/18/06

The Non-Exempt QTIP Marital Trust of the Glass Family Trust dated February 18, 1982

Dated 3•24•06

Jacqueline M. Glass as trustee of the Non-Exempt QTIP Marital Trust of the Glass Family
Trust dated February 18, 1982

Western National Construction,
a California corporation

Dated 3•14•06

By James Gilly, President

'APPROVED AS TO FORM AND CONTENT:

HOGAN, FENTON, JONES & APPEL, INC.

By: Michael D. McSwamy, Attorneys
for Cifor Apartments, LLC, William H.
Cifor, Sr., Carl A. Cifor and Elizabeth
Cifor Smith

GREEN & HALL

By: Robert E. Green, Attorney for Michael
K. Hayde and Western National
Construction

Dated

3•16•06

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WNC147199
CILKER ORCHARDS
1631 Willow Street, Suite #225  San Jose, CA 95125
Telephone: (408) 264-2534  Fax Number: (408) 264-2537

TO: Gary Penman
COMPANY: McLerand Vasques & Associates
FAX NO: (949) 808-3350
COPIES: Scott Buergex, John Atherton, Mike McSweeney, Gary Eckley, and Jim Nicholas
DATE: July 31, 2002
FROM: Bill Cilker
RE: Loren refusal to answer questions on One Pearl Place

On Monday July 29, 2002, Gary Eckley advised me that Loren Gachen refused to answer his questions regarding construction. This is a serious problem because it slows up the completion of our project. I am surprised that MVP refuses to help us when the inadequate information of the drawings has been one of the major factors holding up our construction. It is also hard to understand after we electronically mailed our check to your firm on Thursday July 25th and our account is current, you still refuse service.

I want your assurance that there would be no further delays by your firm in providing information that may surface as we move ahead. On the other hand, I expect WNC to be very diligent in trying to solve the problems themselves before they contact MVP.

Number one item on our Thursday August 1st meeting will be to finalize the construction completion schedule that you have requested several times.
ITEM 64
During our construction meeting on July 25th, Gary Eckley mentioned that they had telephoned Loren for information. He refused to give any information stating that it would not be forth coming until we have settled our account with your firm. As you know this had been settled. In my judgement, this was a very unwise thing to do. There are many reasons why our project has been seriously delayed. A very significant reason is inadequate information from MVP. For the benefit of everyone, we must consciously pursue completion of the project with a properly constructed facility for which we all be proud. Anything that interferes with this must be avoided to achieve our goal.
PROFESSIONAL SERVICES CONSULTING AGREEMENT

1. PROFESSIONAL SERVICES.

A. Compensation for Professional Services.

White Residential, Inc. ("Consultant") agrees, for a fee of Forty Thousand Dollars and 00/100 ($40,000.00) per month (pro-rated for any partial month), plus out-of-pocket costs and expenses, including housing, to provide consulting services to Cilker Orchards ("Owner") for construction of the One Pearl Place project ("Project") located at #104-4934 TERN WY. Said Project consists of 182 units and the general contractor building the Project is Western National.

2. SCOPE OF PROFESSIONAL SERVICES.

Consultant will provide the following services to Owner: Consultation with Owner, architect and general contractor (including attendance at any required meetings) regarding site use and improvements, selection of materials, building systems and equipment including time for procurement, installation and construction completion and factors related to construction costs, estimates, budget and scheduling. The Consultant shall assist the Owner and its representatives in making determinations as to payments due the contractor and its subcontractors.

The Consultant shall not be required to provide professional services, which constitute the practice of architecture or engineering.

3. OWNER'S INFORMATION AND SERVICES.

The Owner shall provide full information in a timely manner regarding the requirements of the Project including the Owner's objectives, constraints and criteria, special equipment and systems, and site requirements. The Consultant shall be entitled to rely upon the accuracy of any information, reports, surveys, drawings and tests provided to it by the Owner or the Owner's representative.

4. GENERAL LIABILITY: LIMITATION.

Owner agrees to indemnify and hold Consultant harmless on the account of any liability due to bodily injury or property damage arising directly or indirectly out of the actions of Consultant performed in accordance with this Agreement.

5. CONSULTANT'S LIMITATION OF LIABILITY.

Consultant's liability arising in connection with this Agreement, including for breach of contract, consequential incidental damages and for all its negligent acts, error, or omissions in the performance of the services to be performed hereunder, shall not exceed $25,000 or ten percent (10%) of its total invoice amount, whichever is greater, for injuries or loss to Owner or
for which Owner becomes legally liable, including any claims for costs of defense or other costs incurred.

6. **PAYMENTS TO CONSULTANT.**

Invoices shall be submitted monthly for payment. Payment shall be due within ten (10) days of receipt of invoice. An account will become delinquent thirty (30) days after date of billing. It is agreed that a late charge will be added to delinquent accounts at the rate of one and one half percent (1½%) for each thirty (30) days from the date of billing, provided, however, such late charge shall not exceed the maximum allowable by the laws of the state in which the Project is located. If Owner fails to make payments to Consultant within thirty (30) days of receipt, Consultant may, after giving seven (7) days written notice, suspend and/or terminate its services.

7. **ON-SITE JOB RESPONSIBILITY.**

It is understood and agreed that Consultant will not be responsible for any of the contractor's means, methods, sequences and/or procedures of construction (although Consultant will provide advice relative thereto) nor has it been retained to provide, nor will Consultant be compensated for providing services relating to the personal safety of anyone on site other than Consultant and its employees, and Consultant shall not assume any responsibility for providing such services.

8. **STANDARD OF CARE.**

Consultant agrees that it will perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. Nothing in this Agreement shall be construed to constitute an expressed or implied warranty.

9. **TERMINATION.**

This Agreement may be terminated by either party upon seven (7) days written notice. If this Agreement is terminated, it is agreed that Owner shall pay for all charges and Consultant's fee up to the date of termination, plus reimbursable expenses and charges.

10. **MISCELLANEOUS PROVISIONS.**

It is agreed that this Agreement is entered into by the parties for the sole benefit of the parties to the Agreement, and that nothing in the Agreement shall be construed to create a right or benefit for any third party, nor is this Agreement assignable without the express written approval of both parties hereto.

This Agreement shall be construed pursuant to the laws of the state in which the Project is located. If any provision of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the remaining portions of this Agreement shall remain in effect and shall be
enforceable. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

Opinions of probable construction costs prepared by Consultant are made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified Contractor generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over contractor's methods of determining price or over competitive bidding or market conditions, Consultant cannot and does not guarantee the proposals, bids, or actual construction costs will not vary from opinions of probable construction costs prepared by it.

DATED this ___ day of February, 2003.

"CONSULTANT"
WHITE RESIDENTIAL, INC.

By: [Signature]
Printed: [Name] (without title)
Title: President

"OWNER"
CILKER ORCHARDS

By: [Signature]
Printed: 2-6-03
Title: W.H. Cilker
TO: Gary + Grasty  by Don White

COMPANY: Trailers

FAX NO:

DATE: 3-9-04

FROM: Bill

CILKER ORCHARDS
1631 Willow Street, Suite #225
San Jose, California 95125
Telephone: (408) 264-2534
Fax Number: (408) 264-2537

Suggestions & Questions on
Superintendent goals, and
Landscape Goals.

---

Pages including this cover sheet
<table>
<thead>
<tr>
<th>Number</th>
<th>Date Listed</th>
<th>Description</th>
<th>New Item</th>
<th>Complete</th>
<th>Incomplete</th>
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<tr>
<td>1</td>
<td>2/6/04</td>
<td>Roofing: Venting on Sec. #7</td>
<td>X</td>
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<td></td>
<td></td>
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<tr>
<td>2</td>
<td>2/6/04</td>
<td>Stairs: Patch Sec. #7</td>
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<td>On-going</td>
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<td>3</td>
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<td>Carpet: Laying carpet Sec. #9</td>
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<td>X</td>
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<tr>
<td>4</td>
<td>1/12/04</td>
<td>Check Bldg. &quot;B&quot; Savage system for foreign objects and leaks.</td>
<td></td>
<td>X</td>
<td></td>
<td>Begin monitor 1/12/04</td>
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<tr>
<td>5</td>
<td>1/12/04</td>
<td>Resolve punch list items for Sec. #4 &amp; #5</td>
<td></td>
<td>X</td>
<td></td>
<td>Job worked on.</td>
</tr>
</tbody>
</table>
| 6      | 1/12/04     | Install metal between inside and outside lock handles in gate at Step. "A."
                                          |          | X        |            | Has been prioritized             |
| 7      | 12/1/03     | Install mowing and new steps at the side of bldg. "A."                       |          | X        |            | Lane is aware of the, bldg. "B" course is finished. |
| 8      | 1/12/03     | Repair all steps with chipped out areas of concrete.                         |          | X        |            | Will be completed all at once when major construction has stopped. |
| 9      | 1/29/04     | Waiting on landscape wall caps from Alamosa.                                 |          | X        |            | Remaining cases to arrive on Mar. 19th, 6 Mar. 30th. |
| 10     | 1/3/04      | Level pavers that have sunk by fountain #1 @ chain to apartments on south side of the E/W path by the trash bin storage. The Pavers between fountain #3 and the covered path to fountain #1. |          | X        |            | Total punch on site this week.   |
| 11     | 3/1/04      | Add trim to entry pavers                                                     |          | X        |            | Total punch on site this week.   |

Gary 3/9

#5 - Who is the subcontractor and what is the price?

#6 - When will this be finished?

#7 - When will this be finished?

#8 - When will this be finished?

#11 - Please correct the second sentence to read: Re-level the pavers by laser for proper drainage between fountain #3 and the covered walkway.

Status - What is the meaning of "Total punch on site this week?" Show me the punch please.
<table>
<thead>
<tr>
<th>Number</th>
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<th>New Item</th>
<th>Complete</th>
<th>Incomplete</th>
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<td>Stucco: Patch Sec. #7</td>
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<td></td>
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<td>6</td>
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<td>Resolve punch list items for Sec. #4 &amp; #5.</td>
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<td></td>
<td></td>
<td>Joe working on.</td>
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<tr>
<td>7</td>
<td>12/16/03</td>
<td>Install shield between inside and outside lock handles in gate at Bldg. &quot;A.&quot;</td>
<td>X</td>
<td></td>
<td></td>
<td>Larco is aware of this, Bldg. &quot;B&quot; comes first.</td>
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<td>8</td>
<td>12/16/03</td>
<td>Install railing to new steps at the side of Bldg. &quot;A.&quot;</td>
<td>X</td>
<td></td>
<td></td>
<td>Will be completed all at once when major construction has stopped.</td>
</tr>
<tr>
<td>9</td>
<td>1/19/04</td>
<td>Repair all steps with chipped out areas of concrete.</td>
<td>X</td>
<td></td>
<td></td>
<td>Remaining caps to arrive on Mar. 15th, &amp; Mar. 20th.</td>
</tr>
<tr>
<td>10</td>
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<td>Waiting on landscape wall caps from Albanese.</td>
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<td>11</td>
<td>3/3/04</td>
<td>Level pavers that have sunk by fountain #1 @ stairs to apartments on south side of the E/W path by the trash bin storage. The Pavers between fountain #3 and the covered path to fountain #1.</td>
<td>X</td>
<td></td>
<td></td>
<td>Total punch on site this week.</td>
</tr>
<tr>
<td>12</td>
<td>3/3/04</td>
<td>Add fines to many pavers</td>
<td>X</td>
<td></td>
<td></td>
<td>Total punch on site this week.</td>
</tr>
</tbody>
</table>
ITEM 67
June 25, 2002

Ernie Vasquez  
McLarand, Vasquez & Associates  
1900 Main St., 8th Floor  
Irvine, CA  92614

Dear Ernie,

Our meeting on Wednesday, June 19 was a step in resolving some of the many problems that exist between your firm and the construction of One Pearl Place. It is imperative that the remaining many issues be resolved as soon as possible. The passed delays have been extremely costly to both Western National Construction and Cilker Orchards.

I would like to affirm in writing what John and I believe you offered to do during this meeting. McLarand Vasquez and Associated will provide at no charge to Cilker Orchards or Western National Construction one week (about 40 hours) of time by both MVP and Jitu. Most of this work will be carried out during the coming week.

Please coordinate the schedule with Scott Buerger so that work will be done expeditiously and construction can proceed at a faster pace.

Sincerely,

Bill Cilker
William H. Cilker

Cc:  John Atherton, WNC  
     Scott Buerger, WNC
TO: Bob Clark  
FROM: Beul Eckles
CILKER ORCHARDS  
1631 Willow Street, Suite #225  
San Jose, California 95125  
Telephone: (408) 264-2534  
Fax Number: (408) 264-2537

Include in the final agreement:
1. I have changed "c" to Timber and Material not to exceed. (Assume said there is no material change)
2. I need the starting and completing dates
3. I signed on owners approval

3. Pages including this cover sheet
CONTRACT
(LUMP SUM COST)

('Contractor') JETT PLASTERING CORPORATION OF CALIFORNIA, Street 26801 VISTA TERRACE
City LAKE FOREST, State CA Zip 92630 Phone 949-888-8545 Fax 949-888-1917
Job Supervisor: Albert Cox

Manager: Kelley Fini

Street: 26801 Vista Terrace
City: Lake Forest, Zip: 92630 Phone: 408-722-2370

A. The Work. Contractor shall furnish at its sole cost all labor, materials, equipment, supervision, licenses, fees, permits and insurance necessary to complete the following Work (the "Work"):

Plaster repair throughout the property. Repair all damaged/cracked plaster caused by building settling as per the attached specifications.

Contractor is to schedule the work with the on-site manager to allow for 48-hour advance notice to tenants. Manager and/or maintenance supervisor will oversee the work on a daily basis, and coordinate with a Woodside Real Estate Services project manager for final inspection and completion approval. All unforeseen circumstances that could result in increased cost require inspection and approval from the on-site manager before additional work is initiated. Contractor is to provide a written estimate for any such additional work.

B. Contract Documents. All the Work shall be done in a first class professional manner by experienced workers and in accordance with local codes and regulations, all other applicable State and Federal Codes and the plans and specifications attached hereto and incorporated herein by this reference. This Contract, the plans and specifications attached hereto, and the following described documents shall hereafter be collectively referred to as the "Contract Documents", all of which are incorporated herein by this reference.

1) This Contract dated March 14, 2007, (four pages, two pages front and back).
2) Contractor's Proposal dated March 15, 2007 (one page)
3) Property Site Map

C. Compensation: Contractor shall complete the Work for the Lump-Sum Contract of Eight Thousand Eight Hundred and 00/100 Dollars ($8,800.00) (the "Contract Price").

1. Payment: The Contract Price shall be paid as follows: Contractor's invoices for contracted Work shall be processed and paid within thirty (30) days of receipt, subject to and in accordance with all other conditions set forth herein (including in particular, without limitation, Paragraphs H.23, H.23, H.24.1 and H.25 of the General Conditions).

2. Owner may retain an amount equivalent to ten percent (10%) of each progress payment invoice amount from each progress payment until all Work is completed and all other conditions of the contract are met.

D. Insurance: Contractor shall obtain and continuously maintain the following insurance coverages through and including the date of final payment unless otherwise specified herein:

1. Workers' Compensation Insurance covering all workers engaged in performance of the Work in amounts not less than the minimum required by law.

2. Comprehensive Broad Form General Public Liability Insurance on an occurrence form containing a per occurrence combined single limit in the amount specified below to protect against claims arising from exposures of Pollution operations, Property damage resulting from explosion, collapse of any building or structure, and property damage caused by automobile. Insurance coverage shall also include Completed Operations/Products, Independent Contractors Contractual Liability insurance and automobile liability insurance covering owned and non-owned vehicles. Coverage shall be in the minimum amount as indicated of Two Million Dollars ($2,000,000.00).

(WHITEL COPY - ORIGINAL; YELLOW COPY - PROPERTY COPY; PINK COPY - CONTRACTOR COPY)

Initials: Contractor ___________ Owner: ___________

PLT013210
3. Contractor shall provide Owner with copies of certificates of all such policies stating that no policy may be canceled except upon fifteen (15) days prior written notice to Owner. Contractor and Owner hereby waive any rights of recovery against each other for, and hereby release and relieve the other from, any loss or damage to the waiving party’s property arising out of or incidental to the perils or risks actually insured against under any insurance policies carried by the parties and in force at the time of such damage. Contractor’s insurance shall be primary and Owner’s insurance shall be excess. Contractor shall require of its subcontractors, agents and employees, by appropriate written agreements, similar waivers in favor of Owner.

4. Both Owner and Managing Agent shall be named as additional insured under the general liability with completed operations coverage, worker’s compensation/employer’s liability, business auto liability and aircraft and/or umbrella liability policies as required by this contract. Said endorsements naming the Owner and Managing Agent as additional insured shall provide that such insurance as is afforded under the Contractor’s policy is primary insurance as respects Owner and Managing Agent, and that any insurance maintained by the Owner and Managing Agent is excess and non-contributing with the insurance required herein.

E. Schedule: Contractor shall commence the Work no later than _March 15, 2001_ and the Work shall be substantially completed _April 15, 2001_. Time is of the essence of this Contract. The foregoing substantive completion date may only be delayed by reason of extremely inclement weather, strikes, acts of God or other causes beyond Contractor’s control, provided that Contractor provides Owner with written notice of such delay within forty-eight (48) hours thereof. Should Owner so request, Contractor shall provide Owner within five (5) days after serving of this Contract a detailed written work schedule showing all trades and major job phases.

F. Warranty: Contractor warrants and guarantees in favor of the Owner and its respective heirs, successors and assignees that the materials supplied and Work performed hereunder shall be free from all defects in workmanship, design, performance and suitability for the purpose supplied for a period of one year.

1. Defective Work and Materials: In addition to any warranties or guarantees applied under law and the warranty set forth immediately above, Contractor guarantees Owner, and Owner’s respective successors in interest in the Work or in Owner’s rights hereunder, against any loss or damage arising from any defects or deficiencies in materials or workmanship furnished under this Contract, and, unless otherwise specifically herein, Contractor, within seven (7) days of notification from Owner of any defect or deficiency discovered in the Work, shall remedy at Contractor’s expense any defects or deficiencies and any damage to other work on the Job Site resulting therefrom. Building Owner shall make reasonable efforts to notify Contractor of apparent defects when defects become known to Building Owner. If such repair cannot reasonably be completed within such seven (7) day period and thereafter diligently pursue same to completion. Contractor’s obligations under this Paragraph F. 1 shall survive the termination of this Contract.

G. Contract Administration: Woodmont representatives, as the Managing Agent for the Owner, shall have access to the Work site to periodically inspect the Work in progress and shall retain a broad general power of supervision and inspection rights as to the quality of the Work to ensure its satisfactory performance. In the event the Contractor omits or Contractor’s non-compliance with Contract plans, documents or accepted building practices necessitate additional inspections beyond the routine inspections normally made by Woodmont, Woodmont shall have the option to bill the Contractor for any non-existing management time spent on the Work site. Non-existence management time may include, but is not limited to, time for identifying Contractor errors, coordinating with Contractor or Contractor employees, and additional work site visits above and beyond the routine site visits. The Contractor’s name and address shall be on all Work site visits shall be deducted from the Contractor amount. Woodmont’s time shall be billed at a rate of $50.00 per hour.

H. All the obligations of Owner hereunder shall be deemed fully satisfied and discharged upon the payment of the Contract Price and said final invoice. Notwithstanding anything in this Contract to the contrary, the parties further agree that (1) no payment by Owner to Contractor under this Contract shall be conclusive evidence of Contractor’s performance in whole or in part, and no such payment shall be construed to be Owner’s acceptance of defective work or improper materials, and (2) final payment by Owner to Contractor shall not constitute or be deemed to be a waiver by Owner of claims related to unsatisfied or unpaid items, faulty or defective Work or Work not in compliance with the Contract Documents.

DATED this _24th_ day of _March_, _2005_.

"CONTRACTOR" "OWNER"
Devere Construction, Inc. Circle Apartments, LLC
By: By: __________________________
(Authorized Agent) Woodmont Real Estate Services, as Managing Agent
Contract # 100746

Page 2

PLT013211
ITEM 69
June 10, 2004  OPP Punch List Priority Items

**High Priority**

Storm water drains
  Drainage from 3rd story decks.
  No gutters
  Rain water can exceed sheet gutter capacity
  Sheet gutter can overflow on the ends causing excess moisture on building stucco

  Are weep holes adequate for paver decks? Also weep holes allow water to drip onto building stucco.

Protection of exposed HVAC lines. They're an attractive nuisance. They're hot, under pressure and fragile.

Thin stucco. Cracks and flakes easily. Provides little protection to underlying foam and wire. Rust seepage on building stucco.

**Lower priority**

**Electrical - MDE**

Lighting issues
  Some lighting circuits in A & B remain lit 24 hours
  Emergency lights don't come on when "Test" button is depressed
  Planter lights are too tall
  Electrical boxes in planters are poorly mounted.

Plumbing
  Water leaks in the B garage.

Stucco
TO:  Don WHITE

COMPANY:  WRI

FAX NO:  425-828-2578

DATE:  6-2-04

FROM:  Bill

CILKER ORCHARDS
1631 Willow Street, Suite #225
San Jose, California 95125
Telephone: (408) 264-2534
Fax Number: (408) 264-2537

We have updated the OPP Construction
landscape & more, problems for completion
and have concluded that it will
not be necessary to have Lewis Williams come
to San Jose, most of the work will be done
by Woodward, Cilker Orchards employees, Moe,
LDE and Lando. If unusual problems arise,
we will discuss them with you. If new
vendents are necessary we will work
with San Jose Construction Company.

1 Pages including this cover sheet
ITEM 71
3/18/04 OPP

Finplaces in Re building don't work w/ doors closed. Too hot for heat sensitive valve.

Rusting in fountain

WNC-

List of carryover contract services for when WNC leaves. It's in manuals from key.

Elevator contract - Connection to Xonic

Expires at end of month.

We need key to elevator room.

Buttons on top floor are not waterproof.

Lack of waterproofing at top of shaft leaves can express terrain intrusion.

Stucco -

Check stucco spec. Was it thick enough?

Was design correct? Lots of cracks.

When are we on budget approval.

Budget is revised using revised props tax and w/ as requested.
Crimean wars have taken place on 8 floor plan.

Due to circumstances: Venice 1360-1380-85
leave incentives in place as background
Our rent the same as Santana Row.
Not a good time to decrease
October 11, 2000

Mr. John Atherton, President
Western National Construction
8 Executive Circle
P.O. Box 19528
Irvine, CA 92623-9528

Re: Guaranteed Maximum Price Contract – Additional agreement letter

Dear John,

As a material consideration for the principle owners of Western National Construction providing personal guarantees of costs for the work undertaken under the Contract to be executed between Western National Construction and Cilker Apartments, LLC, the undersigned, William H. Cilker, does hereby warrant that he will, in turn guarantee that Cilker Apartments, LLC, or other entities controlled by the undersigned will pay any costs in excess of the Guaranteed Maximum Price established under the aforementioned contract.

The intent of the foregoing commitment is to establish that Western National Construction is not and shall not in the future be, obligated to expend its own funds to cover costs beyond those established under the referenced contract.

Your Truly,

William H. Cilker

cc: David Mitchell
    Hoge Fenton Jones & Appel
ITEM 73
**Change Order**

**AIA Document G701 - Electronic Format**

---

**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.**

---

**PROJECT:** One Pearl Place  
5210 Terner Way  
San Jose, CA

**CHANGE ORDER NUMBER:** 01

**DATE:** 10/23/01

**ARCHITECT'S PROJECT NO:** N/A

**TO CONTRACTOR:** Western National Construction  
8 Executive Circle  
Irvine, CA 92614

---

The Contract is changed as follows: Adjustment to the contract guaranteed maximum price and project budget, based on the Owner requested changes of $693,562.00 and line item adjustments as shown on the Cost Summary Report dated 10/22/01 sheets 1 of 1 and sheets 1 thru 5 attached hereto and made a part of this Owner Change Order #01

---

Not valid until signed by the Owner, Architect and Contractor.

---

The original (Contract Sum) (Guaranteed maximum Price) was  
$21,670,667.00

Net change by previously authorized Change Orders  
$0.00

The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was  
$21,670,667.00

The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of  
$974,009.00

The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be  
$22,644,676.00

The Contract Time will be (increased) (decreased) (unchanged) by ( ) days.

The Date of Substantial Completion as of the date of this Change Order therefore is

---

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed maximum Price which have been authorized by Construction Change Directive.

---

**ARCHITECT**  
**CONTRACTOR**  
**OWNER**

Address  
Address  
Address

BY:  
BY:  
BY:

DATE: 10/23/01  
DATE:  
DATE:

---

AIA DOCUMENT G701 - CHANGE ORDER • 1987 EDITION • AIA • COPYRIGHT 1987 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C., 20006-5292. WARNING: Unlicensed photocopying violates U.S. copyright laws and is subject to legal prosecution. This document was electronically produced with permission of the AIA and can be reproduced without violation until the date of expiration as noted below. 

Electronic Format - G701-1997


WNC 095387
October 23, 2001

Mr. Bill Cilker
CILKER ORCHARDS
1631 Willow Street
Suite 225
San Jose, CA 95125-5118

Re: One Pearl Place

Dear Bill:

Please find attached for your signature Owner Change Order No. 01, which is based on the inclusions of Owner requested items in the amount of $693,562 and the adjustments to various line items in the amount of $280,447 due to scope finalizations.

In the attached sheets you will find that we have taken into account your conversation with John Atherton as it relates to general conditions and fees. Also, we have provided a column which shows the changes to the various cost codes as requested by Cilker Orchards, and a variance column which shows plus and minus adjustments that Western National Construction has made.

Since these adjustments affect many various line items, we need to get the OCO approved so that we may bill and pay subcontractors.

Should you have any questions, please feel free to contact me at 949.862.6242

Very Truly Yours,

Jim Egner
Director of Construction

Signed at delivery by Bill 11/1/01
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WESTERN NATIONAL CONSTRUCTION
ONE PEARL PLACE REVISED BUDGET NO. 1
DATED:10/22/201
WNC 095389
### Table: Project Costs

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**TOTAL INDIRECT ONSITES** 1,401,860 1,401,860

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**TOTAL INDIRECT OFFSETS** 165,000 165,000

**TOTAL INDIRECT COSTS** 1,566,860 1,566,860

**TOTAL DIRECT COSTS** 1,566,860 1,566,860

**TOTAL BUDGET** 1,566,860 1,566,860

**OVERALL BUDGET** 1,566,860

---

**Notes:**
- Charges against budget to cover overrun of costs to complete the resolution of GC/tenant items.
- ORGIN: 12/1/01; Signature: [Signature]

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WNC 095390
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Comments:
- We will require the balance to complete, we need to transfer misc costs from 4000 cost codes for last fall's work.
- Need Information from Owner to bid and build.
- Based on estimate will need to walk with city inspector to define scope of final work.
- $10,000 balance for patch repair and slurry.
- Will be completed at end of project in conj with the city of San Jose.
- Clean cost will be spent through the course of construction. Make transfer from GC.
- Need to get spreads signed.
- Need to get spreads signed.
- Need to finalize design with owner prior to construction and ME. Est base on preliminary cost by MDE.
- Misc costs required during the course of construction.
ITEM 74
Change Order

PROJECT: CILKER ORCHARDS
(Name and address) One Pearl Place
5210 Terrer Way
San Jose, CA 95136

TO CONTRACTOR: Western National
Construction
(Name and address) 8 Executive Circle
Irvine, CA 92614

CHANGE ORDER NUMBER: 2
DATE: June 18th, 2002

ARCHITECT'S PROJECT NUMBER:

CONTRACT NUMBER:

CONTRACT FOR: One Pearl Place
Apartments

THE CONTRACT IS CHANGED AS FOLLOWS:

The (Contract Sum) Guaranteed-Maximum Price prior to this Change Order was $21,245,887.00. The net change by previously authorized Change Orders is $74,009.00. The (Contract Sum) Guaranteed-Maximum Price prior to this Change Order was $22,044,876.00. The (Contract Sum) Guaranteed-Maximum Price will be (increased) (decreased) (unchanged) by this Change Order in the amount of $2,777,257.75. The new (Contract Sum) Guaranteed-Maximum Price including this Change Order will be $22,958,083.75. The Contract Time will be (increased) (decreased) (unchanged) by (2) days. The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive for which the cost or time are in dispute as described in Subparagraph 7.3.8 of AIA Document A201.

Not valid until signed by the Architect, Contractor and Owner.

ARCHITECT (Typed Name)

CONTRACTOR (Typed Name)

OWNER (Typed Name)

(Signature)

(Signature)

(Signature)

BY

William H. Clker - President

BY

William H. Clker - Manager

DATE

DATE June 18th, 2002

DATE

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PCDR Summary:
- Number of Approved PCDRs by Citzer Orchards: 39
- Total Approved CDR Amount: $293,387.75

Western National Construction
Change Order

PROJECT: CILKER ORCHARDS
(Home and address) One Pearl Place
5210 Termer Way
San Jose, CA 95138

TO CONTRACTOR: Western National Construction
(Home and address) 8 Executive Circle
Irvine, CA 92614

CHANGE ORDER NUMBER: 3
DATE: July 22nd 2002
ARCHITECT'S PROJECT NUMBER: 
CONTRACT DATE: December 4th, 2000
CONTRACT FOR: One Pearl Place Apartments

THE CONTRACT IS CHANGED AS FOLLOWS:

The original (Contract Sum) (Guaranteed Maximum Price) was $24,125,667.00
The net change by previously authorized Change Orders is $1,251,289.75
The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was $22,408,953.75
The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by ( )
this Change Order in the amount of $1,251,289.75
The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be
$23,660,243.50
The Contract Time will be (increased) (decreased) (unchanged) by ( )
days.

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or
Guaranteed Maximum Price which have been authorized by Construction Change Directive for
which the cost or time are in dispute as described in Subparagraph 7.3.8 of AIA Document A201.

Not valid until signed by the Architect, Contractor and Owner.

ARCHITECT (Typed name)  
Western National Construction

CONTRACTOR (Typed name)  
Cilker Apartments, LLC

OWNER (Typed name)  

(Signature)  
By: John C. Atkinson - President

(Signature)  
By: William H. Cilker - Manager

DATE: August 29th, 2002
DATE: 9/13/02
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ITEM 76
June 8th, 2004

Mr. Bill Clinker
1631 Willow St., Suite 225
San Jose, Ca. 95125

Dear Bill,

I received your letter dated 6/7/04 in regards to the balance of White Residential, Inc. compensation for the work that we did for you at One Pearl Place. Bill you know that the agreement that we signed with you was for Gary Love and me only. If you look at paragraph number seven of the agreement you will see that White Residential, Inc. was retained to oversee the Contractor, and was not responsible for the means, methods, sequences and/or procedures of construction. This agreement went out the door almost the day that we started. White Residential, Inc. had to take over all the duties of the General Contractor, with exception of writing the checks to Sub-Contractors and suppliers. After firing all of Western National employee's and needing to bring on Lewis, who was a great asset to the project, you agreed to have me bill Lewis Williams through Western National. In December I informed you that we would need to charge more for our service, because we had been there for one year and my cost for the employees had gone up for salary increases to them and also year end bonuses. I am also faced with the first five months of this year paying Gary and Lewis a bonus for the time that they have been on your project, which will cost me another $30,000.00. I have tried to be very fare with you and made many trips, where I went to Sacramento, and Vacaville and only charged you half the fair. I have paid Gary's entire trips home on the weakening and never billed you for them. Bill I guess it comes down to what you feel is fair. I had to turn down a project, so that Gary could complete yours which I committed to you that I would see it through, and did so. I feel that I have been more than fair to you, and have done far more then our agreement called for.

Sincerely,

Don White
ITEM 77
Bill, I've gone over all the change orders from Western National, and have put a yes or no on the items that I think are yours or they should be in Western Nationals contract with you. Bill, so that everyone understands the budget that we all agreed to was just a budget number that White Residential and Western National agreed to. This amount was ($26,900,000), and that it would take that amount to complete the project, if you did not make any additional changes. This is not a cost that should be yours but a cost that you will need to fund in order to complete the project. There are many items that Western National is trying to Change Order you on that are really not yours but we need to complete the project. They have gone way over on General Conditions, Security and a framing sub-contractor that totally didn’t know what he was doing and has caused you cost from bringing in another framer and all the Structural details that were missed and the cost for all the inspections from G.T. the structural engineer, and Sub-Contractors have come back to them for additional cost due to time delays caused by poor supervision and not properly managing the project, which should not be yours but needs to be funded because of the time delay on Western National Contract with you. Bill, the only things that Western National should be giving you a Change Order for is the actual items that you have changed from the original contract, things that you have upgraded or changed from the scope. Bill, White Residential, Inc. has come in and added supervision which is two Superintendent’s, one Assistant Superintendent, and the only one that has been helping us is Joe, whom is a team player. Gary Eckley has not proven to be of much help and seems to want to stay in the construction trailer, and not get out in the field where he is needed. I think that much of the mistakes that have been made have been caused by Western National and the lack of any help from their top management. No Project Manager full time on the job and Gary Eckley, which he was not qualified to run a project like this and has never been a Superintendent before, and needed help but no one was there to help him. We have been trying to work with Eckley and make him part of the team but he is not willing to work with the others in order to make this happen, so we will probably will be asking Western National to let him go.

Sincerely

Don White
ITEM 78
1/28/04
Ref: One Pearl Place

Bill,

I received your fax in regards to the new turn schedule and I agree with you that this is unthinkable but it is what it is. We have tried to turn over to you what we feel are great units, but are still having a problem getting management to walk on a timely manner. We have walked division #4 for the fifth time which has put us behind on the other divisions. I need to complete the landscaping, but need plant selection, I need to know what we are going to do with the fence in the back so that we can complete this, it seems that the balance of decisions need to be made so that we can get out of this project and complete everything. We are having problems with getting the draws funded on time and this affects production, the sub-contractors don’t know if they are going to get paid. The draw is to be funded on the 25th of each month and it has never funded on time but maybe twice since I’ve been involved in the project. Bill, I have been working very hard with the team that we have in place and feel that they have done a great job and it seems that they keep getting kicked down because of things that are out of their control. I will be there today and will walk units with Bob on Thursday to see if we might get him to accept these units and move on. This is the first time that I have had to walk units myself with management and my staff because of differences in what is acceptable. Gary Love has turned several thousands of units for me and we have never had any problems with the quality, or the management company walking or the Developers that we have worked with. I need to get finished with this project myself, because it has gone on much longer than expected and I need Gary Love and Lewis on other projects for me. I’ve not made any money on this project, and certainly would not have taken it on for the fee that I am charging you, and that fee was based on me providing only Gary Love as supervision and not overseeing all of Western National staff. We have had to clean up so many mistakes that Western National made and are still doing so. I don’t believe anyone knows how difficult this project has been and have had no help from Western National. We should be thankful for Gary Love and his team for the job that they have done and be telling them so, I think that everyone’s tempers are getting short and people are getting burnt out. It’s always hard to take on a project that has gone south due to poor supervision, cost overruns, time delays, poor sub-contractors, mistakes, and quality. We will also need to stay involved with you after completion because of your dispute’s with Western National, and the other consults, and will need to be paid for this service. Hope this assures some of your concerns and we will get out of here as soon as possible.

Sincerely,

Don White
PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1851 East First Street, 10th Floor, Santa Ana, CA 92705-4052.

On April 13, 2016, I served the within document(s) described as:

REQUESTS FOR ADMISSION SET NO. TWO TO CILKER APARTMENTS, LLC

on each interested party in this action as stated below:

Jon B. Zimmerman, Esq.
Gregory B. Cohen, Esq.
Robinson & Wood, Inc.
227 N. 1st Street
San Jose, CA 95113
(408) 298-7120; Fax: (408) 298-0477

BY MESSENGER SERVICE: I served the documents by providing them to a professional messenger service for service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 13, 2016, at Santa Ana, California.

Sheila Ellis
PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 1851 East First Street, 10th Floor, Santa Ana, CA 92705-4052.

On April 13, 2016 I served the within document(s) described as:

REQUESTS FOR ADMISSION SET NO. TWO TO CILKER APARTMENTS, LLC

BY E-SERVICE: I electronically served the document(s) via Santa Clara County Superior Court's Electronic Filing System on the recipients designated on the transaction receipt located on the Santa Clara County Superior Court's Electronic Filing System website. [See Transaction Receipt on SCE Filing Website]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 13, 2016, at Santa Ana, California.

Sheila Ellis