MVE’S EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF’S SECOND AMENDED COMPLAINT
Pursuant to Code of Civil Procedure section 437c and California Rules of Court 3.1350(g), Defendants McLARAND VASQUEZ EMSIEK & PARTNERS, MVE & PARTNERS, INC. and MVE + Partners, Inc. (“MVE”) respectfully submits the following evidence in support of its Motion for Summary Judgment against Plaintiff CILKER APARTMENTS, LLC’s (“Cilker”) Second Amended Complaint.

<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Professional Services Agreement between Cilker Orchards and McLarand, Vasquez &amp; Partners, Inc. for the design of the One Pearl Place Apartments project.</td>
</tr>
<tr>
<td>B</td>
<td>Plaintiff’ s Second Amended Complaint.</td>
</tr>
<tr>
<td>C</td>
<td>Transcript of the Deposition of Carl McLarand, September 22, 2015, pp. 33-34; 44-47; 54-55; 145-147; 235-237; 239.</td>
</tr>
<tr>
<td></td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>-------------</td>
</tr>
<tr>
<td>E</td>
<td>Minutes of the Special Meeting of the Board of Directors of McLarand, Vasquez &amp; Partners, Inc. dated January 2, 2002.</td>
</tr>
<tr>
<td>F</td>
<td>McLarand, Vasquez &amp; Partners, Inc.’s Supplemental Responses to Case Management Order #1 – Statement of Insurance.</td>
</tr>
</tbody>
</table>

DATED: February 18, 2016  
COLLINS COLLINS MUIR + STEWART LLP

By: _Signature_  
STEPHEN B. LITCHFIELD  
SAMUEL J. MUIR  
Attorneys for McLARAND VASQUEZ EMSIEK & PARTNERS, INC., MVE & PARTNERS INC., and MVE + PARTNERS, INC.
PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into this 13th day of July, 1998, by and between Cilker Orchards located at 1631 Willow Street, Suite 225, San Jose, California 95125, Attention: William Cilker (hereinafter referred to as "Client"), and McLarand, Vasquez & Partners, Inc., a California corporation located at 695 Town Center Drive, Suite 300, Costa Mesa, California 92626 (hereinafter referred to as "MV&P" or "Architect").

The parties shall provide the professional services described below with respect to the job located on approximately 4.5-acres of the approximate 10.54-acre William H. and Leila A. Cilker Trust site at the southeast corner of Winfield and Chynoweth near the Chynoweth/Ohlon light rail station in the City of San Jose, State of California.

CILKER MIXED-INCOME APARTMENT VILLAGE – PHASE II
SAN JOSE, CALIFORNIA
MV&P JOB NO. 97-229
REVISED JANUARY 27, 1998
REVISED MARCH 19, 1998
REVISED APRIL 7, 1998
REVISED JULY 13, 1998

ARCHITECT shall provide these services as needed by CLIENT in a timely manner such that a minimum delay is encountered in actual construction of the project.

ARTICLE I - SCOPE

A. THE WORK

The proposed work shall include predesign and site development services, schematic design services, design development services, construction document services, plan check coordination, and services during construction as delineated below for a mixed-income apartment village. Depending upon the desired density plan, the village will consist of a maximum of 200 apartments. The master plan for the overall 10-acre site has been completed previously.

Architect will prepare alternatives and work with Client, Valley Transportation Agency, and Client's marketing and property management team to design the village adjacent to the proposed transit residential village.

The project will consist of three and four-story building types, with 200 total dwelling units consisting of a variety of unit types, to provide a mixed-income community. Seventy-five percent of the buildings will be built over a one-level parking structure with elevator-serviced parking to all residential units. The remaining 25 percent of
the buildings will be two- and three-story with tuck-under parking building and individual garages accessible from the perimeter street.

Architect will develop floor plan designs in concert with the site planning. The approximate mix for both scenarios is as follows:

<table>
<thead>
<tr>
<th>UNIT</th>
<th>LAYOUT</th>
<th>SQUARE FOOTAGE</th>
<th>MIX PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Studio</td>
<td>450</td>
<td>5 - 8</td>
</tr>
<tr>
<td>B</td>
<td>1 bedroom/1 bath</td>
<td>725</td>
<td>45</td>
</tr>
<tr>
<td>C</td>
<td>2 bedroom/2 bath</td>
<td>975</td>
<td>45</td>
</tr>
<tr>
<td>D</td>
<td>2 master bedroom/2 bath</td>
<td>1,000</td>
<td>40 - 45</td>
</tr>
<tr>
<td>E</td>
<td>3 bedroom/2 bath (townhome)</td>
<td>1,150 - 1,250</td>
<td>10</td>
</tr>
<tr>
<td>F</td>
<td>2 bedroom/2.5 bath/den</td>
<td>1,200</td>
<td></td>
</tr>
</tbody>
</table>

The desired marketing input will be utilized and incorporated into the architectural image of the village.

Architect will coordinate with the civil engineer and landscape architect in designing the village. Architect will assist Client, as required, with processing the project for the City of San Jose P.D. permit process or other public agency approval. Architect will assist Client in coordination of neighborhood group meetings and/or City public hearings on an as-needed basis. Compensation for these coordination services will be based on the hourly rates outlined in Article VI, Paragraph C of this Agreement.

A recreational facility will be designed utilizing approximately 3,000 square feet for the recreational and leasing/management area. The major recreational amenities to be included are aerobics, exercise/gym, lockers and change areas, toilets, lounge area, kitchen/storage, media wall, business center, and telecommunications.

It is anticipated that the development will be constructed in a single construction phase. Further, it is assumed that the architectural documents will be prepared in a single increment of work.

Structural engineering services; design-build mechanical, plumbing, and electrical engineering services; and Title 24 calculations are included within the basic services of this Agreement.

Client will have the authority to approve all engineering consultants prior to their hiring by Architect. Client will not unduly withhold his approvals for qualified engineering consultants.

B. AGREEMENT

Upon execution, this Agreement supersedes any previous agreement for services.
ARTICLE II - BASIC SERVICES

A. PHASE I - PREDESIGN AND SITE DEVELOPMENT SERVICES

1. PROJECT DEVELOPMENT PROGRAMMING

After reviewing Client's objectives and the physical characteristics of the site, Architect will establish with Client a program for the development of the overall project. Project programming is the process by which a detailed set of requirements for a proposed building project is developed. The design concept will be based on the adaptation of these requirements to Client's available resources, to technical requirements, to physical and economic forces, and to site limitations.

2. MASTER PLANNING (previously completed)

Architect will develop, in accordance with Client's requirements, a master plan of the above-referenced development. Several alternative approaches will be explored and reviewed with Client prior to solidifying a presentation plan. The objective of this phase is to create an optimized land plan for development and presentation.

3. INITIAL CONCEPT AND BUDGET REVIEW

The initial concept is created following careful study and analysis of the project program. This task includes illustrating diagrammatically the size and relationship of the project components. A probable construction budget can then be prepared, using square foot cost figures as a basis for calculating the anticipated cost of the several elements involved, and presented for review.

4. GOVERNMENTAL AGENCY CONSULTATION

Coordination with governmental agencies (i.e. Valley Transportation Agency for P.D. Permit Processing with the Planning Agency of the City of San Jose), includes preparation of material for and consultation with local governmental agencies having jurisdiction regarding applicable laws, statutes, building codes, and regulations affecting the project to verify the assumptions of concept. In addition, presentations to homeowners' groups will be made by Architect, if required by Client.

B. PHASE II - SCHEMATIC DESIGN SERVICES

Based on program requirements developed with Client and mutually agreed to by Client and Architect, Architect will prepare schematic design studies of the development, which may offer one or more possible solutions to Client for selection and approval. These studies will include an overall site plan, diagrammatic plans of each level within the development, and tabulated data indicating square footage and overall efficiencies of the development.
In addition to the schematic floor plans, schematic conceptual exterior elevations and sections which delineate the basic shape, structure, size, and character of the proposed development will be prepared.

A revised construction estimate of probable cost will be provided by others for review by Client at the sole expense of Client.

C. PHASE III - DESIGN DEVELOPMENT SERVICES

Subsequent to the approval of the schematic design and with the authorization of Client, Architect will proceed with the design development of the project.

The objective of this phase is to prepare a package of drawings and other documents refining and explaining the project. This package includes refinement of the floor plans and elevations and a more detailed development of the project's exterior.

The visual aspects of the structures will be studied. Building materials and installation systems will be studied and selected.

The various engineering systems will be analyzed by Client's consultants in order that the final architectural design concept can be carried out efficiently and economically.

A refined statement of probable construction cost will be prepared by others at the sole expense of Client for review by Client at the conclusion of this phase of the work.

D. PHASE IV - CONSTRUCTION DOCUMENT SERVICES

1. ARCHITECTURAL CONSTRUCTION DOCUMENTS

Upon authorization by Client, Architect will prepare construction documents consisting of drawings and specifications setting forth the requirements for project construction. The total construction documents will be of sufficient detail to reasonably bid and build the project.

The architectural construction documents are prepared from the approved Design Development Phase drawings with two-dimensional graphic representations, such as plans, elevations, sections, and details indicating the design, location, size, and dimensions of the project and of the parts thereof. Notes on the drawings and specifications support and explain the graphic representations.

Architect will prepare advance bid documents, schedule permitting, when the construction sequencing requires some portion of the work at an earlier stage in the project's development.
2. **STRUCTURAL CONSTRUCTION DOCUMENTS**

The structural engineer's work includes preparation of structural working drawings, in concert with the architectural working drawings, which graphically represent the structural concept of the project and include sufficient details, schedules, notes, and information necessary to facilitate its construction. The work also includes preparation of engineering calculations which verify the size and dimension of foundations, structural reinforcing; and wall, column, beam, floor, and roof structures. Calculations will conform to the applicable building code requirements in force at the time of issuance of the building permit.

Any additional engineering required for shoring or foundation designs other than conventional spread-footing or driven-pile type will be billed to Client as an additional service.

Architect and the structural engineer shall rely on the soils report provided by Client to Architect prior to the commencement of the preparation of construction documents. As long as Architect and his consultants comply with the approved recommendations of the soils report, they shall be indemnified and held harmless by Client for any damage or alleged damage caused in part or in whole by any surface failure including, but not limited to, soils settlement or soils corrosion.

3. **CIVIL CONSTRUCTION DOCUMENTS** (by Client's consultant)

The civil engineer's work includes preparing civil working drawings from the approved Site Development studies to represent graphically those features dealing with onsite improvements such as utilities, culverts, drainage, and grading, both rough and final, as well as elevations of hardscape areas.

4. **MECHANICAL CONSTRUCTION DOCUMENTS**

The mechanical engineer's work includes assisting Architect in developing the criteria for the mechanical/plumbing engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment. The fire protection system, as required in the approved architectural design, will be performed by a design/build contractor but with head type and location approved by Architect.

The design/build contractor shall make an independent analysis and be fully responsible for the mechanical and plumbing engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.
The mechanical engineer shall review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, coordinate and review the mechanical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

5. **ELECTRICAL CONSTRUCTION DOCUMENTS**

The electrical engineer's work includes assisting Architect in developing the criteria for the electrical engineering designs which shall be prepared by a design/build contractor selected by the general contractor. In addition, he shall assist Architect in locating and sizing the equipment.

The design/build contractor shall make an independent analysis and be fully responsible for the electrical engineering and the size, shape, dimension, and capacity of the various elements, as well as coordinating with other trades.

The electrical engineer shall coordinate and review the construction documents of the design/build contractor to verify general consistency with the established criteria for design.

Architect shall, using the standard of care, review the electrical engineer's design and advise Client and the design/build contractor if Architect observes any material deficiencies in the design.

**E. PHASE V - PLAN CHECK COORDINATION SERVICES**

Architect will submit the appropriate architectural documents to the appropriate building department for the purpose of checking the plans prior to issuing a building permit.

Architect will coordinate with the various governmental agencies and make adjustments necessary to the architectural construction documents so that they will satisfy the requirements for issuance of a building permit.

**F. PHASE VI - SERVICES DURING CONSTRUCTION**

1. **CONSTRUCTION OBSERVATION**

All time spent on the project subsequent to the obtaining of building permits will be billed to the Construction Observation Phase.

Construction services through completion of construction are included within the scope of the Agreement. Construction services requested by Client beyond the above-stated construction phase will be billed as additional services.

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Architect shall make 16 trips to the site during the construction of the project, to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the contract documents and the general conditions of the contract. However, Architect will not be required to make exhaustive or continuous onsite reviews to check the quality or quantity of the work.

Architect will provide assistance to the contractor, his superintendent and subcontractors as is reasonably required to explain or interpret the drawings.

Architect shall not have control of or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; or for safety precautions and programs in connection with the Work; for the acts or omissions of the contractor, subcontractors or any other persons performing any of the work; or for the contractor's or subcontractor's schedules; or for the failure of any of them to carry out the work in accordance with the contract documents in accordance with the requirements of the governmental agency having jurisdiction over the work.

It is assumed that construction of the entire project will be completed within a sixteen- (16-) month construction schedule. If time of Architect is required beyond the above-allocated construction period, that time will be billed as an additional service.

Verification for payment of materials stored, fabrication or construction, and work performed offsite shall be verified by others retained by Client.

2. SHOP DRAWINGS AND SUBMITTAL REVIEW

Architect and Client's selected general contractor shall review and take appropriate action on shop drawings, product data, samples, and other submittals required by the construction documents. Architect's review shall be only for general conformance with the design concept and general compliance with the information given in the construction documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades, or construction safety precautions, all of which are the sole responsibility of the contractor. Architect's review shall be conducted with reasonable promptness consistent with sound professional practice. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. Architect shall not be required to review and shall not be responsible for any deviations from the construction documents not clearly noted by the contractor, nor shall Architect be required to review partial submissions or those for which submissions for correlated items have not been received.
3. **BULLETINS AND CHANGE ORDERS**

Architect shall prepare bulletins after the construction contract is established or construction has commenced. Bulletins will provide the contractor with information relating to clarification, documentation of field changes, detail changes, errors, omissions, and Client changes.

Change orders will be prepared by the general contractor in a format established by Architect to be issued and approved by both Architect and Client prior to execution.

If bulletins are a result of a change in the scope of work as directed by Client, the expense for the preparation and execution of the bulletin and change order shall be billed to Client as an additional service.

4. **ARCHITECT'S INTERPRETATIONS AND DECISIONS**

Interpretations and decisions of Architect shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Architect shall endeavor to secure faithful performance by both Client and contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith. Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the contract documents.

5. **MISCELLANEOUS**

The term "substantial completion" shall be interpreted to mean that the project's construction is sufficiently complete in accordance with the construction documents so that the premises, in whole or in part, can be occupied and utilized for the use for which it is intended as expressed in the contract documents. Evidence of same shall be through the issuance of a certificate of occupancy, temporary or permanent.

**ARTICLE III - EXCLUSIONS**

The following items are specifically excluded from the services to be performed by Architect under this Agreement:

Services specifically excluded in addition to those indicated hereinafore are production of any drawings normally included in the work of a consulting landscape architect; civil engineer services; de-watering design and engineering; shoring design and engineering; graphics consultant; traffic or parking consultant; elevator consultant; special consultants required for gas, water, or asphalt conditions; acoustical engineering consultant; design or production of any brochures; interior design or decoration (other than interior elevations of casework or built-in equipment); renderings; models; job supervision; environmental impact reports; the preparation of record drawings; or any work other than as specified herein.
ARTICLE IV - RESPONSIBILITIES OF ARCHITECT

A. ALTERATIONS TO DRAWINGS

Architect shall have no claim for any extras whatsoever, unless and until specific written or verbal orders are given by Client to Architect. All such work shall be executed under the conditions hereof, except that any claim thereby shall be adjusted at the time of ordering such change.

B. PROFESSIONAL SERVICES

All work done under this Agreement shall be performed pursuant to the requirements of the appropriate governmental agencies having jurisdiction over the issuance of a building permit and certificate of occupancy at the time the service is rendered.

C. NOTIFICATION OF FEES

Architect shall notify Client as to dollar amounts of plan check fees for building permit only. Client shall be responsible for determining requirements and amounts of other fees necessary for the construction and occupancy of the work.

D. COST RECORDS

Architect shall keep sufficient cost records of accounts on a generally recognized accounting basis and shall make them available to Client as required for hourly charges.

No deductions shall be made from Architect’s compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of changes in the Work (“backcharges”) other than those for which Architect has been found liable by a court of competent jurisdiction.

ARTICLE V - RESPONSIBILITY OF CLIENT

A. ACCURATE SURVEY OF SITE

Client to furnish Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties and contours of the building sites, and full information as to storm sewer, sanitary sewer, water, gas, telephone, and electrical services and other buried utilities. Survey shall also furnish any information prepared by public authorities regarding street improvements, condemnations, and highway dedications, both existing and proposed.

B. LEGAL AND AUDITING ADVICE

Client to provide all legal and auditing advice incurred as a result of the project and its development.
C. SOILS INFORMATION

Client to provide a soils investigation report prepared by a licensed soils engineer and/or licensed geologist. Report shall provide investigations of the site and make recommendations. Architect and structural engineer will rely solely on the accuracy and completeness of this soils report and recommendations contained therein for the design of the project. Such report shall also include information and recommendations relating to subterranean water levels and volumes, contaminated or hazardous existing soils and/or water conditions.

D. REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation for basic and additional services and include actual expenditures made by Architect and Architect's employees and consultants in the development of the project. These expenses shall include, but shall not be limited to, blueprinting and reproduction, photo work, artist renderings (if requested by Client), overnight delivery, and messenger services.

E. CONSULTANT SERVICES

Client to pay for all consultant services not specifically included within the scope of this Agreement.

It is clearly understood by all parties that while Architect may provide coordination services for consultants whose services are within and outside the scope of this Agreement, these consultants are professionals licensed in the State of California and Architect assumes no liability for the quality of said consultants' work nor for the errors or omissions these consultants may cause. Further, Architect assumes no responsibility for the errors or omissions which may be the result of the coordination of consultants outside the scope of this Agreement.

F. PLAN CHECK AND BUILDING PERMIT FEES

Client to pay for all plan check, building permit and other fees required by the municipality.

G. ARTIST RENDERINGS

Client to pay for artist renderings of the project, if requested by Client.

H. TRAVEL EXPENSES

Client to pay for all travel expenses and travel time for Architect and its consultants as necessary to accomplish the work included within the scope of this Agreement including air fares, lodging and meals, except within Orange County and Greater Los Angeles.
I. REVIEW OF DOCUMENTS

The proposed language of certificates, consents, assignments, etc., requested of Architect or Architect's consultants shall be submitted to Architect for review and approval at least fourteen (14) days prior to execution. Client shall not request certifications, consents, or assignments that would require knowledge or services beyond the scope of this Agreement.

Any time required of Architect or his employees for the review of such documents shall be considered additional service and shall be compensated in accordance with Article VI, Paragraph C. Further, any time required of Architect as a result of the change of the primary client as a result of such documentation (i.e., assumption by lender) shall be considered additional services.

ARTICLE VI - FEE

Client agrees to compensate Architect, in accordance with the terms and conditions of this Agreement, for services rendered hereunder as follows:

A. TOTAL FEE

For the Predesign and Site Development Services Phase, Architect shall be compensated on an hourly basis as delineated in Article VI, Paragraph C of this Agreement for time spent during this phase of the work. For budgetary purposes, an allotment shall be established in the amount of Twenty-five Thousand ($25,000), broken down as follows:

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>ALLOTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conceptual Site Plan/Feasibility Studies</td>
<td>$17,500</td>
</tr>
<tr>
<td>P.D. Permit Process</td>
<td>$7,500</td>
</tr>
<tr>
<td>TOTAL ALLOTMENT*</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

* This is not to be construed as a guaranteed maximum.

In addition to the allotment for predesign services, Client agrees to pay Architect for Architect's basic services rendered hereunder a fee equal to Four Hundred Ninety-five Thousand Dollars ($495,000).

Payment shall be made monthly in proportion to services performed so that compensation at the completion of each phase shall equal the following amounts:

1. RETAINER

A retainer of Ten Thousand Dollars ($10,000) shall be paid Architect upon execution of this Agreement. A credit of Two Thousand Dollars ($2,000) shall be applied to each of the five bidding phases; i.e., Article VI, Paragraphs A2 through A6.
2. **SCHEMATIC DESIGN SERVICES PHASE**

Upon substantial completion of the Schematic Design Services Phase, Architect shall have been compensated ten (10) percent of the total architectural fee or Forty-nine Thousand Five Hundred Dollars ($49,500).

3. **DESIGN DEVELOPMENT SERVICES PHASE**

Upon substantial completion of the Design Development Services Phase, Architect shall have been compensated an additional twenty (20) percent of the total architectural fee or Ninety-nine Thousand Dollars ($99,000).

4. **CONSTRUCTION DOCUMENT SERVICES PHASE**

Upon substantial completion of the construction documents ready for plan check submission, Architect shall have been compensated an additional fifty (50) percent of the total architectural fee or Two Hundred Forty-seven Thousand Five Hundred Dollars ($247,500).

5. **PLAN CHECK COORDINATION SERVICES PHASE**

Upon issuance of a building permit or ninety (90) days following substantial completion of the construction documents, whichever occurs first, Architect shall have received an additional seven (7) percent of the total architectural fee or Thirty-four Thousand Six Hundred Fifty Dollars ($34,650).

6. **CONSTRUCTION SERVICES PHASE**

Upon filing notice of substantial completion of construction, Architect shall have received an additional thirteen (13) percent of the total architectural fee or Sixty-four Thousand Three Hundred Fifty Dollars ($64,350).

Architect will maintain and provide copies of job cost records of time expended during the Construction Services Phase. In the event that these costs exceed the above-stated percentage of the total fee allotment, Architect will notify Client in writing of same and will be compensated for this additional cost as an additional service on an hourly basis.

7. In the event that Client desires to re-use the plans developed by Architect under the terms of this Agreement, Architect shall receive a re-use fee equal to Four Hundred Fifty Dollars ($450) per residential unit, due and payable upon obtaining the building permits for the units. In addition, Architect shall be reimbursed for all time spent on the work including drawing revisions, site planning, plan processing and job site observation on an hourly basis as delineated in this Agreement. There shall be no re-use fee charged for the initial 200-unit subdivision.
B. ADDITIONAL SERVICES

For additional services of Architect, but excluding additional services of consultants, compensation shall be on an hourly basis or negotiated lump-sum basis.

For additional services of consultants, a multiple of 1.15 times the amounts billed to Architect for such services shall be charged Client.

In the event that other architectural firms, landscape architect, engineering or other consultant services outside the scope of services of this Agreement are required by Client for certain portions of the work, Architect will, at the direction of Client, provide coordination services for Client. Such services by Architect will be billed on an hourly basis. Architect shall not be responsible, however, for the quality of the design, engineering, or implementation of any other architect’s, landscape architect’s, engineer’s, or other consultant’s work on any portion of this project.

C. HOURLY RATES

For compensation on an hourly basis, the following rates shall apply:

- Time spent by Principal will be billed at the fixed rate of One Hundred Eighty Dollars ($180) per hour.

- Time spent by Senior Associate Partners will be billed at the fixed rate of One Hundred Fifty Dollars ($150) per hour.

- Time spent by Associate Partners will be billed at the fixed rate of One Hundred Twenty-five Dollars ($125) per hour.

- Employees of Architect will be billed at the rate of three (3) times the employee’s direct personnel expense. Direct personnel expense shall be defined as 1.35 times the direct hourly wage.

- Computer time will be billed at the flat rate of Thirty-five Dollars ($35) per hour in addition to the employee/operator’s normal hourly billing rate.

D. REIMBURSABLE EXPENSES

For Architect’s reimbursable expenses delineated in Article V, Paragraph D above of this Agreement, Architect shall be compensated 1.15 times the amount billed to Architect.

E. INVOICING

A statement for services shall be rendered monthly in accordance with the terms specified above and shall include charges for reimbursable expenses paid by Architect on Client’s behalf and charges for additional services and/or changes. All payments shall be due within forty-five (45) days of receipt of statement. A monthly service charge of one and one-half (1.5) percent, compounded monthly, will be
charged for accounts unpaid or overdue beyond forty-five (45) days of the billing date.

In light of the obvious advantage of resolving questions and disputes regarding Architect's billing quickly and while recollections are fresh, Client will notify Architect of any questions or dissatisfaction which it may have regarding any particular invoice within thirty (30) days of the invoice date, and if Client fails to give Architect such notice, then Client will have waived its right to dispute the accuracy and appropriateness of the invoice and the invoice will be binding upon Client.

F. **CHANGES IN THE WORK**

For changes in the work or changes in the scope: Notwithstanding the provision of basic services, if there are any changes in the drawings requested by Client, after prior approval of the work, or if changes are made necessary as the result of fire, the elements, Acts of God, or other casualties beyond the control of Architect, or if changes in the drawings are necessary as a result of changes in the code after any suspension or delay, or if Client requests services in addition to those specified in basic services, Architect shall be compensated for making such changes or for such additional services amounting over and above the aforementioned maximum fee on an hourly basis.

G. **OVERTIME PREMIUM**

In the event Client authorizes Architect overtime, Client shall reimburse Architect 1.5 times the employee's billable rate for the overtime hours.

H. **COMPLETED WORK TIME FRAME**

It is presumed that the services delineated in this Agreement are to be completed within thirty-two (32) months following origination date of Agreement. If portions of the work extend beyond this thirty-two- (32-) month time frame, those portions will be billed an additional ten (10) percent per annum or the consumer price index increase for the previous year, whichever is less, for each twelve-month period or portion thereof beyond the original thirty-two- (32-) month time frame.

**ARTICLE VII - GENERAL CONDITIONS**

A. **SUCCESSORS AND ASSIGNMENT WITHOUT APPROVAL**

No assignment hereof by Architect or Client shall be binding without the written consent of the other. This Agreement is also binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, to the extent assignment is permitted.
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

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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.

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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 adjustors, 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.
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first above written.

Approved and Accepted:

McLARAND, VAZQUEZ & PARTNERS, INC.

[Signature]

Ernesto M. Vasquez, AIA
Managing Principal

Approved and Accepted:

CILKER ORCHARDS

[Signature]

William H. Cilker
By: William H. Cilker
Title: Owner
Date: 8-12-98
EXHIBIT “B”
Case No. 113CV258281

SECOND AMENDED COMPLAINT FOR DAMAGES

CILKER APARTMENTS, LLC,

Plaintiff,

vs.

WESTERN NATIONAL CONSTRUCTION,
MCLARAND, VASQUEZ & PARTNERS,
INC., GROUP M ENGINEERS, GENTRY
ASSOCIATES CONSTRUCTION
CONSULTANTS, LARCO INDUSTRIES,
FITCH PLASTERING, COURTNEY
WATERPROOFING, CELL-CRETE
CORPORATION, LOS NIETOS
CONSTRUCTION, MADERA FRAMING,
KELLY DOOR, TARA COATINGS, LDI,
ADM PAINTING, ALLIANCE BUILDING
PRODUCT, JOS. J. ALBANESE,
ANDERSON TRUSS, CALIFORNIA
CLASSIC PAVERS, CASEY-FOGIL
CONCRETE CONTRACTORS,
COMMERCIAL ROOF MANAGEMENT,
DAVEY ROOFING, INC., DIMETRIUS
PAINTING II, INC., DOORWAY MFG.,
LANDSCAPE PROS, MULTI-BUILDING
STRUCTURES, PARK WEST, PYRAMID
BUILDERS, ROBECKS WELDING &
FABRICATION, RYLOCK COMPANY,
SUMMIT WINDOW & PATIO DOOR,
AMPAM PARKS MECHANICAL,
CALIFORNIA CLASSIC PAVER DESIGNS,
INC., JELD-WEN, INC. DBA SUMMIT
WINDOW & PATIO DOOR, MCLARAND
VASQUEZ EMSIEK & PARTNERS, INC.,
CAPITAL DRYWALL, INC., MVE &
PARTNERS, INC., MVE + PARTNERS, INC., AMPAM LDI MECHANICAL, INC.,
EASTERN LANDSCAPE COMPANY, INC., PACIFIC COAST BUILDING PRODUCTS
DBA ANDERSON TRUSS, COURTNEY, INC., ROUNDS & BROKER, INC. dba
MADERA CONSTRUCTION and DOES 1-
100, inclusive,

Defendants.

COMES NOW Plaintiff CILKER APARTMENTS, LLC and for causes of action against
Defendants, and each of them, complain and allege as follows:

1. Plaintiff CILKER APARTMENTS, LLC ("Plaintiff") is a limited liability company
operating in the County of Santa Clara and is the owner of the real property and improvements
commonly known as One Pearl Place Apartments, One Pearl Place, San Jose, California
(hereinafter the "PROPERTY" or the "PROJECT"). The PROJECT consists of approximately
182 residential apartment units and other improvements including but not limited to a
recreation/leasing center. Plaintiff is the legal holder of all rights, claims, causes of action and
interests pertaining to the PROPERTY including all rights, claims, causes of action and interests
of Cilker Orchards.

2. Plaintiff is informed and believes, and based thereon alleges that at all times herein
mentioned, Defendant WESTERN NATIONAL CONSTRUCTION (hereinafter "WNC") was a
California Corporation based in Orange County, but doing business in the County of Santa Clara,
California. Plaintiff entered into a written agreement with WNC pertaining to the construction of
the PROJECT.

3. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant MCLARAND, VASQUEZ & PARTNERS, INC. (hereinafter
"MV&P") whose true business form and entity is unknown, was an architectural firm doing
business in the County of Santa Clara, California. Plaintiff entered into a written agreement with
MV&P pertaining to the design and construction of the PROJECT.

4. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant GROUP M ENGINEERS (hereinafter "GROUP M"), whose true
business form and entity is unknown, was an engineering firm doing business in the County of
Santa Clara, California.

5. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant GENTRY ASSOCIATES CONSTRUCTION CONSULTANTS
("GENTRY") whose true business form and entity is unknown, was doing business in the County
of Santa Clara, California. Plaintiff entered into an agreement with GENTRY pertaining to the
design and/or construction of the PROJECT.

6. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant LARCO INDUSTRIES ("LARCO") whose true business form and
entity is unknown, was doing business in the County of Santa Clara, California. WNC entered
into a written subcontract agreement with LARCO pertaining to the construction of the PROJECT
on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due
consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under
the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses
of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or
indirectly connected with the PROJECT.

7. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant FITCH PLASTERING ("FITCH") was a California Corporation,
doing business in the County of Santa Clara, California. WNC entered into a written subcontract
agreement with FITCH pertaining to the construction of the PROJECT on behalf of Plaintiff. In
said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend,
indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against
any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including
attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected
with the PROJECT.

8. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant COURTNEY WATERPROOFING ("COURTNEY") was a
California Corporation, doing business in the County of Santa Clara, California. WNC entered
into a written subcontract agreement with COURTNEY pertaining to the construction of the
PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed
to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent
possible under the law from and against any and all loss, damages, liability, claims, demands,
costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any
manner directly or indirectly connected with the PROJECT.

9. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant CELL CRETE was a California Corporation, doing business in the
County of Santa Clara, California. WNC entered into a written subcontract agreement with CELL
CRETE pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written
subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify
and save Plaintiff harmless to the fullest extent possible under the law from and against any and all
loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys'
fees and expert fees, arising out of or in any manner directly or indirectly connected with the
PROJECT.

10. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant LOS NIETOS CONSTRUCTION ("LOS NIETOS") whose true
business form and entity is unknown, was doing business in the County of Santa Clara, California.
WNC entered into a written subcontract agreement with LOS NIETOS pertaining to the
construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said
subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to
the fullest extent possible under the law from and against any and all loss, damages, liability,
claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising
out of or in any manner directly or indirectly connected with the PROJECT.

11. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant MADERA FRAMING ("MADERA") whose true business form and
entity is unknown, was doing business in the County of Santa Clara, California. WNC entered
into a written subcontract agreement with MADERA pertaining to the construction of the
PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed
to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent
possible under the law from and against any and all loss, damages, liability, claims, demands,
costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any
manner directly or indirectly connected with the PROJECT.

12. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant KELLY DOOR whose true business form and entity is unknown,
was doing business in the County of Santa Clara, California. WNC entered into a written
subcontract agreement with KELLY DOOR pertaining to the construction of the PROJECT on
behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due
consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under
the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses
of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or
indirectly connected with the PROJECT.

13. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant TARA COATINGS ("TARA") whose true business form and entity
is unknown, was doing business in the County of Santa Clara, California. WNC entered into a
written subcontract agreement with TARA pertaining to the construction of the PROJECT on
behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due
consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under
the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses
of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or
indirectly connected with the PROJECT.

14. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant LDI whose true business form and entity is unknown, was doing
business in the County of Santa Clara, California. WNC entered into a written subcontract
agreement with LDI pertaining to the construction of the PROJECT on behalf of Plaintiff. In said
written subcontract agreement, said subcontractor agreed to, for due consideration, to defend,
indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against
any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including
attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected
with the PROJECT.

15. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant ALLIANCE BUILDING PRODUCTS (hereinafter "ALLIANCE")
whose true business form and entity is unknown, was doing business in the County of Santa Clara,
California. WNC entered into a written subcontract agreement with ALLIANCE pertaining to the
construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said
subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to
the fullest extent possible under the law from and against any and all loss, damages, liability,
claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising
out of or in any manner directly or indirectly connected with the PROJECT.

16. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant JOS. J. ALBANESE (hereinafter "JJA") whose true business form
and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered
into a written subcontract agreement with JJA pertaining to the construction of the PROJECT on
behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due
consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under
the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses
of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or
indirectly connected with the PROJECT.

17. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant ANDERSON TRUSS (hereinafter "ANDERSON") whose true
business form and entity is unknown, was doing business in the County of Santa Clara, California.
WNC entered into a written subcontract agreement with ANDERSON pertaining to the
construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said
subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to
the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

18. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant CALIFORNIA CLASSIC PAVERS (hereinafter "CALIFORNIA CLASSIC") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with CALIFORNIA CLASSIC pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

19. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant CASEY-FOGIL CONCRETE CONTRACTORS (hereinafter "CASEY-FOGILI") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with CASEY-FOGILI pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

20. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant CENTRAL COAST STAIRS whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with CENTRAL COAST STAIRS pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor
agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

21. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant COMMERCIAL ROOF MANAGEMENT (hereinafter "CRM") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with CRM pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

22. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant DAVEY ROOFING, INC. (hereinafter "DAVEY") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with DAVEY pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

23. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant DIMETRIUS PAINTING, II (hereinafter "DIMETRIUS") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with DIMETRIUS pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff
harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

24. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant DOORWAY, MFG. (hereinafter "DOORWAY") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with DOORWAY pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

25. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant LANDSCAPE PROS (hereinafter "LANDSCAPE") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with LANDSCAPE pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

26. Plaintiff is informed and believes, and based upon thereon alleges that at all times herein mentioned, Defendant MULTI BUILDING STRUCTURES (hereinafter "MBS") whose true business form and entity is unknown, was doing business in the County of Santa Clara, California. WNC entered into a written subcontract agreement with MBS pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability,
claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising
out of or in any manner directly or indirectly connected with the PROJECT.

27. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant PARK WEST whose true business form and entity is unknown, was
doing business in the County of Santa Clara, California. WNC entered into a written subcontract
agreement with PARK WEST pertaining to the construction of the PROJECT on behalf of
Plaintiff. In said written subcontract agreement, said subcontractor agreed to, for due
consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under
the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses
of any kind, including attorneys' fees and expert fees, arising out of or in any manner directly or
indirectly connected with the PROJECT.

28. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant PYRAMID BUILDERS (hereinafter "PYRAMID") whose true
business form and entity is unknown, was doing business in the County of Santa Clara, California.
WNC entered into a written subcontract agreement with PYRAMID pertaining to the construction
of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor
agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest
extent possible under the law from and against any and all loss, damages, liability, claims,
demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of
or in any manner directly or indirectly connected with the PROJECT.

29. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant ROBECKS WELDING & FABRICATION (hereinafter
"ROBECKS") whose true business form and entity is unknown, was doing business in the County
of Santa Clara, California. WNC entered into a written subcontract agreement with ROBECKS
pertaining to the construction of the PROJECT on behalf of Plaintiff. In said written subcontract
agreement, said subcontractor agreed to, for due consideration, to defend, indemnify and save
Plaintiff harmless to the fullest extent possible under the law from and against any and all loss,
damages, liability, claims, demands, costs, and expenses of any kind, including attorneys' fees and
expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

30. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant RYLOCK COMPANY (hereinafter "RYLOCK") whose true
business form and entity is unknown, was doing business in the County of Santa Clara, California.
WNC entered into a written subcontract agreement with RYLOCK pertaining to the construction
of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said subcontractor
agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest
extent possible under the law from and against any and all loss, damages, liability, claims,
demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of
or in any manner directly or indirectly connected with the PROJECT.

31. Plaintiff is informed and believes, and based upon thereon alleges that at all times
herein mentioned, Defendant SUMMIT WINDOW & PATIO DOOR (hereinafter "SUMMIT")
whose true business form and entity is unknown, was doing business in the County of Santa Clara,
California. WNC entered into a written subcontract agreement with SUMMIT pertaining to the
construction of the PROJECT on behalf of Plaintiff. In said written subcontract agreement, said
subcontractor agreed to, for due consideration, to defend, indemnify and save Plaintiff harmless to
the fullest extent possible under the law from and against any and all loss, damages, liability,
claims, demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising
out of or in any manner directly or indirectly connected with the PROJECT.

32. On or about May 9, 2014, Plaintiff caused to be filed in the Santa Clara Superior
Court "Plaintiff Cilker Apartments, LLC's First Doe Amendment To Complaint For Damages"
identifying an additional defendant, then designated as DOE 1 as follows:

<table>
<thead>
<tr>
<th>Fictitious Name</th>
<th>True Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doe 1</td>
<td>AMPAM Parks Mechanical</td>
</tr>
</tbody>
</table>

33. On or about August 27, 2014, Plaintiff caused to be filed in the Santa Clara
Superior Court "Plaintiff Cilker Apartments, LLC's Second Doe Amendment To Complaint For
Damages" identifying additional defendants, then designated as DOE's 2-3 as follows:
34. On or about April 9, 2015, Plaintiff caused to be filed in the Santa Clara Superior Court "Plaintiff Cilker Apartments, LLC's Third Doe Amendment To Complaint For Damages" identifying additional defendants, then designated as DOE's 4-5 as follows:

35. On or about May 11, 2015, Plaintiff caused to be filed in the Santa Clara Superior Court "Plaintiff Cilker Apartments, LLC's Third Doe Amendment To Complaint For Damages" identifying additional defendants, then designated as DOE's 6-9 as follows:

36. On or about July 22, 2015, Plaintiff caused to be filed in the Santa Clara Superior Court "Plaintiff Cilker Apartments, LLC's Third Doe Amendment To Complaint For Damages" identifying an additional defendant, then designated as DOE 10 as follows:

37. Defendants, AMPAM PARKS MECHANICAL (Doe 1), CALIFORNIA CLASSIC PAVERS DESIGN, INC. (Doe 2), JELD-WEN, INC. DBA SUMMIT WINDOW & PATIO DOOR (Doe 3), CAPITAL DRYWALL, INC. (Doe 5), AMPAM LDI MECHANICAL INC. (Doe 8), EASTERN LANDSCAPE COMPANY, INC. (Doe 9), AND PACIFIC COAST BUILDING PRODUCTS DBA ANDERSON TRUSS.
PRODUCTS DBA ANDERSON TRUSS (Doe 10), are named as Defendants herein in the caption of this Second Amended Complaint. Each named defendant was involved in the construction of the PROJECT, and provided design, labor and/or materials to the PROJECT for this purpose. Each of these Defendants entered into a written subcontract agreement with WNC on behalf of Plaintiff pertaining to the PROJECT. In said written subcontract agreement and for due consideration, said subcontractors agreed to (among other commitments) defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims, demands, costs, and expenses of any kind, including attorneys’ fees and expert fees, arising out of or in any manner directly or indirectly connected with the PROJECT.

38. Defendants MCLARAND VASQUEZ EMSIEK & PARTNERS, INC. (Doe 4), MVE & PARTNERS, INC. (Doe 6), and MVE + PARTNERS, INC. (Doe 7) (hereinafter collectively "MVE"), are named as Defendants herein in the caption of this Second Amended Complaint. At all relevant times, MVE shared a unity of interest with Defendant MV&P, such that any individuality and separateness between MVE and MV&P have ceased, and MVE is the alter-ego of MV&P. The work performed by MVE and MV&P with respect to the PROJECT was undertaken as a united company, and each entity performed the services required under the written contractual agreement entered into between MV&P and Plaintiff.

39. At all relevant times, MVE acted as an agent, successor, assignee, alter-ego and/or joint-venturer of MV&P, and in doing the things alleged herein, acted within the course and scope of such agency, succession, assignment, alter-ego and furtherance of the joint venture. These actions include, but are not limited to, assuming, performing, executing, completing, and carrying out, the contractual obligations, duties, responsibilities, requirements and liabilities contained in the written contractual agreement, and associated change orders, addenda, RFIs, and written requests, entered into between MV&P and Plaintiff with respect to the PROJECT.

40. Specifically, at all times relevant hereto, a unity of interests between MVE and MV&P is demonstrated by certain facts, including, but not limited to: (1) both MV&P and MVE were located in the same offices located at 1900 Main Street, Irvine, California 92614 and 350
Frank H. Ogawa Plaza, Suite 100, Oakland, California 94612; (2) Both MV&P and MVE provided its employees, resources, advice and professional services to Plaintiffs and WNC, Group M and others concerning the PROJECT including but not limited to architects Ernesto Vasquez, Gary Penman and Loren Gachen, and MVE responded to inquiries and questions concerning professional services at the PROJECT without identifying themselves or itself as a separate entity from MV&P, (3) MVE corresponded to Plaintiff in the name of MVE and provided its professional approval of modifications to the construction documents, site observation and other services under that corporate form MVE, (4) MVE utilized the physical and intellectual property of MV&P in the providing of services to the PROJECT, (5) The agent for service of process of both MV&P and MVE is Carl McLarand; and (3) The president of both MV&P and MVE is Carl McLarand. Discovery into the interworking of MV&P and MVE is ongoing and Plaintiff will seek leave of the Court to alleged additional facts as they are discovered in this litigation.

41. At all relevant times, MVE was the alter-ego of MV&P, and there was such a unity of interest and ownership that the individuality or separateness of MV&P and MVE has ceased during the pendency of the PROJECT, and the facts are such that an adherence to the fiction of the separate existence of these entities would under the particular circumstances, sanction a fraud and promote injustice.

42. On July 1, 2015, counsel for Plaintiff filed a Certificate of Merit pursuant to Code of Civil Procedure §411.35 with respect to the MVE Defendants. Attached hereto as Exhibit "A" is a true and correct copy of this Certificate and the accompanying proof of service.

43. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1-100, and therefore sues said Defendants by these fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants is in some manner responsible for the injury and damage to Plaintiff alleged herein.

44. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants were the agents, servants and employees of their co-defendants and in
doing the things hereinafter mentioned, were acting in the course and scope of their authority as agents, servants, and employees with the permission and consent of their co-defendants.

45. In or about July 1, 2000, Plaintiff entered into a written contract with WNC to construct the subject apartment PROJECT. The PROJECT began sometime after execution of the written contract and continued until all work was completed in or about 2004.

46. Plaintiff is informed and believes, and based upon thereon alleges that Defendants identified in paragraphs 2 through 40 above were subcontractors or others who performed construction or design work on the PROJECT.

47. Within the one year prior to the filing of this complaint Plaintiff discovered construction defects at the PROJECT in areas where each of the defendants set forth herein performed work, labor, design or architectural services. The areas impacted by defects include, but are not limited to:

   a. Exterior decks;
   b. Exterior walkways;
   c. Breezeways;
   d. Elevated Courtyards and pathways;
   e. Podium level planters
   f. Structural Components
   g. Doors, doorways and door thresholds;
   h. Concrete;
   i. Stucco and exterior building elevations;
   j. Wood framing;
   k. Waterproofing;
   l. Windows;
   m. Railings;
   n. Roofing;
   o. Plumbing/storm drainage;
   p. Sheet metal flashings
q. Mechanical/flashing; and,

r. Miscellaneous steel and structural steel.

48. The nature of the defects are such that they were not reasonably apparent or discoverable by Plaintiff until within the statutory period. Investigation of the full nature and extent of the defects is continuing.

FIRST CAUSE OF ACTION

[Breach of Contract Against All Defendants and DOES 1-100]

49. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them herein by reference as though set forth in full.

50. The Contract utilized by Plaintiff and Defendant WNC contained an express agreement to complete the PROJECT in a good and workmanlike manner and in legal compliance. The same was true for all subcontracts between WNC and each of its subcontractors each of which identifies Plaintiff as an intended third party beneficiary. The subcontracts for each of the remaining subcontract defendants incorporated these agreements and provisions and/or expressly set forth said agreements and provisions.

51. The Contract utilized by Plaintiff and Defendant MV&P contained an express agreement to design and manage the PROJECT in a good and workmanlike manner and in legal compliance. As alleged in paragraphs 38-41 above, MVE was the agent, successor, assignee, alter-ego and/or joint-venturer of of MV&P, and as a result, assumed, performed, executed, completed, and carried out, the contractual obligations, duties, responsibilities, requirements and liabilities contained in the written contractual agreement, and associated change orders, addenda, RFIs, and written requests, entered into between MV&P and Plaintiff with respect to the PROJECT.

52. The Contract utilized by or on behalf of Plaintiff and Defendant GROUP M contained an express agreement to design and manage the PROJECT in a good and workmanlike manner and in legal compliance.

///

///
53. The Contracts were breached by Defendants by virtue of the existence of and
various latent construction deficiencies as described inter alia in Code of Civil Procedure sections
337.15.

54. Plaintiff has performed all acts, conditions and covenants required by the Contracts,
except as excused by the acts or omissions of Defendants, and each of them.

55. As a direct and proximate result of the breach by Defendants, Plaintiff has suffered
damages, which includes but is not limited to: Being required to seek the employ of design
professionals and contractors to perform repair/remediation work on the PROJECT; denial of the
use and rent of the PROJECT; being required to seek the employ of a forensic construction
consultant to investigate the construction defects on the PROJECT in order to establish the
defective construction practices in the construction of the PROJECT and the incurrence of
attorney’s fees and costs, which are ongoing.

56. The Contracts between Plaintiff and Defendants, and each of them, contained a
provision allowing the prevailing party in any proceeding arising out of the agreement to recover
their reasonable attorneys fees and costs.

57. As a proximate result of Defendants' breach of contract as set forth above, Plaintiff
has suffered damages in an amount exceeding the minimal jurisdictional amount of this Court to
be shown according to proof at trial but including, and not limited to, the cost of repairing and
replacing the defective materials and workmanship, testing and investigation of such defective
materials and workmanship, lost rents and income, diminution of fair market value, and legal and
professional costs, as well as other incidental and consequential damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
hereinafter set forth.

SECOND CAUSE OF ACTION

[Breach of Implied Warranty Against All Defendants and DOES 1-100, Not including
MV&P, MVE, and GROUP M Defendants]

58. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them
herein by reference as though set forth in full.
59. Defendants, and each of them, impliedly warranted that the PROJECT would be
constructed in a skillful manner so as to be reasonably fit for its intended purpose as an apartment
complex.

60. Plaintiff relied on this implied warranty and believed in good faith that the
PROJECT was of merchantable quality.

61. In or about December 2013, Plaintiff first learned that the PROJECT was not
properly constructed when notified by a forensic construction consultant of its analysis of the
PROJECT.

62. Defendants breached the implied warranty in that the PROJECT was constructed
with construction defects including, but not limited to, those defects as set forth in Paragraph 47
above. The discovered defects have resulted in consequential property damage which needs to be
repaired.

63. As a proximate result of Defendants' breach of warranty as set forth above, Plaintiff
has suffered damages in an amount exceeding the minimal jurisdictional amount of this Court to
be shown according to proof at trial but including, and not limited to, the cost of repairing and
replacing the defective materials and workmanship, testing and investigation of such defective
materials and workmanship, lost rents and income, diminution of fair market value, and legal and
professional costs, as well as other incidental and consequential damages.

64. Plaintiff has given notice to Defendants of the defects in construction as determined
to date by Plaintiff's forensic construction consultant.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
hereinafter set forth.

THIRD CAUSE OF ACTION

[Breach of Express Warranty Against All Defendants and DOES 1-100, Not including
MV&P, MVE and GROUP M, Defendants]

65. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them
herein by reference as though set forth in full.

///
66. Defendants expressly warranted that the PROJECT they constructed would be free from defects.

67. Plaintiff relied on this express warranty and believed in good faith that the PROJECT would be free from defects.

68. In or about December 2013, when Plaintiff was notified of the forensic consultant's initial analysis of the work done on the PROJECT, Plaintiff learned that the PROJECT had not been properly constructed.

69. Defendants breached the express warranty as the PROJECT was constructed with construction defects including, but not limited to, those defects as set forth in Paragraph 47 above. The discovered defects have resulted in consequential property damage which needs to be repaired.

70. As a proximate result of Defendants' breach of warranty as set forth above, Plaintiff has suffered damages in an amount exceeding the minimal jurisdictional amount of this Court to be shown according to proof at trial but including, and not limited to, the cost of repairing and replacing the defective materials and workmanship, testing and investigation of such defective materials and workmanship, lost rents and income, diminution of fair market value, and legal and professional costs, as well as other incidental and consequential damages.

71. Plaintiff has given notice to Defendants of the defects in construction as determined to date by Plaintiff's forensic construction consultant.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter set forth.

FOURTH CAUSE OF ACTION

[Negligence Against All Defendants and DOES 1-100]

72. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them herein by reference as though set forth in full.

73. Defendants had a duty to exercise reasonable care in the design, management and/or construction of the PROJECT. Attached hereto as Exhibit "B" is a true and correct copy
of the Certificate of Merit filed by Plaintiff's prior counsel of record as provided by Code of Civil Procedure.

74. Defendants breached their duty of care in failing to assure the PROJECT was designed, managed and/or built correctly, and according to specifications and industry standards.

75. Defendants breached their duties to exercise reasonable care in the design, management and/or construction of the PROJECT as the work on the PROJECT is defectively constructed, as set forth above.

76. As a proximate result of Defendants' negligence as set forth above, Plaintiff has suffered damages in an amount exceeding the minimal jurisdictional amount of this Court to be shown according to proof at trial but including, and not limited to, the cost of repairing and replacing the defective materials and workmanship, testing and investigation of such defective materials and workmanship, lost rents and income, diminution of fair market value, and legal and professional costs, as well as other incidental and consequential damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter set forth.

FIFTH CAUSE OF ACTION

[Strict Liability Against All Defendants and DOES 1-100, Not including MV&P, MVE and GROUP M Defendants

77. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them herein by reference as though set forth in full.

78. Plaintiff is informed and believes, and thereon alleges, that at all times relevant hereto Defendants, and each of them, were in the business of designing, manufacturing, distributing, constructing, assembling, fabricating, selling, providing, testing, supplying and producing multi-family apartment structures, buildings, building products, components, parts, and appurtenant structures for sale to, and use by, members of the general public, including, but not limited to, those products and materials used in the construction of the PROJECT.

79. Defendants, and each of them, designed, manufactured, distributed, constructed, assembled, fabricated, sold, provided, tested, distributed, supplied and produced multi-family
apartment structures, buildings, building products, components, parts, and appurtenant structures for the PROJECT. Said Defendants knew, or had reason to know, that Plaintiff and others would rely on the skill, expertise and judgment of Defendants for the design, manufacture, distribution, construction, assembly, fabrication and production of the PROJECT and that said products would be used without inspection by Plaintiff for defects and/or that defects would not be apparent with reasonable inspection.

80. Said products were unfit and unsafe for their intended use, and could and have caused physical damage to the Plaintiff's PROJECT as a result of said unfitness.

81. Plaintiff have used said products in a reasonably foreseeable manner without knowing of the unsafe and defective nature of said product. Said defects were latent but existed in said products at the time they were delivered to and constructed within the PROJECT.

82. As a proximate result of Defendants' breach as set forth above, Plaintiff has suffered damages in an amount exceeding the minimal jurisdictional amount of this Court to be shown according to proof at trial but including, and not limited to, the cost of repairing and replacing the defective materials and workmanship, testing and investigation of such defective materials and workmanship, lost rents and income, diminution of fair market value, and legal and professional costs, as well as other incidental and consequential damages.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as hereinafter set forth.

SIXTH CAUSE OF ACTION

[Express Contractual Indemnity against ALL Defendants and DOES 1 through 100, inclusive]

83. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them herein by reference as though set forth in full.

84. Plaintiff entered into written contracts with Defendants, and each of them, either directly or as a third party beneficiary through the express agents of the Plaintiff, whereby each Defendant agreed, for due consideration, to defend, indemnify and save Plaintiff harmless to the fullest extent possible under the law from and against any and all loss, damages, liability, claims,
demands, costs, and expenses of any kind, including attorneys' fees and expert fees, arising out of 
or in any manner directly or indirectly connected with the PROJECT, any default by Defendants, 
any act or omission of Defendants or Defendants' agents or employees and regardless of any active 
or passive fault or action on the part of Plaintiff and its agents and representatives, excepting any 
such matters solely and exclusively caused by the sole negligence or willful misconduct of 
Plaintiff.

85. Defendants further agreed to defend, indemnify and save WNC harmless to the 
fullest extent possible under the law as to any and all claims, liability, loss, damage, costs, 
including reasonable attorneys' fees, awards, fines or judgments arising by reason of any 
obligation or Indemnity which WNC has to Plaintiff and Plaintiff's agents and representatives.

86. Defendants', and each of their, indemnification and hold harmless agreements 
included the immediate duty to defend Plaintiff, WNC, and their agents and representatives as to 
claims and demands made against them.

87. Plaintiff has fully performed all the conditions and obligations on its part required 
under each of the said agreements.

88. Defendants, and each of them, are required to hold harmless, defend and indemnify 
Plaintiff with regard to the losses, damages and claims arising out of or related to their work, the 
PROJECT and all matters related thereto. And, as a result of the negligence, breach of contract, 
fault, or legal responsibility of Defendants, and each of them, as hereinabove alleged, Plaintiff's 
have been required and have expended, or may be required to and will expend, substantial 
amounts in repairing, mitigating, investigating and responding to and defending against the 
complaints of Plaintiff's tenants and residents at the PROJECT and in other matters according to 
proof.

89. Plaintiff is entitled to be fully reimbursed, to be defended and to be indemnified 
and hold safe and harmless by Defendants, and each of them, for all otherwise recoverable fees, 
expenses, costs, consultant fees, expert fees, and attorneys' fees, incurred in connection with this 
suit, as well as all damages resulting from Defendants' breach of their contractual responsibilities.
90. By this Complaint, and although not legally required to do so, Plaintiffs hereby
tender its defense and indemnification to Defendants, and each of them, and demands that
Defendants immediately defend, indemnify, and hold Plaintiffs harmless as to all claims and
damages as fully required by the written agreements between them and as alleged herein.

SEVENTH CAUSE OF ACTION

[Breach of Third Party Beneficiary Contract against ALL Defendants and DOES 1 through
100, inclusive, Not including Defendants WNC, MV&P and MVE]

91. Plaintiff refers to the allegations in the preceding paragraphs and incorporates them
herein by reference as though set forth in full.

92. Plaintiff is informed and believes, and thereon alleges that Subcontractor
Defendants, and each of them, entered into written contracts with WNC pursuant to which the
Subcontractor Defendants agreed to perform work of improvement at the PROJECT. These
contracts were made for the benefit of Plaintiff.

93. Plaintiff is informed and believes, and thereon alleges that Subcontractor
Defendants breached said contracts with WNC in that they failed to perform their scopes of work
in a workmanlike manner and in accordance with the plans and specifications and applicable
building codes.

94. Plaintiff is informed and believes, and thereon alleges that Defendant GROUP M
entered into written contracts with MV&P pursuant to which the GROUP M Defendants agreed to
perform professional structural and other civil engineering work for the PROJECT. This contract
was made for the benefit of Plaintiff.

95. Plaintiff is informed and believes, and thereon alleges that, as a direct and
proximate result of the foregoing breach of the third party beneficiary contracts, and the actions
and/or omissions of the said Defendants, and each of them, Plaintiff has suffered damages in an
amount exceeding the minimal jurisdictional amount of this Court to be shown according to proof
at trial but including, and not limited to, the cost of repairing and replacing the defective materials
and workmanship, testing and investigation of such defective materials and workmanship, lost
rents and income, diminution of fair market value, and legal and professional costs, as well as
other incidental and consequential damages.

96. Plaintiff is informed and believes, and thereon alleges that, as a further direct and
proximate result of the breach of third party beneficiary contracts by the said Defendants, and each
of them, the interest of Plaintiff in the PROJECT and the value thereof has been reduced and
diminished in an amount presently unknown but will be established at the time of trial, according
to proof.

97. Plaintiff is informed and believes and thereon alleges that, as a further direct and
proximate result of the breach of third party beneficiary contracts by the said Defendants, and each
of them, the residents of the PROJECT have sustained damage to the interior portions of their
dwelling units and sustained loss of use and enjoyment of their dwelling units in an amount
presently unknown but will be established at the time of trial, according to proof.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
follows:

1. For general, special and compensatory damages and for consequential damages
   according to proof;

2. For all investigative and testing costs including expert and consultant fees and
   expenses;

3. For past and future costs of repair;

4. For indemnity/compensatory damages according to proof;

5. For an order of the court determining the rights of Plaintiffs to express contractual
   indemnity from the Defendants contained in the Sixth Cause of Action;

6. For declaratory judgment that Defendants, and each of them, must defend,
   indemnify and hold harmless Plaintiff from all damages, judgments, settlements and for costs,
   expenses, attorneys' fees, and other damages incurred in defending the damage claims at the
   PROJECT and in prosecuting this complaint and other claims and damages at the PROJECT;
7. For attorneys' fees and costs of suit as allowable by law and the contracts between the parties;
8. For pre-judgment and post-judgment interest at the legal rate of interest;
9. For such other and further relief as the Court may deem just and proper.

Dated: September 25, 2015

ROBINSON & WOOD, INC.

By:

JON B. ZIMMERMAN
GREGORY B. COHEN
Attorneys for Plaintiff, CILKER APARTMENTS, LLC
CILKER APARTMENTS, LLC,

Plaintiff,

vs.

WESTERN NATIONAL CONSTRUCTION,
MCLARLAND, VARQUEZ & PARTNERS,
GROUP M ENGINEERS, GENTRY
ASSOCIATES CONSTRUCTION
CONSULTANTS, LARCO INDUSTRIES,
FITCH PLASTERING, COURTNEY
WATERPROOFING, CELL CRET, LOS
NIETOS CONSTRUCTION, MADERA
FRAMING, KELLY DOOR, TARA
COATINGS, LDI, and DOES 1-100,
inclusive,

Defendant.

AND RELATED CROSS-ACTIONS

I, Jon B. Zimmerman, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a shareholder of Robinson & Wood, Inc., attorneys of record for Plaintiff, CILKER APARTMENTS, LLC (hereinafter "Cilker"). I have personal knowledge of the facts set forth herein, except as to those
stated on information and belief and, as to those, I am informed and believe them to be true. If

called as a witness, I could and would competently testify to the matters stated herein.

2. I have reviewed the facts of this case and have consulted with and received an
opinion from an architectural expert with a license to practice, and who practices in the State of
California, regarding the work of MCLARAND VASQUESZ EMSIEK & PARTNERS, INC., and
its successor entities MVE & PARTNERS, INC., and MVE + PARTNERS, INC. (collectively the
"MVEP entities"), the architectural firm that provided design services for the residential property
and improvements thereon owned by CILKER, and which is located at One Pear Place in San
Jose, California, and which consists of 182 residential units and other improvements.

3. The architectural expert with whom I have consulted practices in the same
discipline as the MVEP entities; and I reasonably believe this architectural expert is
knowledgeable in the relevant issues involved in this action, and has reviewed plans and other
documents as they relate to this litigation.

4. I have concluded on the basis of my review and consultation with the aforesaid
architectural expert that there is reasonable and meritorious cause for the filing and service of this
action as against these MVEP entities.

5. The architectural expert who was consulted by me is not a party to this action; and
has rendered an opinion that the MVEP entities were negligent in the performance of the
applicable professional services and may have contributed to the damages incurred by CILKER in
this action.

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

Executed June 24, 2015, at San Jose, California.

Jon B. Zimmerman
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC, Plaintiff,

Plaintiff,

vs.

WESTERN NATIONAL CONSTRUCTION; MCLARAND,
VARQUEZ & PARTNERS; GROUP M ENGINEERS;
GENTRY ASSOCIATES CONSTRUCTION
CONSULTANTS;
LARCO INDUSTRIES; FITCH PLASTERING;
COURTNEY WATERPROOFING; CELL CRETE;
LOS NIETOS CONSTRUCTION; MAZADA FRAMING;
KELLY DOOR;
TARA COATINGS; LDI; and DOES 1-100,
inclusive, Defendants.

Defendant.

AND RELATED ACTIONS

Cilker Apartments, LLC v. Western National Construction, et al.
Lead Case No.1-13-CV-258281
Hon. Peter Kirwan

PROOF OF SERVICE
Electronic Proof of Service

I am employed in the County of Alameda, State of California.
I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.
The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Wed. July 1, 2015 at 1:50 PM PDT and served by electronic mail notification.
I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:
The document was electronically filed on the Court's website, http://www.scefiling.org, on Wed. July 1, 2015 at 1:50 PM PDT
Upon approval of the document by the Court, an electronic mail message was transmitted to all parties on the electronic service list maintained for this case. The message identified the document and provided instructions for accessing the document on the worldwide web.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 1, 2015 at Oakland, California.

Dated: July 1, 2015

For WWW.SCEFILING.ORG

Andy Jamieson
RONALD J. COOK – SBN 121398  
WILLOUGHBY, STUART & BENING  
50 W. San Fernando Street, Suite 400  
San Jose, California 95113  
Telephone: (408) 289-1972  
Facsimile: (408) 295-6375  

Attorneys for Plaintiff  
CILKER APARTMENTS, LLC

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC,  
Plaintiff

vs.

WESTERN NATIONAL  
CONSTRUCTION, MCLA RLAND,  
VARQUEZ & PARTNERS, GROUP M  
ENGINEERS, GENTRY ASSOCIATES  
CONSTRUCTION CONSULTANTS,  
LARCO INDUSTRIES, FITCH  
PLASTERING, COURTNEY  
WATERPROOFING, CELL CRETE, LOS  
NIETOS CONSTRUCTION, MADERA  
FRAMING, KELLY DOOR, TARA  
COATINGS, LDI, and DOES 1-100,  
inclusive,

Defendants.

CASE NO.: 113CV258281

CERTIFICATE OF MERIT

I, Ronald J. Cook, declare as follows:

1. I am an attorney at law duly licensed to practice in all the courts of the State of California, and am a shorter holder in the law firm of Willoughby, Stuart & Bening, attorneys of record for plaintiff CILKER APARTMENTS, LLC in the above referenced matter.

2. I have personally reviewed my file in this matter, and am familiar with the contents thereof.

3. I have consulted with at least one architect, professional engineer or land surveyor who is licensed to practice, and practices, in this State. I believe that the consultant is
knowledgeable in the relevant issues involved in this particular action. I have concluded on the basis of my review and a consultation that there is reasonable and meritorious cause for filing the instant action.

4. This Certificate was originally signed on December 23, 2013 and was inadvertently omitted by my staff when filing the complaint on December 26, 2013.

I declare under penalty of perjury that the foregoing is true and correct and that if called as a witness I could competently testify thereto. This declaration was originally executed on December 23, 2013 at San Jose, California and was resigned on January 7, 2014 following my review of the copies of documents filed with the court.

Ronald J. Cook, Esq.
EXHIBIT “C”
In the Matter Of:
CILKER APARTMENTS vs. WESTERN NATIONAL, et al.,

CARL MCLARAND, AIA, NCARB

September 22, 2015

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

-ooOoo-

CILKER APARTMENTS, LLC,

Plaintiff,

vs. No. 1-13-CV-258281

WESTERN NATIONAL CONSTRUCTION,
et al.,

Defendants,

AND ALL RELATED CROSS-ACTIONS.

DEPOSITION OF CARL F. McLARAND, AIA, NCARB

(PMK of McLarand Vasquez & Partners, Inc.)

(Volume I - Pages 1 through 239)

Taken before JULIE HEYWARD

CSR No. 7907

September 22, 2015

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 250
Oakland, California 94612
(510) 451-1580/(877) 451-1580
Fax: (510) 451-3797
www.aikenwelch.com
Q. All right. When did you and Mr. Vasquez separate from a business perspective?

A. About three years ago, three and a half years ago.

Q. Okay. And what was the reason for that separation, if there was a reason?

A. It was mutually advantageous for Mr. Vasquez to leave our organization. He wanted to pursue other options in the architectural field that related more to his ethnic background and wanted to do more, I believe -- Well, strike that, actually. Let's say he wanted to do more institutional-type projects.

Q. All right. How long did McLarand Vasquez & Partners, Inc. remain in business? And if you have an end date, we can do the math.

A. Well, McLarand Vasquez & Partners operated until just about January of 2000. The firm continued and was eventually dissolved in 2007, as I recall.

Q. When you use the term "dissolved," do you use that term in the legal setting as far as you understand the term or was it just kind of everybody just walked away from the company, was it a formal action?

A. A formal action.

Q. What happened in January -- I'm sorry, 2007, I believe you said.
A. Yes.

Q. What happened at that point in time, why was the firm dissolved?

A. We believed that we had -- I think you need to go back a bit.

In 2000, a new partner was brought in and we started a new organization by the name of McLarand Vasquez Emsiek & Partners. That organization started, like I said, in about January of 2000. All work that occurred subsequent to January of 2000 was in -- was done under that entity. Work that was started prior to that under the McLarand Vasquez & Partners business, remained with McLarand Vasquez & Partners until the projects completed and the last sort of things were done. And so we felt that in 2007, that we had sufficiently given enough time for any and all issues of McLarand Vasquez & Partners to have been resolved and we dissolved it.

Q. You were, obviously, a shareholder in McLarand Vasquez & Partners Inc.; is that accurate, sir?

A. Yes.

Q. Who were the other shareholders in that legal entity?

A. Mr. Vasquez.

Q. Any others besides you and Mr. Vasquez?
the employer wants to pay Social Security taxes once
for -- for an employee. And so when it becomes apparent
that the majority of the work is being done by an
entity, then we move the employees to that entity and
they commence working for that entity. It didn't mean
that the other entity had abandoned their
responsibilities or that the organization that these
employees worked for assumed the responsibilities of
that. That wasn't the case. It was merely an ability
to lease employees from one organization to another.

We have several organizations during the McLarand
Vasquez Emsiek & Partners era, we had several firms that
we operated. MVE International, MVE Studio,
MVE Pacific, I believe. Those were all -- We leased
employees to those organizations from MV&E -- or
McLarand Vasquez Emsiek & Partners at that time, so that
those entities would have resources to operate from.

Q. You mentioned the term a "dominant" -- I think
you said "dominant partner," but you might have said
"entity."

A. Entity.

Q. Entity. Is the dominant entity MVE&P, then,
currently?

A. The dominant entity would be MVE + P.

Q. + P. I say "and," but it's actually a +.
A. I appreciate that, we'll use it interchangeably.

Q. All right. Excellent. Did MVE&P ever have that relationship with McLarand Vasquez & Partners, Inc.?

A. When you say "that relationship," what do you mean?

Q. A dominant, subservient, I guess it would be, relationship of any kind.

A. Okay. All right. We're getting to the nitty-gritty now. That's good. Okay.

As I mentioned, about January of 2000, McLarand Vasquez Emsiek & Partners was formed. And all new work that came into the organization was funneled into that entity. We still had a significant backlog of work with McLarand Vasquez & Partners. So in 2000, the dominant firm was McLarand Vasquez & Partners, Inc. And that continued on to, I believe, around 2002.

In 2002, the employees began working for McLarand Vasquez Emsiek & Partners, and we developed a lease agreement from McLarand Vasquez Emsiek & Partners to McLarand Vasquez & Partners, so that the work that remained under contract with McLarand Vasquez & Partners was completed in an orderly manner.

Q. Was that a written agreement --
Q. I hadn't quite finished, and I know I paused and let me just restate it.

Was there a written agreement between McLarand Vasquez Emsiek & Partners, Inc. and McLarand Vasquez & Partners, Inc. as it related to the leasing of employees for purposes of completing McLarand Vasquez & Partners, Inc. work?

A. I believe there was.

Q. And where is that document today?

A. In our office.

Q. And where is that office located, sir?

A. 1900 Main Street, Irvine.

Q. Who is the custodian of those records, to the best of your knowledge?

A. I don't know, maybe Megan.

Q. And who is Megan, Megan --

A. Megan, the attorney.

Q. Oh, the attorney. I apologize. Is she the custodian of records for the corporation at present?

A. I don't know. Probably, but I don't know.

Q. Who signed that lease agreement on behalf of McLarand Vasquez Emsiek & Partners?

A. The three shareholders.

Q. And that would be Mr. Vasquez, yourself, and
Mr. Emsiek?

A. That is correct.

Q. Physically, at 1900 Main Street today, we will find your office and Mr. Emsiek's office included with the other offices; correct?

A. I'm not sure I'm understanding what you're saying.

Q. That's because it's a bad question.

Currently, at 1900 Main Street, that's your office as well as Mr. Emsiek's physical office; is that right?

A. I office there, yes.

Q. You office there. Good. What was the financial relationship between McLarand Vasquez Emsiek & Partners, Inc. with McLarand Vasquez & Partners, Inc. as it related to employees that were working on McLarand Vasquez & Partners, Inc. projects, in other words, was it an hourly rate, was there a project-by-project rate, how did that work?

A. It was an hourly rate.

Q. So if an employee of McLarand Vasquez Emsiek & Partners was working on a -- Let me just stop here.

Can we call McLarand Vasquez & Partners, Inc. MVP for purposes of today, does that make sense to you?

A. No, because you're going to confuse it with the current firm, so I want to keep it full on.
A. In general.

Q. How was that described to the client where that arrangement was ongoing?

A. Where the connection from McLarand Vasquez & Partners would continue on with Cilker Orchards? I'm not quite sure I understand what the question is.

Q. Well, if you are leasing, as you say, people who are employees of McLarand Vasquez Emsiek & Partners, I presume because it's a lease to another entity, we should never see the name McLarand Vasquez Emsiek & Partners on any correspondence between the architect entity and anyone involved in the building of the project; isn't that right?

A. In a perfect world, yes. But probably not. There's probably some inadvertent errors that might have occurred during that time. Remember that the project -- the project was -- we started negotiating a contract in, what was it, January of '98, and the project wasn't completed until 2004. McLarand Vasquez Emsiek & Partners had been operational since 2000. So there might have been an inadvertent mistake on occasion of somebody indicating they were from MV&E when they were really from MV&P. But I suspect that was very rare and -- a very rare occurrence.

Q. Did MV-- -- You just used MV&P.
A. I know. I just tried to simplify it for you, but I'll go back to the long version.

Q. I appreciate your simplifying things for me.

Between 2001, January, when McLarand Vasquez & Emsiek Partners was created --


Q. I think that's what I said.


Q. 2- -- You had told me January 2- -- Oh, 2000.

I'm looking at the column, I apologize. Withdraw the question.

Between January of 2000, when McLarand Vasquez Emsiek & Partners, Inc. was created, in the Oakland office, did the sign say "McLarand Vasquez Emsiek & Partners, Inc."?

A. Did the sign, what sign?

Q. The sign for the company for its office space.

A. I don't recall.

Q. Had you ever been there?

A. Yes.

Q. You just don't recall?

A. I don't recall.

Q. What was the stationery for the architectural office in Oakland that was being run by a McLarand office, regardless whoever it was, what was the
MR. MUIR: I've seen her.

THE WITNESS: In action.

BY MR. ZIMMERMAN:

Q. On page 18, sir. Well, first of all, strike that.

Did you negotiate paragraph J? Actually, no, of course you didn’t because you did not have any conversations with Mr. Cilker or anybody with him; correct? So you did not negotiate Exhibit 220, paragraph J, on 15 -- on page 17; is that correct?

A. That's correct.

Q. Did you have a contract with Cilker Orchards and the firm of McLaran and Vasquez Emsiek & Partners, Inc.?

A. Not to my knowledge.

Q. So the limitation of liability provisions in the contract would not apply to that entity; is that correct, sir?

A. The limitation -- To my knowledge, there is no liability to McLaran and Vasquez Emsiek & Partners because McLaran Vasquez Emsiek & Partners was not a party to this contract.

Q. And so the limitation, your interpretation of the contract, would be that McLaran Vasquez Emsiek & Partners would have no limitation in liability for any
work that it did, if proven, related to the project in
question; is that right, sir?

A. No, that's not right.

MR. MUIR: Objection; it calls for a legal

conclusion.

BY MR. ZIMMERMAN:

Q. You can answer.

A. I have no understanding of what the heck you're
asking. I'm saying that McLarand Vasquez Emsiek &
Partners had nothing to do with this job, they were not
contracted to do the job. If there was -- If there was
some inadvertent paperwork that showed that somebody
from MV&E once in a blue moon had done something on the
project, it didn't change the substance. The fact was
that the firm was always McLarand Vasquez & Partners
that did this job.

Q. And when you say "once in a blue moon," what
are you referring to, sir?

A. If an occasional bulletin or a note or a shop
drawing is stamped with the wrong name. You know, this
is occurring three, four years into the new firms being
organized. They -- Some employee might have made a
mistake and used the wrong stationery. It doesn't
change the facts that the firm that was responsible for
this project remained and always remained to be McLarand
Vasquez & Partners.

Q. I don't have copies of this, but I'm going to mark this document 221.

THE WITNESS: Before we go any further, I want to take a break.

MR. ZIMMERMAN: Let's take a break.

(REcess taken 2:29 to 2:39 p.m.)

BY MR. ZIMMERMAN:

Q. Mr. McLarand, we are back on the record. Referring your attention back to Exhibit 220, the "Professional Services Agreement," please turn to page 14 of the agreement. Take a look at "Article VII - General Conditions," subsection A, "Successors and Assignments Without Approval." Do you see that?

A. Yes.

Q. That section reads "No assignment hereof by Architect or Client shall be binding without the written consent of the other. This Assignment is also binding" --

A. "This Agreement."

Q. Thank you. "This Agreement is also binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, to the extent assignment is
argumentative person.

THE WITNESS: Right. I understand. But you keep --

MR. MUIR: There's no question pending.

THE WITNESS: The question just keeps going and going and going until it comes back on itself. I don't even know what the hell to say.

BY MR. ZIMMERMAN:

Q. In looking through the documents, I see that Gary Penman was -- in October 2002, had an email address of MVE-Architects.com. What firm was that email address related to?

A. Well, again, sir, as I stated, in 2002, we made the shift to MVNE. So, you know, email addresses also were shifted to that.

Q. So I have your group of many, many documents concerning communications between McLarand Vasquez Emsiek & Partners, Inc. and Western National answering questions, addressing issues, doing all sorts of things. Is it your testimony that in each instance this -- the use of letterhead, the use of facsimile, references the use of -- references that MVE should be paid all, I guess, clerical-type mistakes during the operation of the two businesses?

A. Short form, yes, absolutely. It was never a
change. It was never a change of responsibility for
McLarand Vasquez & Partners to McLarand Vasquez Emsiek &
Partners. In the event that somebody used the wrong
stationery, you know, I can't help that. I'm sorry.
And I'm sorry for the confusion. But it doesn't change
the fundamentals. The firm operated separately.

Q. Okay. Understanding that testimony, where
principals -- or I shouldn't say principals because they
weren't partners, and I know your testimony, but where
Mr. Penman or Mr. Gachen talked about MVE being owed
things or MVE instructing, would that also be a simple
mistake as opposed to their understanding that they were
being employed through MVE? And for the record, "MVE"
is McLarand Vasquez Emsiek & Partners?
A. Please, would you repeat the question.

MR. ZIMMERMAN: Please read it back.

(Last question read.)

MR. ZIMMERMAN: Let me strike the question,
that's ridiculous. I apologize for the question. It's
unintelligible at this late hour.

BY MR. ZIMMERMAN:

Q. Where Mr. Penman referenced to actions being
conducted by MVE in his literature and his
correspondence, as compared to MVP, was that a
reference -- was that a mistaken reference as opposed to
an understanding as to whom that gentleman was working
for on the project as well?

A. Okay. It was a mistake on the behalf of an
employee, which could occur, there's no question about
that. I'm sure there could be some confusion at that
time. You know, there's two different firms operating,
there's actually several firms operating at that time.
And if they happened to pull the wrong stationery out to
send a correspondence to somebody, it doesn't change the
fundamentals of what and who was responsible for that
project.

MR. ZIMMERMAN: Is this a good time to break or
do you want to go on? Why don't we adjourn for today.

Thank you, sir, for coming. We'll see you tomorrow
at 9:30.

THE WITNESS: Okay.

(The proceedings concluded
at 5:15 p.m.)
REPORTER'S CERTIFICATE

I, JULIE HEYWARD, a Shorthand Reporter, State of California, do hereby certify:

That CARL F. MCLARAND, AIA, NCARB, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken by me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 5th day of October 2015.

JULIE HEYWARD, CSR NO. 7907
State of California

877.451.1580 www.aikenwelch.com
CARL MCLARAND, AIA, NCARB 09/22/2015
In the Matter Of:

CILKER APARTMENTS vs. WESTERN NATIONAL CONSTRUCTION, et al.,

CARL MCLARAND

September 23, 2015

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CILKER APARTMENTS, LLC,

Plaintiff,

vs.

WESTERN NATIONAL CONSTRUCTION,
et al.,

Defendants,

AND ALL RELATED CROSS-ACTIONS.

DEPOSITION OF CARL F. McLARAND, AIA, NCARB

PMK of McLarand Vasquez & Partners, Inc.

(Volume II - Pages 240 through 445)

Taken before JULIE HEYWARD

CSR No. 7907

September 23, 2015

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350 Frank H. Ogawa Plaza, Suite 100, Oakland, California
94612. Was that the Northern California office of
McLarand Vasquez Emsiek & Partners, Inc. in May of 2002?
A. Yes.
Q. Was that also the address of McLarand Vasquez &
Partners for Northern California?
A. Yes.
Q. And just to close the loop, that address is the
Oakland office that we've been referring to on and off
during your testimony today; correct?
A. That is correct.
Q. Now, here there are some comments with regard
to structural changes, RFIs and such, being directed to
Mr. Mehta by Loren Gachen. And my question is, first of
all, would your testimony be the same as to why this
particular document was created on this particular
letterhead in May of 2002 as you have previously
tested?
A. Yes, it was just an inadvertent mistake.
Q. And --
A. Mr. Gachen, Mr. Penman, none of these
individuals had the authority to change the firm's
responsibility nor were they intending to. I believe
they just simply grabbed a transmittal form that was
handy to send something out in order to get the job done
quickly.

Q. 243. I have placed in front of you, sir, Exhibit 243, which is a multipage document, with cover sheet from Gentry Associates that was found in your company's files produced in this case. It's MVP -1453 through -1457. Have you seen this document before, sir?

A. I don't recall seeing it.

Q. Does the fact that it was produced by your company mean that it was received by a McLarand entity at some point in time?

A. I don't know. It was -- Clearly, it was in our files. How we got it, I don't know.

Q. Okay.

A. I do know that it's on my birthday, however, so I'm very appreciative of that.

Q. Very good.

A. I was a bit younger then.

MR. DANSKIN: We all were.

BY MR. ZIMMERMAN:

Q. Now, this document originally appears to be from Steve Gentry to an Alex Johnson at Don L. Beck & Associates. Have you ever spoken with Alex Johnson of Don L. Beck & Associates, to your knowledge?

A. No.

Q. Do you know of Don L. Beck Associates?
A. I don't know.

Q. Do you know what role, if any, they had with regard to the One Pearl Place project?

A. He may have been one of those construction managers retained by Mr. Cilker, but I don't know.

Q. All right. On page 2 of the document, and thereafter, there is some handwriting. It's not terribly clear on the copy produced, but do you recognize any of the writing that is notated throughout the margins and areas of this document?

A. You've got to be kidding, no.

Q. Okay. It talks about a site visit of Friday, December 5, 2002, which was attended by various people, including "Loren Gachen of McLarand Vasquez Emsiek & Partners, and myself." Do you have any understanding how it was that Gentry & Associates had the idea that Loren Gachen was related to McLarand Vasquez Emsiek & Partners?

A. No. Just, again, a mistake.

Q. Now, this appears to be a review --

A. You know, realistically, Loren Gachen was an employee of McLarand Vasquez Emsiek & Partners, but he was working on behalf of McLarand Vasquez & Partners. So I can understand how outsiders could make that mistake as well. Okay? It doesn't change the facts.
Q. Did you have a card, to your knowledge, that said "McLarand Vasquez Emsiek & Partners" at that time?
A. I have no idea.

Q. Did you ever issue those kinds of cards?
A. I have no idea.

Q. Here it discusses a review in the trailer and then, apparently, a walk around the project to some degree looking at various assemblies. Would this have been -- Would you characterize this visit as a construction observation visit by the firm?
A. Would you -- Okay. It clearly was a jobsite visit.

Q. This would have been one of the 16, or if it was extended, additional visits related to contractual obligations of McLarand Vasquez & Partners?
A. It would have been one of the visits.

Q. Right. Now, in this document, Mr. Gentry gives his various opinions and thoughts about the waterproofing systems at the project, including some other issues. But directing your attention to the waterproofing systems, do you know what, if any, communications were had between Mr. Gachen and Mr. Gentry related to Mr. Gentry's work on the project?
A. None, to my knowledge, other than maybe this
REPORTER'S CERTIFICATE

I, JULIE HEYWARD, a Shorthand Reporter, State of California, do hereby certify:

That CARL F. McLARAND, AIA, NCARB, in the foregoing deposition named, was present and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken by me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 6th day of October 2015.

JULIE HEYWARD, CSR NO. 7907
State of California
EXHIBIT “E”
MINUTES OF THE SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
McLARAND VASQUEZ & PARTNERS, INC.
A CALIFORNIA CORPORATION

The special meeting of the Board of Directors was called to order at the company’s address at 1900 Main Street, 8th Floor, Irvine, California on January 2, 2002.

The following directors were present: CARL F. McLARAND and ERNESTO M. VASQUEZ. There were none absent.

The following resolutions were submitted to this meeting and upon motion duly made and seconded were unanimously carried.

RESOLVED, that McLarand Vasquez & Partners, Inc. ("MVP") will lease employees from McLarand Vasquez Emsiek & Partners, Inc. ("MVE") to perform architectural and architectural related services. MVP will reimburse MVE for the use of said employees at a rate of 4.05 times the then current employee hourly rate. This rate is subject to change.

There being no further business to come before this meeting, the meeting was adjourned.

CARL F. McLARAND, President
Director

ERNESTO M. VASQUEZ, V.P.
Director
Exhibit “F”
SUPP RESPONSES OF MVP TO CMO #1 STMT OF INSURANCE – EXHIBIT “F”
WESTERN NATIONAL CONSTRUCTION,

Cross-Complainant,

vs.

ROES 1 – 500, inclusive,

Cross-Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Defendant McLARAND, VASQUEZ & PARTNERS, INC. (“MVP”) hereby provides supplemental responses to Case Management Order #1, Exhibit “F” - Statement of Insurance, pursuant to the Court’s Order dated January 29, 2016, as follows:

PRELIMINARY STATEMENT

MVP has not fully completed its investigation of the facts relating to this case, has not fully completed its discovery in this action, and has not completed its preparation for trial. All of the information noted herein is based only upon such information and documents which are presently available to MVP. It is anticipated that further discovery and independent investigation may lead to additions to, changes in, and variations from the responses and documents herein set forth.

The following information is produced without prejudice to MVP’s right to produce evidence of any subsequently discovered or recalled material. MVP accordingly reserves the right to change any and all information herein as such additional material is recalled or discovered. The information noted herein is produced in a good faith effort to supply as much information as is presently known but should in no way be to the prejudice of MVP in relation to further discovery, research or analysis.

This information is produced solely for the purpose of this action. Further, each items or document is subject to and deemed to reflect any and all appropriate objections, including but not limited to objections as to competency, relevancy, materiality, propriety, admissibility and privilege, which would require or allow the exclusion of any document or statement contained therein if the request were asked of or any statement therein were made by, a witness present and
testifying in court. All such objections and grounds are reserved, are not deemed waived by the provision of any response(s) or production of documents herein, and may be interposed at the time of trial. Any specific objection set forth herein below shall be deemed additional to, and not in lieu of, these objections which apply to each and every item. All materials must be construed as produced on the basis of present recollection.

**VERIFIED STATEMENT OF INSURANCE**

For each primary, excess, umbrella, general liability, builder’s risk, course of construction and/or difference in conditions insurance carriers which you have maintained since January 2000, provide:

(a) The name and address of the carrier;
Starr Surplus Lines Insurance Company, 399 Park Avenue, 8th Floor, New York NY 10022, 1-646-227-6300.

(b) The policy number;

(c) The type of policy;
Architects & Engineers Professional Liability.

(d) Effective dates of the policy;

(e) Original policy limits for each type of coverage;
$2,000,000 each claim / $3,000,000 annual aggregate.

(f) Identity of all named insured relating to the Project;
McLarand Vasquez Emsiek & Partners, Inc.
McLarand Vasquez & Partners, Inc.
MV&P International, Inc.
MVE Pacific, Inc.
MVE Studio, Inc.
MVE Group, Inc.
MVE International, Inc.
Carl F. McLarand Architect, Inc.
Ernesto M. Vasquez Architect, Inc.
Richard F. Emsiek Architect, Inc.
Carl McLarand Associates, Inc.
Carl McLarand & Associates

(g) Identity of all additional insured relating to the Project;
N/A.

(h) Whether or not previous payments are known to have depleted some or all coverage limits;
Yes.

(i) The amount of any deductible or self-insured retention (“SIR”) and whether the deductible or SIR has been satisfied;
$100,000 per claim / $500,000 per aggregate; yes.

(j) Whether such carrier has been placed on notice of Plaintiff’s claim;
Yes.

(k) Whether such carrier has issued a reservation of rights;
No.

(l) The current remaining limit of insurance for each type of coverage;
Approximately $1,460,000.

(m) Whether such carrier is defending;
Yes.

Western National Construction, Inc. will make the following information available no later than two (2) weeks before any Mediation or Mandatory Settlement Conference:

(a) The number of accepted Additional Insured tenders;
N/A.

(b) The name of the carriers who have accepted Additional Insured tenders;
N/A.

(c) Fees and costs paid by Western National Construction.
N/A.

DATED: February 12, 2016

COLLINS COLLINS MUIR + STEWART LLP

By: ______________________________

STEPHEN B. LITCHFIELD
SAMUEL J. MUIR
Attorneys for McLARAND VASQUEZ & PARTNERS, INC.
VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am the authorized representative of McLARAND, VASQUEZ & PARTNERS, INC., a party to the above-entitled action or proceeding; I have read the foregoing document entitled DEFENDANT McLARAND, VASQUEZ & PARTNERS, INC.'S SUPPLEMENTAL RESPONSES TO CMO #1 EXHIBIT “F” – STATEMENT OF INSURANCE and know the contents thereof; I certify upon my information or belief as to the matters stated therein and believe them to be true.

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

Executed on February __, 2016, at Irvine, California.

Carl McLarand
McLarand, Vasquez & Partners, Inc.
PROOF OF SERVICE
(§§ 1013(a) and 2015.5; FRCP 5)

State of California, County of Alameda

I am employed in the County of Alameda. I am over the age of 18 and not a party to the within action. My business address is 1999 Harrison Street, Suite 1700, Oakland, California 94612.

On the below date, I served the foregoing document described as DEFENDANT McLARAND, VASQUEZ & PARTNERS, INC.'S VERIFIED SUPPLEMENTAL RESPONSES TO CMO #1 EXHIBIT “E” – STATEMENT OF INSURANCE on the interested parties in this action by placing same in a sealed envelope, addressed as follows:

See Service List Attached Hereto

☐ (BY MAIL) – I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Oakland, California to be served on the parties as indicated on the attached service list. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Oakland, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY CERTIFIED MAIL) – I caused such envelope(s) with postage thereon fully prepaid via Certified Mail Return Receipt Requested to be placed in the United States Mail in Oakland, California.

☐ BY EXPRESS MAIL OR ANOTHER METHOD OF DELIVERY PROVIDING FOR OVERNIGHT DELIVERY
☒ (BY ELECTRONIC FILING AND/OR SERVICE) – I filed and served a true copy, with all exhibits, electronically on designated recipients listed on the attached Service List via Glotrans, per E-Filing and E-Service Standing Order of 08/28/06, on: 02/12/16 (Date) at p.m. (Time)

☐ FEDERAL EXPRESS - I caused the envelope to be delivered to an authorized courier or driver authorized to receive documents with delivery fees provided for.

☐ (BY FACSIMILE) - I caused the above-described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (510) 844-5100 indicated all pages were transmitted.

☐ (BY PERSONAL SERVICE) - I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s).

Executed on FEBRUARY 12, 2016 at Oakland, California.

☒ (STATE) - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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