

DEFENDANT'S PROPERTY DAMAGES (COUNTERCLAIM)--DIMINUTION IN
MARKET VALUE.

The defendant's actual property damages are equal to the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged. The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

(If evidence is introduced regarding the actual or estimated cost of repair, the following paragraph should be used: Evidence of [estimates of the cost to repair] (and) [the actual cost of repairing] the damage to the defendant's property may be considered by you in determining the difference in fair market value¹ immediately before and immediately after the damage occurred.)²

¹If no evidence of fair market value of the damaged property is introduced, then defendant may recover only nominal damages. *Cockman v. White*, 76 N.C. App. 387, 391, 333 S.E.2d 54, 56 (1985).

²*U.S. Fidelity and Guaranty Co. v. P. and F. Motor Express, Inc.*, 220 N.C. 721, 18 S.E.2d 116 (1942). See also *Roberts v. Pilot Freight Carriers, Inc.*, 273 N.C. 600, 160 S.E.2d 712 (1968) (holding that a defendant is entitled to recover the difference of the fair market value of the property before and after the damage by a negligent plaintiff).

