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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master in Equity

Marvin H. Dukes, III, Master in Equity
Case No: 2020-CP-07-01547

Appellate Case No. 2022-000301

Todd E. Taylor .....Respondent,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller..... Appellants,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII .....Respondent.

RECORD ON APPEAL
VOLUME I OF I

Louis H. Lang, SC Bar 3127
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Louislang@callisontighe.com

Attorneys for Appellants, Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller

Edward M. Kubec
State Bar No. 76576
18 Executive Park Road, Suite 3
Hilton Head Island, SC 29928
ekubec@coffeykubec.com
Counsel for Respondent Todd E. Taylor

COPELAND, STAIR, VALZ & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
lhoughton@csvl.law
Ph: (843) 727-0307
By: *s/Lacey L. Houghton*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
LACEY L. HOUGHTON
State Bar No.: 102968
Attorneys for Respondent South Beach Village Lagoon Villas, II; Horizontal Property Regime LVII

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ELECTRONICALLY FILED - 2021 Oct 06 8:36 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT) CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**ORDER REFERRING CASE TO MASTER IN EQUITY**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

IT APPEARING that this matter is before the Court on the Consent Motion of all Parties to this Action, pursuant to Rule 53(b), SCRCP, to refer this action, in part, to the Honorable Marvin H. Dukes III, Master in Equity for Beaufort County; and

IT FURTHER APPEARING that this action concerns various equitable claims among the parties and that this is a proper matter to be referred to a Master in Equity pursuant to Rule 53, SCRCP; and

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IT FURTHER APPEARING that all parties have consented to a reference to the Master-in-Equity for the purpose of making appropriate findings of facts and conclusions of law and entering temporary and final orders with regard to (1) Third-Party Defendant South Beach Village Lagoon Villas, II Horizontal Property Regime, LVII's Petition For Relief Pursuant to S.C. Code § 33-31-160; (2) all summary judgment motions filed by the parties in this action, including those relating to legal claims and (3) all equitable claims alleged and equitable remedies sought by the parties in this action.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action is referred to the Honorable Marvin H. Dukes, III, Master in Equity for Beaufort County, to take testimony arising under the pleadings, to make findings of fact and conclusions of law, with authority to dispose of any and all issues with regard to (1) Third-Party Defendant South Beach Village Lagoon Villas, II Horizontal Property Regime, LVII's Petition For Relief Pursuant To S.C. Code § 33-31-160; (2) all summary judgment motions filed by the parties, including those relating to legal claims and (3) all equitable claims alleged and equitable remedies sought by all parties in this action, pursuant to Rule 53, SCRCP.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff is responsible for paying the Reference Fee set forth in South Carolina Code of Laws Section 14-11- 310; however, if the Plaintiff's case has ended, any remaining party seeking Affirmative Relief shall be responsible for paying the fee. If the case is a Partition Action or Lien Foreclosure the fee amount is $100.00; for all other types of cases the fee is $50.00. The Reference Fee shall be paid to the Office of the Master in Equity for Beaufort County within 30 of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further notice.

IT IS SO ORDERED!

JUDGE'S SIGNATURE PAGE TO FOLLOW

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Beaufort Common Pleas

Case Caption: Todd E Taylor VS Amar And Kennie Gill Living Trust , defendant, et al

Case Number: 2020CP0701547

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of Court

ELECTRONICALLY FILED - 2022 Feb 03 10:09 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547 **ORDER GRANTING THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII'S PETITION FOR RELIEF PURSUANT TO S.C. CODE § 33-31-160**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendants	

THIS MATTER came before me on Third-Party Defendant South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII's (the "Regime") Petition for Relief pursuant to S.C. Code § 33-31-160. The Court held a hearing on November 22, 2021 at which all Parties were represented by counsel. The Court heard oral argument relating to the Regime's Petition, and the responsive arguments thereto made by Plaintiff and Defendants in this action. After considering the parties' arguments at the hearing, the pleadings, motions, written memorandums, affidavits,

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and the entire record in this case, the Court **GRANTS** the Regime's Petition for the reasons set forth herein.

Factual Background

This action concerns property within the South Beach Village Lagoon Villas II Horizontal Property Regime LVII, established pursuant to the Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed"). The Regime and Regime property are subject to and governed by and in accordance with the Master Deed, Bylaws and amendments thereto. The Regime is subject to the provisions of the Horizontal Property Act, S.C. Code Ann. § 27-31-10, et. seq. (the "Act"). The Regime is a non-profit corporation formed and existing under the laws of the State of South Carolina, and subject to the provisions of the South Carolina Non-Profit Code, S.C. Code Ann. § 33-31-101, et seq. The Plaintiff in this action is the owner of residential real property in the Regime located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina. Defendants are the owners of residential real property in the Regime which adjoins Plaintiff's property, located at 226 Sea Pines Drive, Apt. 1595, Hilton Head Island, South Carolina.

The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units. The six (6) dwelling units are owned by co-owners, each of whom has a particular and exclusive property right to their dwelling unit, as well as an undivided interest in the general and limited common elements of the Regime. As defined in the Master Deed, the general common elements and the limited common elements together comprise the "Common Elements" of the Regime. The general common

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elements include all Regime property, excluding the limited common elements and the dwelling units. The limited common elements are further specifically defined in the Master Deed.

Over the past many years, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime now encroach into the common elements of the Regime. The expansion to Defendant's Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2003; the expansion to Unit 1591 was completed in approximately 2004. As a result of the encroachment, the description and depiction of the Regime property and the Encroaching Units as set forth in the Master Deed no longer conform to the physical layout of Regime property as it currently exists.

The Master Deed establishes the proportionate ownership percentage interests of each co-owner of a Dwelling Unit in the common elements. This percentage also governs each co-owner's proportionate share in the profits and expenses of the Regime, and proportionate representation for voting purposes. At various points and as the expansions to some of the Encroaching Units were completed, the Regime co-owners modified these proportionate percentage interests, and conducted the business of the Regime, including payment of assessments based on proportionate percentage interests which were different from those set out in the Master Deed.

Pursuant to the Master Deed, "the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in an amendment to this Deed duly recorded." *See* Master Deed at Eleventh Paragraph; *see also* S.C. Code Ann. § 27-31-60. Additionally, the

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Master Deed requires unanimous consent of "all of the co-owners and the mortgagees of all the mortgages covering Dwelling Units" of the Regime to amend any provisions thereof. *See* Master Deed at Fourteenth Paragraph.

The Regime has discussed the need to amend the Master Deed so that it properly and lawfully describes the Regime property and rights of the co-owners as far back as 2001. In 2018, the Regime commenced a concerted effort to effectuate an amendment to its Master Deed. Since that time the Regime has worked diligently to address the problem regarding the Master Deed. The Regime retained counsel for this purpose, Novit & Scarminach, P.A., and a surveying group, to prepare proposed amendment documents and a revised survey reflecting the current property. The Regime continued to discuss the need for an amendment to the Master Deed, and debate the particular content thereof, throughout 2018 and 2019. Via letter dated October 9, 2019, in an attempt to secure an amendment to the Master Deed, Regime counsel Novit & Scarminach, P.A. sent the co-owners a proposed Consent Resolution, proposed Amendment to Master Deed, and Boundary and As-Built survey ("October 9, 2019 Proposed Amendment"). All co-owners signed the October 9, 2019 Proposed Amendment prepared by Regime Counsel, except for Defendants Kennie Lee Miller Gill and Mr. Amar Singh Gill. After the filing of this lawsuit, Defendants Ken Miller and Anna Miller and the owners of Unit 1592 withdrew their consent to the October 9, 2019 Proposed Amendment. Since that time the Regime has continued to work to procure unanimous consent of all co-owners to the October 9, 2019 Proposed Amendment, as reflected in Regime Meeting Minutes, correspondence, and the Affidavits submitted by the Parties. The Regime has incurred not less than $20,017.50 in expenses, paid to Regime Counsel, Surveyors, and other charges, associated with its efforts to procure a valid amendment to the Master Deed.

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Procedural History

On July 31, 2020, after the failed attempts to pass the October 9, 2019 Proposed Amendment, Plaintiff Taylor filed the instant lawsuit against the Defendants, asserting, *inter alia,* that Defendants illegally expanded Unit 1595 into the Common Area of the Regime, and the encroaching structure must be removed. On December 3, 2020, Defendants filed an Amended Answer and Third Party Complaint against the Regime, seeking, *inter alia*, a Declaratory Judgment that the Regime approved Defendants' addition, and that a valid and enforceable encroachment agreement exists between Defendants and the Regime. On August 26, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, to vote on the October 9, 2019 Proposed Amendment, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting. Plaintiff filed no opposition to the Regime's Petition, and at the hearing held November 22, 2021, supported the Regime's Petition. On November 11, 2021, Defendants/Third Party Plaintiffs filed a Response to the Regime's Petition. Defendants/Third Party Plaintiffs joined in the request (1) for a special meeting to be held for the purpose of consideration by the Council of Co-Owners of the October 9, 2019 Proposed Amendment and any alternatives thereto, and for voting to amend the Master Deed; (2) that the Court order proper notice be provided to the co-owners of the meeting; and (3) that all co-owners be required to attend the special meeting, which may be held via video-conferencing platform or other means to allow for remote attendance in an ADA compliant format. Plaintiffs/Third Party Defendants requested that the Regime's Petition be denied insofar as it seeks to alter the unanimous voting requirement to amend the Master Deed.

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Applicable Law and Analysis

The South Carolina Non-Profit Code, S.C. Code § 33-31-160, entitled "Judicial Relief" provides in its entirety:

> (a) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.
>
> (b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.
>
> (c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.
>
> (d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.
>
> (e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order, is a valid meeting or vote, as the case may be, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

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(emphasis added).

The Master Deed requires an amendment in order to lawfully and properly describe the Regime property, dwelling units, common elements, and the rights of the co-owners. All Parties to this Action agree and concede that the Master Deed requires an amendment, and that the Council of Co-Owners and the Board of Administration have a duty to pass an amendment to the Master Deed. I find that the Regime has shown, based on the lengthy history of attempts to amend the Master Deed, the expenses incurred, the discussions and efforts which have taken place since 2018, and the instant lawsuit, that it is impossible or impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed. I further find that the intervention of the Court is warranted to order that a special meeting of the Regime members be called for the purpose of voting on an amendment to the Master Deed under circumstances this Court finds fair and equitable as set forth herein, that notice shall be provided of the special meeting as set forth herein, that it is necessary and appropriate to modify the voting requirement for passage of an amendment to the Master Deed as set forth herein, and that the subject matter of the special meeting shall be limited as set forth herein.

IT IS THEREFORE ORDERED, pursuant to S.C. Code § 33-31-160 and the equitable powers of this Court, that the Regime's Petition for Relief pursuant to S.C. Code § 33-31-160 is hereby **GRANTED** and the Parties are directed and ordered as follows:

1. Within forty-five (45) days of the date of this Order, the Regime shall hold a Special Meeting for the purpose of voting on a proposed amendment to the Master Deed in accordance with the conditions set forth herein. The Special Meeting may be held virtually

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via the video-conferencing platform "Zoom" and shall provide closed captioning or live transcription service;

2. At the Special Meeting, if a proposed amendment to the Master Deed receives a majority vote, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a "majority" of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed;
3. Prior to the meeting and on a form created by the Regime, each dwelling unit shall select one representative for purposes of speaking on behalf of that dwelling unit and exercising voting rights on behalf of the dwelling unit at the Special Meeting;
4. All co-owners of the Regime shall be entitled to attend the Special Meeting, but the designated representative for each dwelling unit shall attend the Special Meeting ordered herein. If no representative appears on behalf of a dwelling unit at the Special Meeting, they shall forfeit their right to vote on any proposed amendment;
5. The Regime Property Management Company shall issue a Notice of the Special Meeting on behalf of the Regime at least 30 days prior to the date of the meeting, which shall be mailed and electronically mailed to each co-owner of record. The notice shall state the date and time of the Special Meeting. The Notice shall further state the purpose of the meeting is for discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same. The Notice shall enclose a copy of this Order.
6. The following procedures shall apply to the submission of proposed amendments to the Master Deed and voting:

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a. Defendants shall be permitted to present a proposed amendment to the Master Deed. If Defendants wish to submit a proposed amendment to the Master Deed for the consideration of the ownership, Defendants shall submit the proposed amendment to the Master Deed to the Regime Property Management Company via electronic mail at least 10 days prior to the date of the Special Meeting, for distribution to the co-owners via electronic mail;

b. Plaintiff shall also be permitted to submit a proposed amendment to the Master Deed, which shall be submitted to the Regime Property Management Company at least 10 days prior to the date of the Special Meeting via electronic mail, for distribution to the co-owners via electronic mail;

c. At the Special Meeting, Defendants shall be entitled to submit a proposed amendment to the Master Deed to the ownership for consideration, if such proposed amendment was provided ten days in advance of the Special Meeting to the co-owners for consideration, pursuant to the following procedures:

    i. Defendants shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.

    ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.

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iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Defendants' proposed amendment to the Master Deed.

iv. There is no requirement that any Dwelling Unit comment on any proposal.

v. Following the conclusion of comments, if any, by the representatives of each Dwelling Unit, the Regime shall vote on Defendants' proposed amendment to the Master Deed.

vi. If the proposed amendment receives a majority vote, the meeting shall conclude.

d. If Defendants' proposed amendment to the Master Deed does not receive a majority vote, Plaintiff shall be permitted to present the Regime's proposed amendment to the Master Deed, subject to the following procedures:

i. Plaintiff shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.

ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.

iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Plaintiff's proposed amendment to the Master Deed.

iv. There is no requirement that any Dwelling Unit comment on any proposal.

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v. Following the conclusion of comment by the representatives of each Dwelling Unit, the Regime shall vote on Plaintiff's proposed amendment to the Master Deed.

vi. If the proposed amendment receives a majority vote, the meeting shall conclude.

e. If no proposed amendments receive a majority vote, the meeting shall conclude.

7. The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to this Order, within ten days of the date consent responses were due as set forth herein. If a non-party co-owner makes an affirmative objection, the Special Meeting contemplated herein shall be postponed until the Court has heard and ruled upon the objections of the non-consenting co-owner, subject to further Order of the Court;

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8. A true and correct copy of the Notice and attachments, which are expressly approved by the Court as complying with the Court's order, are attached hereto as **Exhibit A**.
9. A transcript of the Special Meeting shall be taken by a Court Reporter;
10. The Special Meeting shall be presided over by a third party neutral, to be designated by mutual agreement of the parties, or by the Court in the event the parties cannot agree. The third party neutral shall ensure the Special Meeting is conducted in accordance with the procedures herein;
11. Should a majority of co-owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order, ordering the Amendment to constitute a lawful and valid amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

IT IS SO ORDERED:

_____
The Honorable Marvin H. Dukes, III

Beaufort, South Carolina
February, _____, 2022.

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Beaufort Common Pleas

Case Caption: Todd E Taylor VS Amar And Kennie Gill Living Trust , defendant, et al

Case Number: 2020CP0701547

Type: Order/Relief

So Ordered:

s/Marvin H. Dukes III #3069

LAGOON VILLAS II, HPR

EXHIBIT A

ELECTRONICALLY FILED - 2022 Feb 02 12:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
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Notice of Court Ordered Special Meeting of the Owners
Day, Month Date, 2022 | 0:00 PM
Virtual Meeting

DATE: Month Date, 2022

TO: Lagoon Villas II, HPR Property Owners

FROM: The Lagoon Villas II, HPR Board of Directors

RE: The Lagoon Villas II, HPR 2022 Court Ordered Special Meeting

Notice is hereby given to all Owners of record that a Special Meeting of Lagoon Villas II, HPR will be held **Day, Month Date, 2022,** electronically **via Zoom.**

The purpose of the meeting is for **discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same, in accordance with the conditions set forth in the Order of the Master in Equity of Beaufort County dated _____,** entered in pending Civil Action No. 2020-CP-07-01547, *Todd E. Taylor v. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller v. South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII.*

This Notice is being sent to you pursuant to the instructions of the Court, and includes important information regarding the Special Meeting and the Court-ordered process for submission and vote on proposed amendments to the Master Deed.

The following Special Meeting materials are enclosed for your review;

- Agenda for the Meeting
- Villa Representative Voter Designation Form (Response required)
- Non-Party Consent and Waiver (Response required)
- Court Order dated _____ (the "Order")

Under the terms of the Court Order, electronic attendance is <u>REQUIRED</u> by a Villa Representative who shall serve as the designated voter for each unit. No proxies will be accepted, and <u>FAILURE TO APPEAR ELECTRONICALLY WILL RESULT IN YOUR VOTE BEING FORFEITED.</u>

To attend the Special Meeting: [Insert Zoom instructions here]

Please find attached hereto: (1) Villa Representative Voter Designation Form; and (2) Non-Party Consent and Waiver Designation. Please complete both forms and return the forms by _____, via email to Regime Property Management at <u>Bryan@IMCHHI.com.</u>

Pursuant to Section 5(f) of the Order, and via the Non-Party consent and Waiver form, the Regime requests a response from each co-owner as to whether the co-owner consents to the

Going Green: Please bring this package with you to the annual meeting as extra copies of its contents <u>will not</u> be provided.

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procedures stated in the Order and this Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to the Order. **All responses shall be due at least ten days prior to the date of the Special Meeting.** Further:

> The co-owners shall be notified that **failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to [the] Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days.**

Pursuant to the Order:

At the Special Meeting, if a proposed amendment to the Master Deed receives a *majority vote*, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a "majority" of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed.

Please review the enclosed Court Order for the full statement of applicable procedures prior to and at the Special Meeting, including procedures for the submission of proposed amendments to the Master Deed and for voting at the Special Meeting.

Please contact, Bryan Dorshimer, our Association Manager at 843-785-4775 ext. 108 or via e-mail at Bryan@IMCHHI.com if you have any questions or would like any additional information.

6712633v.1Going Green: Please bring this package with you to the annual meeting as extra copies of its contents will not be provided.

Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa _____. I/We hereby designate _____ to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Day, Month Date, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated _____ and Special Meeting Notice dated_____.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date:	_____	**Villa Number:**	_____
Print Owner Name:	_____	**Print Co-Owner Name:**	_____
Sign Owner Name:	_____	**Sign Co-Owner Name:**	_____

6712668v.1PLEASE RETURN THIS VOTER DESIGNATION BY Time, Day, Month Date, 2022.

ELECTRONICALLY FILED - 2022 Feb 02 12:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
ELECTRONICALLY FILED - 2022 Feb 03 10:08 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

ELECTRONICALLY FILED - 2022 Feb 02 12:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
ELECTRONICALLY FILED - 2022 Feb 03 10:09 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT) CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

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WHEREAS, on _____, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein;

WHEREAS, I have received a copy of the Special Meeting Notice dated_____.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

_____: I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated [date]. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

ELECTRONICALLY FILED - 2022 Feb 02 12:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
ELECTRONICALLY FILED - 2022 Feb 03 10:09 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

ELECTRONICALLY FILED - 2022 Mar 10 2:50 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	)	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2020-CP-07-01547
Todd E. Taylor, **Plaintiff(s),** vs. Amar and Kennie Gill Living Trust Dated March 15, 2019, et al., **Defendant(s).**	)	**ORDER DENYING MOTION TO RECONSIDER**

This case before me March 4th, 2022 on Defendants Amar and Kennie Gill Living Trust Dated March 15th, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15th, 2019, Kenneth V.L. Miller, and Anna M. Millers' Motion to Reconsider and Alter or Amend; filed February 11th, 2022.

After hearing from parties, I hereby deny the motion.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

March _____, 2022
Beaufort, South Carolina

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Beaufort Common Pleas

Case Caption:	Todd E Taylor VS Amar And Kennie Gill Living Trust , defendant, et al
Case Number:	2020CP0701547
Type:	Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2020 Jul 31 12:26 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT TODD E. TAYLOR, Plaintiff, vs. AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019, KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019, KENNETH V.L. MILLER and ANNA M. MILLER, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL DISTRICT CASE NO. 2020-CP-07-_____ **COMPLAINT** (Jury Trial Demanded)

The Plaintiff, Todd E. Taylor, complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Todd E. Taylor ("Plaintiff") is a citizen and resident of the State of Oklahoma, and an owner of certain real property, as described in more detail below, located in Beaufort County, South Carolina.

2. Defendant Amar and Kennie Gill Living Trust dated March 15, 2019 ("Trust") is, upon information and belief, an owner of certain real property (the "Property"), as described in more detail below, located in Beaufort County, South Carolina.

3. Defendant Kennie Lee Miller Gill is, upon information and belief, a resident of the Commonwealth of Virginia and is the trustee of the Trust.

4. Defendant Kenneth V. L. Miller is, upon information and belief, a resident of the State of Kentucky and is an owner of the Property.

5. Defendant Anna M. Miller is, upon information and belief, a resident of the State of Kentucky and is an owner of the Property.

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6. This Court has jurisdiction over the subject matter and the parties to this action and venue is proper in Beaufort County, South Carolina.

FACTUAL ALLEGATIONS

7. This action concerns an encroachment by the Property into the common elements of the South Beach Lagoon Villas Phase II Horizontal Property Regime LVII ("Regime") on Hilton Head Island, Beaufort County, South Carolina.

8. The Regime and the properties situation therein are governed by and in accordance with the Master Deed establishing the Regime, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 215 at Page 1092, and the By-Laws contained therein, all amendments thereto and all rules and regulations promulgated thereafter (collectively the "Covenants").

9. Plaintiff is the owner of residential real property in the Regime located at 226 Sea Pines Dr., Apt., 1596, Hilton Head Island, Beaufort County, South Carolina.

10. The Defendants are the record owners of the subject residential real Property in the Regime, which adjoins the Plaintiff's property, and is more particularly described as follows:

> ALL that certain Apartment, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina and being known as APARTMENT #1595 of SOUTH BEACH LAGOON VILLAS PHASE II HORIZONTAL PROPERTY REGIME LVII, and being more particularly shown and described by reference to the Master Deed of Sea Pines Plantation Company establishing said Horizontal Property Regime, said Master Deed being dated the 17th day of October 1973 and being recorded in the office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 215 at Page 1092, said Master Deed being specifically incorporated herein by reference.
>
> ALSO, TOGETHER WITH AND INCLUDING, all the rights, privileges and common elements appertaining to the above described Apartment as set forth in the Master Deed and By-Laws of the South Beach Lagoon Villas Phase II Horizontal Property Regime LVII.
>
> TMS NO: R550 019 000 0301 1595

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11. The subject Property is subject to all provisions, restrictions, covenants, conditions, and affirmative obligations contained in the Covenants, and any amendments thereto, which have been in full force and effect at all times herein.

12. Upon the purchase of the subject Property, pursuant to the Covenants and applicable state law, the Defendants became obligated to pay all assessments imposed by the Regime according to the value of the dwelling unit owned.

13. The Covenants define common elements of the Regime to include all property of the Regime, excluding limited common elements and dwelling units, all roads, walkways, paths, trees, shrubs, yards and gardens located on Regime property and all other elements of Regime property, constructed or to be constructed, rationally of common use or necessary or convenient to the existence, upkeep, and safety of the Regime property, and, in general, all other devices or installations existing for common use (the "Common Elements").

14. Pursuant to the Covenants and applicable law, each property owner in the Regime has an undivided interest in the Common Elements entitling each owner to use of the Common Elements, provided such use does not hinder or encroach upon the lawful rights of the other co-owners.

15. Subsequent to their purchase of the Property, the Defendants expanded the size of the Property by constructing certain additions to the building structure. The building expansion resulted in an encroachment over Common Elements of approximately 170 square feet (the "Encroachment").

16. Plaintiff has repeatedly objected to the Encroachment and demanded that the Defendants remove the Encroachment and to restore the area to its original appearance and condition. The Defendants have failed and refuse to comply with Plaintiff's demands.

17. Upon the purchase of the subject Property, pursuant to the Covenants and applicable state law, the Defendants became obligated to pay all assessments imposed by the Regime, including assessments for maintenance and repair of the Common Elements, according to the value of the dwelling unit owned.

18. Plaintiff has further demanded that the Defendants pay an increased assessment to the Regime, and Plaintiff's assessment accordingly reduced, to reflect the Defendants' improper Encroachment upon the Common Elements, the Plaintiff's resulting loss of use of the Common

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Elements and the corresponding reduction in value of Plaintiff's property. The Defendants have failed and refuse to comply with Plaintiff's demands.

FIRST CAUSE OF ACTION

(Breach of Contract)

19. Each and every allegation set forth above is incorporated here.

20. Defendants agreed to comply with the terms and conditions of the Covenants pursuant to both the Covenants and applicable law, including the South Carolina Horizontal Property Act (the "Act").

21. This agreement is enforceable by Plaintiff and the Act authorizes Plaintiff to bring a civil action to recover sums due for damages or injunctive relief, or both.

22. Defendants materially breached the Covenants by constructing and maintaining the Encroachment on Common Elements.

23. Plaintiff has performed his obligations under the agreement, except for those obligations that have been excused or prevented by Defendants' actions.

24. As a direct and proximate result of Defendants' breach, Plaintiff has been and continues to be damaged.

25. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for breach of contract for actual, consequential and incidental damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Trespass)

26. Each and every allegation set forth above is incorporated here.

27. Defendants actions of constructing and maintaining the Encroachment into the Commons Elements have interfered with Plaintiff's undivided right to use and possess the Common Elements.

28. As a direct and proximate result of Defendants' actions, the Plaintiff has been and continues to be damaged.

29. Plaintiff is informed and believes that it he entitled to judgment against the Defendants for actual, consequential and incidental damages in an amount to be determined at trial.

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THIRD CAUSE OF ACTION

(Conversion)

30. Each and every allegation set forth above is incorporated here.

31. As alleged herein, Defendants wrongfully misappropriated and gained control of a portion of the Common Elements and converted such to their own use to the exclusion of Plaintiff and in contravention of Plaintiff's rights therein.

32. As a direct and proximate result of the Defendants' actions, the Plaintiff has been and continues to be damaged.

33. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for actual, consequential and punitive damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

34. Each and every allegation set forth above is incorporated here.

35. Defendants have been unjustly enriched by their wrongful conduct as alleged above, all to Plaintiff's detriment.

36. As a direct and proximate result of Defendants' actions, the Plaintiff has been and continues to be damaged.

37. Plaintiff is informed and believes that he is entitled to judgment against the Defendants for restitution of the unjust enrichment of Defendants in an amount to be determined at trial.

FIFTH CAUSE OF ACTION

(Declaratory Relief)

38. Each and every allegation set forth above is incorporated here.

39. Plaintiff contends that the value used to determine Regime assessments for the Property should be appropriately increased, relative to the value placed on Plaintiff's Regime property, to reflect the corresponding increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment into the Common Elements by the Defendants. Upon information and belief, Defendants dispute Plaintiff's contention. As a result, a justiciable controversy exists between the parties.

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40. Pursuant to the South Carolina Uniform Declaratory Judgments Act, codified in S.C. Code Ann. Section 15-53-10, et seq., and Rule 57 of the South Carolina Rules of Civil Procedure, the Plaintiff seeks, and the Court should issue, a declaratory judgment holding that the value used to determine Regime assessments for the Property should be increased, relative to the value placed on Plaintiff's Regime property, to correspondence with the related increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment.

SIXTH CAUSE OF ACTION

(Injunctive Relief)

41. Each and every allegation set forth above is incorporated here.

42. The Plaintiff is informed and believes that, unless the Court issues a temporary injunction and/or permanent injunction mandating that the Defendants remove the Encroachment, the Defendants will further refuse to remove the Encroachment and thereby fail to bring the Property into compliance with the Covenants.

43. The Plaintiff is informed and believes that he is without legal remedy to correct the wrongs herein described and that he will be irreparable and immediately harmed if the Defendants are not immediately enjoined.

44. The Plaintiff is informed and believes that until such time as the Court permanently decides the issues set forth herein, no material harm will result to the Defendants if they are temporarily enjoined as set forth herein.

45. As a direct result of the foregoing, Plaintiff is entitled to receive a temporary and permanent injunction for the relief sought herein.

WHEREFORE, Plaintiff prays for judgment in his favor and against the Defendants as follows:

1. An award of actual damages and consequential damages;
2. An award of punitive damages;
3. An order of restitution by Defendants to Plaintiff of all property by which Defendants have been unjustly enriched;

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4. An order mandating that the Defendants remove the Encroachment and restore the Common Elements to its original appearance and condition;
5. A declaration that the value used to determine Regime assessments for the Property should be increased, relative to the value placed on Plaintiff's Regime property, to correspond with the related increase in value gained by the Defendants as a result of the Encroachment and/or the related decrease in value suffered by Plaintiff as a result of the Encroachment;
6. For attorneys' fees, costs, pre-judgment interest and post-judgment interest; and
7. For such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

COFFEYKUBEC, LLP

By: /s/ Edward M. Kubec
Edward M. Kubec, Esq. (S.C. Bar #76576)
1 Corpus Christi Place, Suite 105
Hilton Head Island, SC 29928
(843) 422-4488
ekubec@coffeykubec.com

Attorneys for Plaintiff

July 31, 2020
Hilton Head Island, South Carolina

ELECTRONICALLY FILED - 2020 Dec 03 1:41 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

AMENDED ANSWER AND THIRD PARTY COMPLAINT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII,

THIRD-PARTY DEFENDANT.

Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller, ("Defendants") hereby submit their Amended Answer to the Complaint filed by Todd E. Taylor ("Plaintiff") on July 31, 2020, and Third-Party Complaint against South Beach Village Lagoon Villas, II,

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Horizontal Property Regime LVII ("Regime"). In support of their Answer and Third-Party Complaint, Defendants hereby state as follows:

FOR A FIRST DEFENSE:

1. Unless expressly admitted herein, Defendants deny each and every allegation contained in the Complaint.

2. Defendants have insufficient information to admit or deny paragraphs 1 and 9 of the Complaint; therefore, deny same and demand strict proof.

3. Paragraphs 2 through 5, and 10 of the Complaint are admitted.

4. Paragraphs 6, 7, 8, 11, 12, and 17 of the Complaint appear to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof.

5. In response to paragraphs 13 and 14 of the Complaint, Defendants crave reference to the recorded land records of Beaufort County, South Carolina, deny anything inconsistent therewith, and demand strict proof.

6. Defendants admit so much of paragraph 15 of the Complaint as may be construed to allege that Defendants improved the real property described in Defendants' Lis Pendens filed herewith, with the express knowledge, consent, and permission of all necessary parties pursuant to a valid and enforceable encroachment agreement, as is more fully set forth in paragraphs 20, 36, 37, and 38, *supra*, and the Third-Party Complaint. Defendants deny the remainder of paragraph 15, and demand strict proof.

7. Defendants deny paragraphs 16 and 18 of the Complaint, and demand strict proof.

8. To the extent paragraphs 19, 26, 30, 34, 38, and 41 require a response, Defendants deny same and demand strict proof.

9. Defendants deny all allegations in Plaintiff's prayer for relief.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

10. Defendants reassert the foregoing statements as if set forth at length herein.

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11. Paragraph 20 of the Complaint appears to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof.

12. Defendants deny paragraphs 21 through 25 of the Complaint, and demand strict proof.

FOR A SECOND DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

13. Defendants reassert the foregoing statements as if set forth at length herein.

14. Plaintiff lacks standing to assert a cause of action for violation of the Master Deed and/or By-Laws, and this claim should be dismissed with prejudice.

FOR A THIRD DEFENSE TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

15. Defendants reassert the foregoing statements as if set forth at length herein.

16. Plaintiff has failed to plead sufficient facts showing that Plaintiff has suffered any damages, and/or that any actions of Defendants have proximately caused Plaintiff any cognizable damages.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION
(Trespass)

17. Defendants reassert the foregoing statements as if set forth at length herein.

18. Defendants deny paragraphs 27, 28, and 29 of the Complaint and demand strict proof.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION
(Trespass)

19. Defendants reassert the foregoing statements as if set forth at length herein.

20. The improvements to Unit 1595 were erected in 1995 with the express written consent, approval, and authorization required under all applicable Covenants, Conditions, and Restrictions, the Master Deed and the By-Laws recorded in the Beaufort County Register of Deeds Office ("Governing Documents").

21. Plaintiff's cause of action for trespass is barred by S.C. Code Ann. § 15-3-530(3) and should be dismissed with prejudice.

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FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION
(Conversion)

22. Defendants reassert the foregoing statements as if set forth at length herein.

23. Defendants deny paragraphs 31, 32, and 33 of the Complaint and demand strict proof.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION
(Unjust Enrichment)

24. Defendants reassert the foregoing statements as if set forth at length herein.

25. Defendants deny paragraphs 35, 36, and 37 of the Complaint and demand strict proof.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION
(Declaratory Relief)

26. Defendants reassert the foregoing statements as if set forth at length herein.

27. Defendants deny paragraph 39 of the Complaint and demand strict proof.

28. Paragraph 40 of the Complaint appears to state legal conclusions to which no response is required. To the extent that a response is required, Defendants crave reference to applicable South Carolina law, deny anything inconsistent therewith, and demand strict proof. Defendants deny the remainder of paragraph 40, and demand strict proof.

FOR A SECOND DEFENSE TO THE FIFTH CAUSE OF ACTION
(Declaratory Relief)

29. Defendants reassert the foregoing statements as if set forth at length herein.

30. Assessments for individual units are based on the value of the unit as set by the Council of Co-Owners as a whole based on regime expenses, not a valuation or diminution of value of the common elements.

31. The Master Deed and By-Laws do not permit Plaintiff, or any other owner, to alter assessments based on any change to the common elements.

32. Therefore, Plaintiff's claim should be dismissed with prejudice.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION
(Injunctive Relief)

33. Defendants reassert the foregoing statements as if set forth at length herein.

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34. Defendants deny paragraphs 42 through 45 of the Complaint, and demand strict proof.

FOR FURTHER AND COMPLETE AFFIRMATIVE DEFENSE:
(Estoppel, Waiver, Laches, Consent, Acquiescence)

35. Defendants reassert the foregoing statements as if set forth at length herein.

36. The improvements to Unit 1595 were erected in 1995 with the express written consent, approval, and authorization required under the Governing Documents.

37. After the completion of the improvements, the Council of Co-Owners agreed to increase Unit 1595's assessment at the annual meeting held on October 30, 1998.

38. Defendants have continually paid the increased assessment rate for Unit 1595 since the increased rate for Unit 1595 became effective with the fiscal year November 1998.

39. Defendants are informed and believe that at least two (2) other Units have also been expanded in a similar fashion in the past, with the express written consent, approval, and authorization required under the Governing Documents.

40. Plaintiff, as owner of Unit 1596, without obtaining the required approval under the Governing Documents, materially changed and altered the Limited and Common Elements of the Regime when he completed renovations to his Unit in 2015.

41. As a result of the foregoing, all of Plaintiff's claims are barred by the doctrines of estoppel, waiver, laches, consent, acquiescence, and should be dismissed with prejudice.

FOR A FURTHER AND COMPLETE AFFIRMATIVE DEFENSE
(Unclean Hands)

42. The previous allegations are incorporated herein as if repeated verbatim.

43. As the owner of Unit 1596, Plaintiff is subject to the terms and provisions of the Governing Documents.

44. Upon information and belief, Plaintiff completed improvements to Unit 1596 in 2014 and 2015, including the replacement of sliding glass doors on the front of Unit 1596 with a fixed window, alterations to the existing exterior wall, deck, and stairs, and addition of a new exterior wall ("2014 Improvements").

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45. Pursuant to the Master Deed, maintenance, repair, and replacement of sliding glass doors and windows is the responsibility of the owner, while maintenance, repair, and replacement of exterior walls is the responsibility of the Regime.

46. The 2014 Improvements materially increased the maintenance and repair obligations of the remaining owners including Defendants, and were completed without the required approval pursuant to the Governing Documents.

47. Plaintiff has not paid an increase in assessments since completion of the 2014 Improvements.

48. One who seeks equity must do equity.

49. As a result of the foregoing, Plaintiff's claims against Defendants are barred by his unclean hands and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

50. Defendants reassert the foregoing statements as if set forth at length herein.

51. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendants pursuant to Rule 12(b)(6), SCRCP, and Plaintiff's claims against Defendants should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

52. Defendants reassert the foregoing statements as if set forth at length herein.

53. Plaintiff's claims are barred by the applicable statute(s) of limitations and statute(s) of repose, and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

54. Defendants reassert the foregoing statements as if set forth at length herein.

55. Plaintiff's claims are barred by the doctrine of release and should be dismissed with prejudice.

FOR FURTHER AFFIRMATIVE DEFENSE:

56. Defendants reassert the foregoing statements as if set forth at length herein.

57. Plaintiff's claims are barred by ratification and should be dismissed with prejudice.

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FOR FURTHER AFFIRMATIVE DEFENSE:

58. Defendants reassert the foregoing statements as if set forth at length herein.

59. The relief requested by Plaintiff is barred by S.C. Code § 15-36-10.

FOR FURTHER AFFIRMATIVE DEFENSE:

60. Defendants reassert the foregoing statements as if set forth at length herein.

61. Defendants reserve the right to assert additional claims and defenses as they may become known.

THIRD PARTY COMPLAINT AGAINST SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME LVII

62. The previous allegations are incorporated herein as if repeated verbatim.

63. Defendants/Third-Party Plaintiffs are the owners of real property, which is the subject of the action herein, located in the County of Beaufort, State of South Carolina, as is more fully set described in the Lis Pendens filed herewith ("Unit 1595").

64. South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII ("Third-Party Defendant", or the "Regime") is a non-profit organized under the laws of South Carolina.

65. The parties to this action are subject to the jurisdiction of this Court, and venue is appropriate in Beaufort County.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

66. The previous allegations are incorporated herein as if repeated verbatim.

67. Pursuant to the Master Deed recorded in Book 215 at Page 1092, and the By-Laws recorded in Book 215 at Page 1099, all owners of the six (6) units in the South Beach Village Lagoon Villas II comprise the Council of Co-Owners.

68. Pursuant to the Master Deed and By-Laws, the affairs of the Council of Co-Owners shall be governed by a Board of Administration ("BOD"), which is responsible for compliance with all of the terms and conditions of the Master Deed and enforcement of same.

69. The BOD and its individual officers, collectively, comprise the legal entity known as the Regime.

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70. Actions taken by the Regime, through the BOD and pursuant to the Governing Documents and, specifically, the Master Deed and By-Laws, are binding upon and constitute the valid, lawful acts of the Council of Co-Owners.

71. The Regime has the actual authority, through the BOD and pursuant to Governing Documents, to take actions on behalf of the Council of Co-Owners, and any such actions shall be binding upon the Council of Co-Owner and their privies.

72. The Regime, through the BOD, has apparent authority to take actions on behalf of the Council of Co-Owners, and any such actions shall be binding upon the Council of Co-Owner and their privies.

73. Sometime in 1995, Third-Party Plaintiffs submitted a written request to the Regime, through the BOD and the Architectural Review Board ("ARB"), to build an approximately 154 square foot addition to Unit 1595.

74. The improvement request for Unit 1595 was approved in writing by both the Regime and ARB, through the BOD pursuant to the Governing Documents.

75. The approximate 154 square foot improvement to Unit 1595 is located entirely within the limited common element, to which the Third-Party Plaintiffs possess an exclusive right to use and enjoy pursuant to the Master Deed and the deed(s) conveying interests in Unit 1595 to Third-Party Plaintiffs.

76. The approximate 154 square foot improvement to Unit 1595 does not encroach upon the general common element, as described in the Master Deed and the deeds to each respective unit.

77. A justiciable controversy exists between Third-Party Defendants and the Regime, as the entity representing the Council of Co-Owners and, in turn, all Co-Owners of the Regime.

78. Pursuant to S.C. Code §15-53-10, *et seq.*, Third-Party Plaintiffs are entitled to an order declaring that a valid and enforceable encroachment agreement exists between Third-Party Plaintiffs and the Regime, which grants Third-Party Plaintiffs, and their successors and assigns, an encroachment for the authorized improvements upon the limited common element adjacent to Unit 1595.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that this Court:

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1. Dismiss the Plaintiff's Complaint with prejudice;

2. Award Defendants their costs and attorneys' fees;

3. Decree, order and declare that:

   a. A valid and enforceable encroachment agreement exists between Defendants/Third-Party Plaintiffs and the Regime, that shall run with the land and inure to the benefit of Defendants/Third-Party Plaintiffs' successors and assigns; and,

   b. Plaintiff lacks standing to sue for a change in the Regime's assessment structure based on Unit 1595's authorized improvements;

   c. Plaintiff lacks standing to sue for removal of a common element encroachment;

   d. Defendants have not violated any provisions of the Master Deed and By-Laws, or other Governing Documents;

   e. Plaintiff and the Council of Co-Owners are estopped from taking any action regarding the authorized improvements to Unit 1595 under the doctrine of laches, and are estopped from forcing the removal of the authorized improvements to Unit 1595 because the Regime, through the BOD, has already entered into a binding encroachment agreement with Defendants/Third-Party Plaintiffs; and

4. Grant such other and further relief as is just and necessary.

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech (SC Bar 78855)
Post Office Box 41489
Charleston, South Carolina 29423
Phone: (843) 577-5460
Fax: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Defendants/Third-Party Plaintiffs

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII'S ANSWER TO THIRD-PARTY COMPLAINT**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendants	

COMES NOW, Third-Party Defendant *South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII*, by and through its undersigned counsel, and presents this, its Answer to the Third-Party Complaint, and shows the Court as follows:

1. Third-Party Defendant denies each and every allegation contained in the Amended Answer and Third-Party Complaint not specifically admitted herein.

2. Paragraphs 1-61 of the Amended Answer and Third-Party Complaint respond to the original Complaint and do not contain allegations directed to Third-Party Defendant. As

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such, Third-Party Defendant is not required to respond to Paragraphs 1-61 of the Amended Answer and Third-Party Complaint. To the extent a response is required, Third-Party Defendant denies the same and demands strict proof thereof.

3. In response to Paragraph 62, Third-Party Defendant lacks sufficient information to admit or deny Paragraph 62, as it is unclear what allegations Defendants/Third-Party Plaintiffs attempt to incorporate. Therefore, it can neither admit nor deny Paragraph 62 at this time.

4. Third-Party Defendant admits Paragraph 63.

5. Third-Party Defendant admits Paragraph 64.

6. Third-Party Defendant admits Paragraph 65.

7. In response to Paragraph 66, Third-Party Defendant lacks sufficient information to admit or deny the allegations contained therein because it is unclear what allegations Defendants/Third-Party Plaintiffs are attempting to incorporate herein. Therefore, it can neither admit nor deny Paragraph 66 at this time.

8. Third-Party Defendant admits Paragraph 67.

9. In response to Paragraph 68, Third-Party Defendant admits that the affairs of the Council of Co-Owners shall be governed by a Board of Administration. Third-Party Defendant refers to the aforementioned Master Deed and By-Laws for the duties and responsibilities of the Council and Board denies any remaining or inconsistent allegations in Paragraph 68.

10. Third-Party Defendant denies Paragraph 69 as stated.

11. Paragraph 70 states a legal conclusion to which no response is required from Third-Party Defendant. To the extent a response is required, Third-Party Defendant lacks sufficient information to respond to Paragraph 70 of the Third-Party Complaint, and therefore, Third-Party Defendant can neither admit nor deny Paragraph 70 at this time.

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12. Paragraph 71 states a legal conclusion to which no response is required from Third-Party Defendant. To the extent a response is required, Third-Party Defendant lacks sufficient information to respond to Paragraph 71 of the Third-Party Complaint, and therefore, Third-Party Defendant can neither admit nor deny Paragraph 71 at this time.

13. Paragraph 72 states a legal conclusion to which no response is required from Third-Party Defendant. To the extent a response is required, Third-Party Defendant lacks sufficient information to respond to Paragraph 72 of the Third-Party Complaint, and therefore, Third-Party Defendant can neither admit nor deny Paragraph 72 at this time.

14. Third-Party Defendant lacks sufficient information to admit or deny the allegations contained in Paragraphs 73, 74, 75 and 76. Therefore, Third-Party Defendant can neither admit nor deny the allegations contained in Paragraphs 73, 74, 75 and 76 at this time.

15. Third-Party Defendant denies Paragraph 77.

16. Third-Party Defendant denies Paragraph 78.

17. In response to the WHEREFORE paragraph and prayer for relief, Third-Party Defendant denies Defendants/Third-Party Plaintiffs' entitlement to the relief requested.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Third-Party Complaint fails to state facts sufficient to constitute a cause of action against Third-Party Defendant and should be dismissed pursuant to the provisions of SCRCP 12(b)(6).

SECOND AFFIRMATIVE DEFENSE
(Compliance with the Standard of Care)

At all relevant times, Third-Party Defendant exercised the necessary degree of care and skill maintained by other Boards of Administration for property regimes under similar conditions and like circumstances.

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THIRD AFFIRMATIVE DEFENSE
(Compliance with Governing Documents)

All times relevant to the matters complained of in the Third-Party Complaint, Third-Party Defendant acted within the authority and power granted to it through the governing documents of South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII.

FOURTH AFFIRMATIVE DEFENSE
(General Reservation)

Third-Party Defendant reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

This 5th day of March, 2021.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
LACEY L. HOUGHTON
State Bar No.: 102968
Attorneys for Third-Party Defendant

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
lhoughton@cskl.law
Ph: 843-727-0307

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII'S PETITION FOR RELIEF PURSUANT TO S.C. CODE § 33-31-160**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

COMES NOW, Third-Party Defendant *South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII* (the "Regime") by and through its President William Tatum, Jr., and undersigned counsel, and files this Petition for Relief Pursuant to S.C. Code § 33-31-160. As set forth herein, following renovation and expansion of certain dwelling units forming part of the Regime property into the common elements of the Regime, the Master Deed identifying, describing and governing the Regime requires an amendment in order to lawfully and properly describe the property and rights of the co-owners. The Master Deed requires the approval and

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consent of 100% of the co-owners of the Regime in order to effect such an amendment. Per Regime Meeting Minutes, the Regime membership has acknowledged the necessity of an amendment to the Master Deed as far back as 2003. Since 2018, the Regime has incurred approximately $25,000.00 in expenses representing attorney's fees, surveying fees and other costs in pursuing an amendment to the Master Deed. Despite these efforts, the Regime has been unable to effect the necessary amendment to the Master Deed due to the 100% co-owner approval requirement. The Regime seeks relief from the Court pursuant to S.C. Code § 33-31-160 in order to effect the necessary amendment to the Master Deed, showing the Court as follows:

1. This action concerns property within the South Beach Village Lagoon Villas II Horizontal Property Regime LVII, established pursuant to the Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed"). The Master Deed and Bylaws are attached hereto as **Exhibit A.**

2. The Regime and Regime property are subject to and governed by and in accordance with the Master Deed, Bylaws, amendments thereto, and various rules and regulations ("Governing Documents"). *See* Exhibit A.

3. The Regime is subject to the provisions of the Horizontal Property Act, S.C. Code Ann. § 27-31-10, et. seq. (the "Act").

4. The Regime is a non-profit corporation formed and existing under the laws of the State of South Carolina, and subject to the provisions of the South Carolina Non-Profit Code, S.C. Code Ann. § 33-31-101, et seq.

5. The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units.

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6. The six (6) dwelling units are owned by co-owners, each of whom has a particular and exclusive property right to their dwelling unit, as well as an undivided interest in the general and limited common elements of the Regime.

7. Pursuant to the Governing Documents, the co-owners of the dwelling units constitute the Council of Co-Owners, who have the responsibility of administering the Regime property. The affairs of the Council of Co-Owners are governed by a Board of Administration comprised of five persons, all of whom must be co-owners of dwelling units.

8. The Plaintiff in this action is the owner of residential real property in the Regime located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina.

9. Defendants are the owners of residential real property in the Regime which adjoins Plaintiff's property, located at 226 Sea Pines Drive, Apt. 1595, Hilton Head Island, South Carolina.

10. The Act sets out various requirements as to the contents of a Master Deed establishing and governing a Horizontal Property Regime, including:

> (a) The description of the land...and the building or buildings in existence or to be constructed, if applicable, expressing their respective areas;
> (b) The general description and number of each apartment, expressing its area, location...;
> (c) The description of the general common elements of the property, and in proper cases, of the limited common elements restricted to a given number of apartments...

See S.C. Code Ann. § 27-31-100. Additionally, The Master Deed must include:

> a map or plat showing the horizontal and vertical location of any building which is proposed or in existence and other improvements within the property boundary, which shall have the seal and signature of a registered land surveyor licensed to practice in this State. There must also be attached a plot plan of the completed or proposed construction showing the location of the building which is proposed or in existence and other improvements, and a set of floor plans of the building which must show graphically the dimensions, area, and location of each apartment therein and the dimension, area, and location of common elements affording access to each apartment. Other common elements, both limited and general, must be shown graphically insofar as possible and must be described in detail in words and figures. The building plans must be certified to by an engineer or architect authorized and licensed to practice his profession in this State.

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See S.C. Code Ann. § 27-31-110.

11. The Master Deed incorporates and/or includes a plat and plans showing and describing the Regime property, including individual dwelling units and common elements.

12. Pursuant to the Master Deed, the Regime property is defined and specified as having "a total area of 0.77 acres of which 8,071.21 square feet will constitute Dwelling Units, and 25,469.99 square feet will constitute common elements." *See* Master Deed at Fourth Paragraph.

13. Further, the dwelling units making up Regime property are described and the measurements of the various units are identified.

> 1. Building 1: This buildings contains two (2) Dwelling Units (hereinafter referred to as "Villas") and commonly referred to as Villas 1591 and 1592.
>
> 2. Building 2: This building contains two (2) Dwelling Units commonly referred to as Villas 1593 and 1594.
>
> 3. Building 3: This building contains two (2) Dwelling Units commonly referred to as Villas 1595 and 1596.
>
> ...[T]he Villas, as shown on the plans of the Property, are composed of four (4) 2 bedroom Type A Villas, and two (2) three bedroom Type B Villas.
>
> 1. Two-bedroom Type A Villas: (Units 1591, 1592, 1595, and 1596). These Villas measure 39.83 feet wide and 36.66 feet deep in their maximum interior dimensions and contain a net interior area of 1,086 square feet.
>
> 2. Three-bedroom Type B Villas: (Units 1593 and 1594) These Villas measure 44.83 feet wide and 44 feet deep in their maximum interior dimensions and contain a net interior area of 1,400 square feet.

See Master Deed at Fifth Paragraph.

14. As defined in the Master Deed, the general common elements and the limited common elements together comprise the "Common Elements" of the Regime. The general common elements include all Regime property, excluding the limited common elements and the

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dwelling units. *See* Master Deed at Third Paragraph, Fifth Paragraph. The limited common elements include pertinently, "the rear and front yards and service areas...adjacent to each dwelling unit..." *See* Master Deed at Fifth Paragraph.

15. Pursuant to the Act, the owner of a dwelling unit,

> shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole....
>
> The basic value, which shall be fixed for the sole purpose of this chapter and irrespectively of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

See S.C. Code Ann. § 27-31-60.

16. Thus, in accordance with the Act, the Master Deed provides:

> The title and interest of each co-owner of a Dwelling Unit in the common elements...and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes ...is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand Dollars ($458,000). The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the price for which the Property of any Dwelling Unit may be sold or exchanged are as follows:
>
> A. Dwelling Units 1591, 1592, 1595 and 1596: 15.939 percent each based on a value of $73,000 for each of said Dwelling Units.
>
> B. Dwelling Units 1593 and 1594: 18.122 percent each based on a value of $93,000 for each of said Dwelling Units.

See Master Deed at Sixth Paragraph.

17. Pursuant to the Master Deed, "the common elements shall remain undivided." *See* Master Deed at Tenth Paragraph; *see also* S.C. Code Ann. § 27-31-70.

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18. Pursuant to S.C. Code Ann. § 27-31-80, "Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners."

19. Pursuant to the Master Deed, "the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in an amendment to this Deed duly recorded." *See* Master Deed at Eleventh Paragraph; *see also* S.C. Code Ann. § 27-31-60.

20. Additionally, the Master Deed requires unanimous consent of all co-owners of the Regime to amend any provisions thereof. *See* Master Deed at Fourteenth Paragraph.

Expansion of Encroaching Units and Discussion of Attempts to Amend the Master Deed to Reflect Changes to Regime Property

21. Over the past many years, owners of Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime now encroach into the Common Elements of the Regime.

22. The expansion of the Encroaching Units into the common elements is prohibited under the Master Deed and the Act, regardless of whether the expansions were done with the consent of the Regime's Board of Administration.[1]

23. As a result, the description and depiction of the Regime property and the Encroaching Units as set forth in the Master Deed no longer conform to the physical layout of Regime property as it currently exists. Additionally, the Encroaching Units have in effect subdivided the Common Elements of the Regime.

[1] Upon information and belief the Regime and owners approved the expansion projects. Due to the passage of time, however,it is unclear if documents exist showing that written requests for all units were submitted for approval and that such requests were formally approved.

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24. Upon information and belief, the expansion to Defendant's Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2002; the expansion to Unit 1591 was completed in approximately 2004.

25. At various points and as the expansions of the Encroaching Units were completed, the Regime co-owners agreed among themselves to change the ownership percentages of the various units, such that the owners of the Encroaching Units would be re-assessed and would pay an increased share of common expenses reflecting the larger portion of the total Regime property the Encroaching Units now comprised. At various times, the Regime operated by mutual agreement using these informally adopted ownership percentages, rather the ownership percentages set forth in the Master Deed.

26. As far back as 2003, Regime Meeting Minutes reflect a discussion among the co-owners of the need to amend the Master Deed in order to reflect additions to the various Encroaching Units, and attempts to retain professionals to prepare the necessary amendments for the Regime.

27. On October 16, 2003, the co-owners requested that Unit 1594 be re-assessed in light of its expansion, and that there be an amendment to the Master Deed reflecting this change.

28. On October 14, 2004, meeting minutes reflect counsel was retained to prepare an amendment:

> [R]egarding additions to the units such as those at 1594 and 1595, when those additions are recorded as changes to the Master Deed, they will also be included under the regime's master policy. [A co-owner] noted that when [counsel] was contracted to file an amendment to the deed for unit 1594 he discovered that there had never been one file for the addition to unit 1595. As there is a request before the owners for an addition to 1591, [property management] suggested that the deed be amended one time, inclusive of all 3 unit renovations, which will keep the cost down. All members were in agreement with this plan."...
>
> ...The...owners of unit [1591] presented a plan for an addition to their unit for approval. They explained that the integrity of the footprint of the unit

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> would not change, but that they would partially enclose the rear and extend the deck area...

29. Despite attempts to retain counsel and move forward with the necessary amendments in 2004, no such amendment was filed. In 2012, the issue re-surfaced, and the co-owners again discussed the Master Deed discrepancies, in the context of concern about whether the expansions of the 3 Encroaching Units were covered under the Regime's insurance policies.

30. On October 20, 2017, the co-owners again discussed the need to amend the Master Deed. Meeting Minutes reflect the following:

> Unfinished Business
>
> [Defendant] Kennie Gill updated the ownership with stating she did some more research on the Master Deed and By-laws. She explained they were out of date, and they would eventually need to be updated. In addition, the percentage of ownership was not current, with the patio additions and improvements, and suggested to have them included for the insurance coverage....[property management] advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some discussion, it suggested to have the Master Deed and Bylaws updated when the funds were available.

31. Following the October 20, 2017 Regime meeting, Defendant Kennie Miller Gill contacted Novit & Scarminach, P.A. for a legal opinion "regarding the title issues resulting from enlargements to certain Dwelling Units located within the [Regime] and the legal requirements for bringing the Regime into compliance with the Master Deed and applicable South Carolina law."

32. Throughout 2017, 2018, and 2019, and Regime was advised by Counsel that an amendment to the Master Deed is required to reflect the expansion of the Encroaching Units and the changes to the Regime property[2].

[2] The advice provided by counsel to the Regime has been shared and discussed among the Regime ownership, in order to discuss the basis and need for an amendment to the Master Deed. However, the Regime does not broadly waive the attorney-client privilege as to the advice rendered by Novit & Scarminach, P.A.

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33. In May 2018, Defendant Kennie Miller Gill raised concerns via email that immediate corrective action was required to address the problems regarding the Encroaching Units and the Master Deed.

34. Throughout 2018 and 2019, the Regime continued to work with counsel to prepare proposed amendment documents to satisfy the ownership and address the issues created by the Encroaching Units.

35. The Regime engaged Survey Consultants to provide a revised survey of the Regime Property reflecting the current property, including the Encroaching Units, for use in the amendment process.

36. On May 9, 2019, Regime Meeting Minutes reflect continued discussion of the proposed Master Deed amendments, and the necessity of the same:

> Master Deed and By Laws Status – [President/Plaintiff Taylor] reported the Association has been working on Master Deed and By Law amendments for a little over a year. Attorney Novit & Scarminach and Survey Consultants have both been retained during this process. Attorney Charles Scarminach advised that 100% agreement by the owners must be obtained to approve Master Deed amendments. [President] read 2 letters and an email from Attorney Charles Scarminach. [President/Plaintiff] referenced plat "Exhibit A" originally filed with the Master Deed. He reported the original dwelling descriptions are no longer accurate due to villa remodeling and adding on to the square footage. [President/Plaintiff] then went on to reference an "Interior/Exterior Measurements" excel spreadsheet as measured by Survey Consultants....There are (2) options to reallocate and define values proportionately; 1.) use interior dimensions as measured by Survey Consultants. 2.) use exterior dimensions as measured by Survey Consultants. Discussion ensued regarding the (2) options. A special meeting will be called to officially vote on the proposed amendments. [President/Plaintiff] thanked Kennie Gill for her work on this project.

37. By letter dated August 2, 2019, the Regime was contacted by attorney John A. Elder, IV, representing owner Bill Tatum. Mr. Elder asserted that the Regime's Master Deed was in violation of the South Carolina Horizontal property Act, and that the Regime has a duty to

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correct the issues with the Master Deed. Mr. Elder further advised he intended to explore judicial alternatives to effectuating a correction and amendment to the Master Deed.

38. Following this correspondence, then-Regime President corresponded with the co-owners about the continuing need to correct the Master Deed, and available options for doing so.

39. Via letter dated October 9, 2019, in an attempt to secure an amendment to the Master Deed, Regime counsel Charles Scarminach sent the co-owners a proposed Consent Resolution, proposed Amendment to Master Deed, and Boundary and As-Built survey showing the correct interior area of each Dwelling Unit ("October 9, 2019 Proposed Amendment"). A true and correct copy of the October 9, 2019 Proposed Amendment is attached hereto as **Exhibit B.**

40. All co-owners signed the October 9, 2019 Proposed Amendment prepared by Mr. Scarminach, except for Defendants Kennie Lee Miller Gill and Mr. Amar Singh Gill. True and correct copies of the co-owner signatures consenting to the October 9, 2019 are attached to the October 9, 2019 Proposed Amendment attached hereto as **Exhibit C.**

41. At the Annual Meeting held October 17, 2019, the co-owners discussed the continuing need to amend the Master Deed and the difficulties created by the delay.

42. The Regime held a special meeting on January 29, 2020, and discussed the continuing need to amend the Master Deed and the challenges posed in continuing to conduct the business and necessary maintenance of the Regime in light of the issues created by the Encroaching Units.

43. Throughout 2020, the co-owners continued to discuss the need to amend the Master Deed, and disputes regarding the content of the amendment.

44. All owners have not attended the meetings of the Association, preventing the ability to hold a vote at which 100% approval could be obtained per the requirements of the Governing Documents.

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45. To date, the Regime has incurred the following expenses in its attempt to effectuate an amendment to the Master Deed, in a total amount not less than $24,855.00:

a. Attorney's fees paid to Novit & Scarminach, P.A: $7,825.00;

b. Fees paid to Surveying Consultants, Inc.: $16,030.00; and

c. Insurance Deductible following being named as party to instant action: $1,000.

Development of Dispute and Filing of Instant Lawsuit

46. On July 31, 2020, following the inability of the Regime to effectuate an amendment to the Master Deed, Plaintiff Taylor filed the instant lawsuit against the Defendant, asserting, *inter alia,* that Defendant illegally expanded Unit 1595 into the Common Area of the Regime, and the encroaching structure must be removed.

47. On December 3, 2020, Defendant filed an Amended Answer and Third Party Complaint against the Regime, seeking, *inter alia*, a Declaratory Judgment that the Regime approved Defendant's addition, and that a valid and enforceable encroachment agreement exists between Defendant and the Regime.

48. Following the filing of the instant action, some of the co-owners who previously consented to the October 9, 2019 Proposed Amendment withdrew their consent.

Relief Requested by Regime

49. The South Carolina Non-Profit Code, S.C. Code § 33-31-160, entitled "Judicial Relief" provides in its entirety:

> (a) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or **otherwise obtain their consent,** in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.

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> (b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.
>
> **(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.**
>
> (d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.
>
> (e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order, is a valid meeting or vote, as the case may be, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

(emphasis added).

50. The Master Deed requires an amendment in order to lawfully and properly describe the Regime property, dwelling units, common elements, and the rights of the co-owners.

51. The Regime shows, based on the lengthy history of attempts to amend the Master Deed, the expenses incurred, the protracted discussion and efforts which have taken place since 2018, and the instant lawsuit, that it is impossible and impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed.

52. The Regime submits this Petition, praying that this Court order that such a meeting be called or that a written ballot of other form of obtaining the vote of the members be authored,

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in such a manner as the Court finds fair and equitable under the circumstances. The Regime further requests that the Court dispense with requirements relating to the holding of or voting at meetings or obtaining votes, including the requirements relating to quorums and percentage of votes needed for approval.

53. Specifically, the Regime requests the following relief:

a. That the Court order the Regime to hold a special meeting for the purpose of approving an amendment to the Master Deed;

b. That the Court order proper notice be provided to the co-owners of the Special Meeting;

c. That the October 9, 2019 Proposed Amendment will be provided to the co-owners for a vote at the Special Meeting.

d. That all co-owners be required to attend the Special Meeting, which may be held via video-conferencing platform or other means to allow for remote attendance;

e. That the Court will alter the voting requirement, and order that should the amendment receive a majority approval of the co-owners based on voting percentages expressed in the Sixth paragraph of the current Master Deed, the amendment will be ordered by the Court to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

54. The Regime further requests such other relief as the Court may deem appropriate, under S.C. Code § 33-31-160 and otherwise.

[SIGNATURE PAGE TO FOLLOW]

This 25th day of August, 2021.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
dmackelcan@cskl.law
lhoughton@cskl.law
Ph: 843-727-0307

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
LACEY L. HOUGHTON
State Bar No.: 102968
Attorneys for Third-Party Defendant

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EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

1092

SEA PINES PLANTATION COMPANY)
)
TO) MASTER DEED
)
SOUTH BEACH VILLAGE LAGOON VILLAS II) HORIZONTAL PROPERTY REGIME
HORIZONTAL PROPERTY REGIME LVII)

At Hilton Head Island, County of Beaufort, and State of South Carolina, on this 14th day of October, 1973, Sea Pines Plantation Company, a South Carolina Corporation, whose principal office is situated on Hilton Head Island, State of South Carolina, (hereinafter referred to as "Grantor"), does hereby declare:

FIRST: That Grantor owns a property situated at Hilton Head Island, County of Beaufort, State of South Carolina, which is described as follows:

ALL that certian piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII as shown on a plat thereof prepared by Calvert Surveying Company, Inc., R.L.S., which said plat is dated October 2, 1973, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 21 at Page 149, said herein described property commencing at a Point of Beginning which said Point of Beginning is the generally northernmost point of the above described South Beach Village Lagoon Villas II property and its intersection with a portion of lands identified as Port Villas; thence S 44° E a distance of 46 feet to a point; thence S 17° 45' W a distance of 239 feet to a point; thence S 46° W a distance of 112 feet to a point; thence N 44° W a distance of 77 feet to a point; thence N 46° E a distance of 37 feet to a point; thence N 3° 43' E a distance of 74.34 feet to a point; thence N 51° 32' W a distance of 65.58 feet to a point; thence S 63° 30' E a distance of 48.18 feet to a point; thence N 67° 30' E a distance of 30 feet to a point; thence N 33° 14' E a distance of 30 feet to a point; thence N 18° 42' E a distance of 30 feet to a point; thence N 3° 35' W a distance of 30 feet to a point; thence N 45° 51' E a distance of 57.70 feet to a point; thence S 49° 09' E a distance of 20 feet to a point; thence N 45° 51' E a distance of 62 feet to the Point of Beginning of the within described property. Said property is generally bounded on its East by a lagoon, on its West by Lagoon Villas Phase I, an access roadway, and Port Villas all being located within Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina. For a more detailed description as to location, courses, metes, bounds and distances, reference to said plat of record is craved.

AND ALSO, a nonexclusive easement for ingress and egress on all existing roads within Sea Pines Plantation Company including, but not limited to, roads in existence running from the eastern portion of the above described property to South Sea Pines Drive said ingress and egress roads having their center lines shown and indicated on the

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above referred to plat of record which said plat was prepared by Calvert Surveying Company, Inc., R.L.S., and entitled "Lagoon Villas Phase II."

SECOND: That Grantor (intending to create a horizontal property regime that shall be known as South Beach Village Lagoon Villas II, Horizontal Property Regime [VII hereinafter called the "Regime") has constructed on the parcel of land described above certain buildings and other improvements (which, together with the land described in Paragraph "FIRST", all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto and hereinafter usually referred to as the "Property"), according to the plans attached hereto and identified as Exhibit "A", which were certified to by Richard F. Collins, Jr., A.I.A., an architectural firm duly authorized and licensed to practice in the State of South Carolina, on the 27th day of September, 1973, and which are made a part hereof.

-1a-

THIRD: That the Property includes three (3) buildings, containing six (6) individual dwelling units (hereinafter referred to as "Dwelling Units") all of which are to be used for residential purposes. The Dwelling Units are all capable of individual utilization on account of having their own exits to the common elements of the Property, and they will be sold to one or more co-owners, each co-owner obtaining a particular and exclusive property right thereto, and also undivided interest in the general and limited common elements of the Property, as listed hereinafter in this Deed, necessary for their adequate use and enjoyment (hereinafter referred to as "common elements"), all of the above in accordance with the Horizontal Property Act of South Carolina.

FOURTH: That Property has a total area of 0.77 acres of which 8,071.21 square feet will constitute Dwelling Units, and 25,469.09 square feet will constitute common elements.

FIFTH:

I. DWELLING UNITS.

A. General:

1. Building #1: This building contains two (2) Dwelling Units (hereinafter referred to as "Villas") and commonly referred to as Villas 1591 and 1592.

2. Building #2: This building contains two (2) Dwelling Units commonly referred to as Villas 1593 and 1594.

3. Building #3: This building contains two (2) Dwelling Units commonly referred to as Villas 1595 and 1596.

B. The Dwelling Units include the space enclosed by the unfinished surfaces of perimeter and interior walls, ceilings and floors thereof, including vents, doors, windows and such other structural elements that ordinarily are regarded as enclosures of space; all interior dividing walls and partitions (including the space occupied by such walls or partitions); and the decorated inner surfaces of said perimeter and interior walls (including the decorated inner surfaces of all interior load-bearing walls) and floors, ceilings, consisting, as the case may be, of wallpaper, paint, plaster, carpeting, tiles and all other furnishings, materials and fixtures affixed or installed and for the sole and exclusive use of any Dwelling Unit, commencing at the point of disconnection from the structural body of the building and from utility lines, pipes or systems serving the Dwelling Unit. No pipes, wires, conduits, or other public utility lines or installations constituting a part of the overall systems designed for the service of any particular Dwelling Unit of a building, nor any property of any kind, including fixtures and appliances within any Dwelling Unit, which are not removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building, shall be deemed to be a part of any Dwelling Unit.

C. Villas: That the Villas, as shown on the plans of the Property (Exhibit "B") are composed of four (4) two-bedroom Type A Villas, and two (2) three-bedroom Type B Villas.

1. Two-bedroom Type A Villas: (Units 1591, 1592, 1595 and 1596) These Villas measure 39.83 feet wide and 36.66 feet deep in their maximum interior dimensions and contain a net interior area of 1,086 square feet.

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2. Three-bedroom Type B Villas: (Units 1593 and 1594) These Villas measure 44.83 feet wide and 44 feet deep in their maximum interior dimensions and contain a net interior area of 1,400 square feet.

II. COMMON ELEMENTS:

A. The General Common Elements are as follows:

1. The Property, excluding the limited common elements and the Dwelling Units, and including, but not limited to, the foundations, roofs, floors, ceilings, perimeter walls, load-bearing interior walls and partitions, slabs, stairways, pipes, wires, conduits, air ducts, and public utility lines, including the space actually occupied by the above.

2. Tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installation existing for common use, including a substitution of same or additional equipment which may be acquired by the Council of Co-Owners or the Regime.

3. Parking facilities located on the Property, which parking facilities consist of approximately 1,701 square feet, and are shown on the Plat of the Property (attached hereto and identified as Exhibit "A").

4. All roads, walkways, paths, trees, shrubs, yards, gardens, etc., located on the Property.

5. All other elements of the Property, constructed or to be constructed, rationally of common use or necessary or convenient to the existence, upkeep, and safety of the Property, and, in general, all other devices or installations existing for common use.

B. The Limited Common Elements are as follows:

1. The rear and front yards and service areas (shown on the plat attached hereto and identified as Exhibit "A") adjacent to each Dwelling Unit, the storage cabinets located in the service yards, and the fences screening the service areas are limited common elements and are each restricted to the use of the Dwelling Unit adjacent to such limited common elements, respectively.

SIXTH:

1. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting of the Council of Co-Owners (hereinafter referred to as "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-eight Thousand Dollars ($458,000.00). The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the price for which the Property or any Dwelling Unit may be sold or exchanged are as follows:

A. Dwelling Units 1591, 1592, 1595 and 1596; 15.939 per cent each based on a value of $73,000 for each of said Dwelling Units.

B. Dwelling Units 1593 and 1594; 18.122 per cent each based on a value of $83,000 for each of said Dwelling Units.

SEVENTH: That the administration of the Regime consisting as aforesaid of the Property described in Paragraphs "FIRST" and "FIFTH" of this Deed shall be in accordance with the provisions of the By-Laws which are made a part hereof of this Deed and are attached hereto as Exhibit "C".

EIGHTH: That, as appears above, a Horizontal Property Regime is hereby constituted under and subject to the provisions of the Horizontal Property Act of the State of South Carolina, so that Dwelling Units may be conveyed and recorded as individual properties capable of independent use, and each having its own exit to the common elements of the Property, and each Dwelling Unit co-owner having an exclusive and particular right over his respective Dwelling Unit and in addition the specified undivided interest in the common elements of the Property.

NINTH: That so long as the Grantor owns one or more of the Dwelling Units, the Grantor shall be subject to the provisions of this Deed and of Exhibits "A", "B", and "C" attached hereto and the Grantor covenants to take no action which will adversely affect the rights of the Regime with respect to the assurances against latent defects in the Property or other rights assigned to the Regime by reason of the establishment of said Horizontal Property Regime.

TENTH: That the common elements shall remain undivided and no co-owner shall bring any action for partition and/or division.

ELEVENTH: That the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in amendment to this Deed duly recorded.

TWELFTH: That the undivided interest in the common elements (both general and limited) shall not be separated from the Dwelling Unit to which it appertains and shall be deemed conveyed or encumbered with the Dwelling Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

THIRTEENTH: That each co-owner shall comply with the provisions of this Master Deed, the Declaration of Covenants, Restrictions, and Affirmative Obligations Applicable to all Class "B" Multi-Family Residential Areas by Sea Pines Plantation Company dated July 9, 1964, and recorded in the Office of the Clerk of Court for Beaufort County at Book 124 of Deeds, Page 35, and any applicable recorded additions or amendments thereto, the Regime By-Laws, decisions resolutions of the Council of Co-Owners, Board of Administration and their representatives, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages or for injunctive relief; provided that nothing contained herein shall limit the rights of the Sea Pines Plantation Company, its successors and assigns, as set forth in Covenants, Restrictions, and Affirmative Obligations dated August 20, 1967, declared by Sea Pines Land Company, Inc., Sea Pines Plantation Company, Inc., and Lighthouse Beach Company recorded in the Office of the Clerk of Court for Beaufort County at Book 150 of Deeds, Page 41. The Dwelling Unit shall also be conveyed subject to the recorded plat and plan of the Property. In addition, the Dwelling Units shall be conveyed subject to the South Beach Owners Association Restrictive Covenants recorded in the Office of the Clerk of Court, County of Beaufort, South Carolina, in Book 176 of Deeds, at Page 203, and to the By-Laws of the South Beach Owners Association, Inc.

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FOURTEENTH: That the dedication of the Property to the Horizontal Property Regime herein shall not be revoked, or the Property removed from the Horizontal Property Regime, or any of the provisions herein amended unless all of the co-owners and the mortgagees of all the mortgages covering the Dwelling Units unanimously agree to such revocation, or amendment, or removal of the Property from the Horizontal Property Regime by duly recorded instrument.

FIFTEENTH: That no co-owner of a Dwelling Unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Dwelling Unit.

SIXTEENTH: That all present or future co-owners, tenants, future tenants, or any other person that might use the facilities of the Property in any manner, are subject to the provisions of this Deed, and that the mere acquisition or rental of any of the Dwelling Units shall signify that the provisions of this Deed are accepted and ratified.

SEVENTEENTH: That if the Property is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the Property shall be as provided by the above-mentioned Statute of South Carolina.

EIGHTEENTH: That, where a mortgagee or other purchaser of a Dwelling Unit obtains title by reason of foreclosure of a mortgage covering a Dwelling Unit, such acquirer of title, his successors or assigns, shall not be liable for assessments by the Regime which became due prior to the acquisition of title by such acquirer, it being understood, however, that the above shall not be construed to prevent the Regime from filing and claiming liens for such assessments and enforcing same as provided by law, and that such assessment liens shall be subordinate to such mortgage.

NINETEENTH: That in a voluntary conveyance of a Dwelling Unit, the Grantee of the unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Regime against the latter for his share of the common expenses up until the time of the grant or conveyance without prejudice to the Grantees right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the manager or Council of Co-Owners, as the case may be, setting forth the amount of the unpaid assessments against the Grantor due the Regime and such Grantees shall not be liable for, nor shall the Dwelling Unit conveyed be subject to a lien for, any unpaid assessments made by the Council of Co-Owners against the Grantor in excess of the amount therein set forth.

TWENTIETH: That the Board of Administration of the Regime or the Management Agent, or Manager, shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering Dwelling Units, but without prejudice to the right of the co-owners to obtain additional individual Dwelling Unit insurance.

TWENTY-FIRST: That insurance premiums for blanket insurance coverage of the Property shall be a common expense to be paid by periodic assessments levied by the Regime and that such payments shall be held in a separate escrow account of the Regime and used solely for the payment of the Blanket Property Insurance premiums as such premiums become due.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed by the duly authorized officers the day and year first above written.

FILED
RECORDED
INDEXED
CROSS REFERENCED
SCANNED
VERIFIED
MICROFILMED

Signed, Sealed and Delivered in the presence of:

SEA PINES PLANTATION COMPANY

Mary Duncan

BY: Richard S. Woods (L.S.)

Kristine L. McClain

ATTEST: H. Richard Werth (L.S.)

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF BEAUFORT)

PERSONALLY appeared before me Mary Duncan and made oath that she saw the within named Sea Pines Plantation Company by Richard S. Woods its Vice President and H. Richard Werth its Assistant Secretary sign and affix the corporate seal, and as its act and deed deliver the within instrument dated the 12th day of October, 1973, and that she with Kristine L. McClain witnessed the execution thereof.

Mary Duncan

SWORN TO before me this 12th day of October, 1973.

Kristine L. McClain
Notary Public for South Carolina
My Commission Expires: 4/10/83

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FILED FOR RECORD IN BEAUFORT COUNTY, S.C. AT 2:30 P.M. OCT 15 1973

BY-LAWS OF
SOUTH BEACH VILLAGE LAGOON VILLAS
HORIZONTAL PROPERTY REGIME LVII

ARTICLE I
PLAN OF APARTMENT OWNERSHIP

Section 1. Horizontal Property Regime. The Property (the term "Property" as used herein means and includes the land, the buildings, all improvements and structures thereto) located in Sea Pines Plantation, Hilton Head Island, in Beaufort County, State of South Carolina, known as South Beach Village Lagoon Villas, has been, by Master Deed, submitted to the provisions of the Horizontal Property Act of South Carolina, and is to be hereforth known as South Beach Village Lagoon Villas, Horizontal Property Regime LVII (hereinafter referred to as the "Regime").

Section 2. By-Laws Applicability. The provisions of these By-Laws are applicable to the Property and the Regime.

Section 3. Personal Application. All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the facilities of the Property in any manner, are subject to the regulations set forth in these By-Laws and in the Master Deed establishing said Regime. The mere acquisition or rental of any of the Dwelling Units (hereinafter usually referred to as "Dwelling Unit"), as defined in the Master Deed of the Property or the mere act of occupancy of any of said Dwelling Units will signify that these By-Laws and the provisions of the Master Deed are accepted and ratified, and will be complied with.

ARTICLE II
VOTING, MAJORITY OF CO-OWNERS QUORUM, PROXIES

Section 1. Voting. Voting shall be on a percentage basis and the percentage of the vote to which the co-owner is entitled is the percentage assigned to the Dwelling Unit or Dwelling Units in the Master Deed.

Section 2. Majority of Co-owners. As used in these By-Laws, the term "majority of co-owners" shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the Master Deed.

Section 3. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of co-owners as defined in Section 2 of this Article shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

ARTICLE III
ADMINISTRATION

Section 1. Council Responsibilities. The co-owners of the Dwelling Units will constitute the Council of Co-Owners (hereinafter usually referred to as "Council") who will have the responsibility of administering the Property, approving the annual budget, establishing and collecting periodic assessments, and arranging for the management of the Property pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Council shall require approval by a majority of co-owners.

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Section 2. Place of Meetings. Meetings of the Council shall be held at such place convenient to the co-owners as may be designated by the Council.

Section 3. Annual Meetings. The annual meetings of the Council shall be held on the call of the Regime President once a year on the third Saturday in October. At such meetings there shall be elected by ballot of the co-owners a Board of Administration in accordance with the requirements of Section 5 of Article IV of these By-Laws. The co-owners may also transact such other business of the Council as may properly come before them.

Section 4. Special Meetings. It shall be the duty of the Secretary to call a special meeting of the co-owners as directed by resolution of the Board of Administration or upon a petition signed by a majority of co-owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the votes present, either in person or by proxy.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each co-owner of record, at least five but not more than ten days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Section 6. Adjourned Meeting. If any meeting of the Council cannot be organized because a quorum has not attended, the co-owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Order of Business. The order of business at all Annual Meetings of the Council shall be as follows:

(a) Roll Call.
(b) Proof of notice of meeting or waiver of notice.
(c) Reading of minutes of preceding meetings.
(d) Reports of officers.
(e) Report of committees.
(f) Election of inspectors of election.
(g) Election of administrators.
(h) Unfinished business.
(i) New business.

The order of business at all Special Meetings of the Council shall include items (a) through (d) above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

ARTICLE IV
BOARD OF ADMINISTRATION

Section 1. Number and Qualification. The affairs of the Council shall be governed by a Board of Administration (hereinafter referred to as "Board") comprised of five persons, all of whom must be co-owners of Dwelling Units in the Property.

Section 2. General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Council and may do all such acts and things as are not by law or by these By-Laws directed to be executed and done by the Council or individual owners.

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Section 3. Other Duties. In addition to duties imposed by these By-Laws, or by resolutions of the Council, the Board shall be responsible for the following:

(a) Compliance with all of the terms and conditions of the Master Deed and enforcement of same.
(b) Care, upkeep and surveillance of the Property and the common elements.
(c) Collection of assessments from the co-owners.
(d) Employment, dismissal and control of the personnel necessary for the maintenance and operation of the common elements.
(e) Performing repairs caused by any natural disaster or man-made damage from the escrow account and any special assessment.

Section 4. Management Agent. The Board may employ a Management Agent at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article.

Section 5. Election and Term of Office. At the first Annual Meeting of the Council, the initial term of office of two members of the Board shall be fixed at three (3) years. The term of office of two members of the Board shall be fixed at two (2) years, and the term of office of one member of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the Board, his successor shall be elected to serve a term of three (3) years. The members of the Board shall hold office until their successors have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Board of Administration caused by reason other than the removal of a member of the Board by a vote of the Council shall be filled by vote of the majority of the remaining members, even though they may constitute less than a quorum, and each person so elected shall be a member of the Board until a successor is elected at the next meeting of the Council.

Section 7. Removal of Members of the Board. At any regular or special meeting of the Council duly called, any one or more of the members of the Board may be removed with or without cause by a majority of co-owners and a successor may then and there be elected to fill the vacancy thus created. Any member of the Board whose removal has been proposed to the Council shall be given an opportunity to be heard at the meeting.

Section 8. Organization Meeting. The first meeting of a newly elected Board shall be held within ten (10) days of election at such place as shall be fixed by the Board at the meeting at which such Board members were elected by the Council, and no notice shall be necessary to the newly elected Board members in order legally to constitute such meeting, providing a majority of the Board shall be present.

Section 9. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given by the Secretary-Treasurer, or other designated person, to each Board member, personally or by mail, telephone or telegraph, at least ten (10) days prior to the day named for such meeting.

Section 10. Special Meetings. Special meetings of the Board may be called by the President on three days' notice to each Board member, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least two Board members.

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Section 11. Waiver of Notice. Before or at any meeting of the Board, any Board member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall be a waiver of notice by him of the time, place and purpose thereof. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Board Quorum. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of busines, and the acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of the Board members present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Fidelity Bonds. The Board may require that any and all officers and employees of the Regime handling or responsible for Regime funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Regime.

ARTICLE V
OFFICERS

Section 1. Designation. The principal officers of the Regime shall be a President, a Vice President, and a Secretary-Treasurer all of whom shall be elected by and from the Board. The Board may appoint an assistant treasurer, and an assistant secretary, and such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Regime shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Regime. He shall preside at all Council meetings of the Regime and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of a Regime, including but not limited to the power to appoint committees from among the co-owners from time to time as he may in his discretion decide are appropriate to assist in the conduct of the affairs of the Regime.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Council; he shall have charge of such books and papers as the Board may direct; and he shall have responsibility for Regime funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books

belonging to the Regime. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Regime in such depositories as may from time to time be designated by the Board. He shall, in general, perform all the duties incident to the offices of Secretary and Treasurer.

ARTICLE VI

OBLIGATIONS OF THE CO-OWNERS

Section 1. Assessments. All co-owners are obligated to pay periodic assessments imposed by the Regime to meet all Regime expenses, which shall include a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake, and other hazards. The assessments shall be made pro rata according to the value of the Dwelling Unit owned, and as stipulated in the Master Deed.

Escrow Account. The transfer of ownership of an individual villa within the Regime carries with it the proportionate equity of that villa ownership in the Regime Escrow Account. Each villa owner will be assessed for the Regime Escrow Account in accordance with a set schedule in order to provide for a contingency fund for maintenance and repair of the Regime Property.

Section 2. Maintenance and Repair.

(a) Every co-owner must perform promptly all maintenance and repair work within his own Dwelling Unit, which if omitted would affect the Property in its entirety or in a part belonging to other co-owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(b) All the repairs of internal installations of the Dwelling Unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, lamps, and all other accessories belonging to the Dwelling Unit shall be at the expense of the co-owner.

(c) A co-owner shall reimburse the Regime for any expenditures incurred in repairing or replacing any common elements damaged through his fault.

Section 3. Use of Dwelling Units -- Internal Changes.

(a) All Dwelling Units shall be utilized for residential purposes only.

(b) A co-owner shall not make structural modifications or alterations in his Dwelling Unit or installations located therein without previously notifying the Regime in writing, through the management agent, if any, or through the President if no management agent is employed. The Regime shall have the obligation to answer within thirty (30) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration.

Section 4. Use of Common Elements. A co-owner shall not place or cause to be placed in the passages or roads any furniture, packages, or obstructions of any kind. Such areas shall be used for no other purpose than for normal transit through them.

Section 5. Right of Entry.

(a) A co-owner shall grant the right of entry to the management agent or to any other person authorized by the Board in case of any emergency originating or threatening his Dwelling Unit, whether the co-owner is present at the time or not.

ELECTRONICALLY RECORDED IN THE OFFICIAL RECORDS OF MIAMI-DADE COUNTY, FLORIDA

(b) A co-owner shall permit other co-owners, or their representatives, when so required, to enter his Dwelling Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the co-owner. In case of an emergency, such right of entry shall be immediate.

Section 6. Rules of Conduct.

(a) Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, television and amplifiers that may disturb other residents.

(b) No residents of the Property shall:

(1) Post any advertisements, or posters of any kind, in or on the Property except as authorized by the Regime;

(2) Hang garments, towels, rugs, or similar objects, from the windows or from any of the facades of the Property;

(3) Dust rugs, mops or similar objects from the windows or clean rugs or similar objects by beating on the exterior part of the Property;

(4) Throw garbage or trash outside the disposal installations provided for such purposes in the service areas;

(5) Act so as to interfere unreasonably with the peace and enjoyment of the residents of the other Dwelling Units in the Property;

(6) Maintain any pets which cause distress to co-owners through barking, biting, scratching or damaging of property.

(c) No co-owner, resident, or lessee shall install wiring for electrical or telephone installations, television antennae, machines or air conditioning units, or similar objects outside of his dwelling or which protrude through the walls or the roof of his dwelling unit except as authorized by the Board.

ARTICLE VII
AMENDMENTS

Section 1. By-Laws. These By-Laws may be amended by the Council in a duly constituted meeting held for such purpose, and no amendment shall take effect unless approved by co-owners representing at least two-thirds of the total value of the Property as shown in the Master Deed.

ARTICLE VIII
MORTGAGES

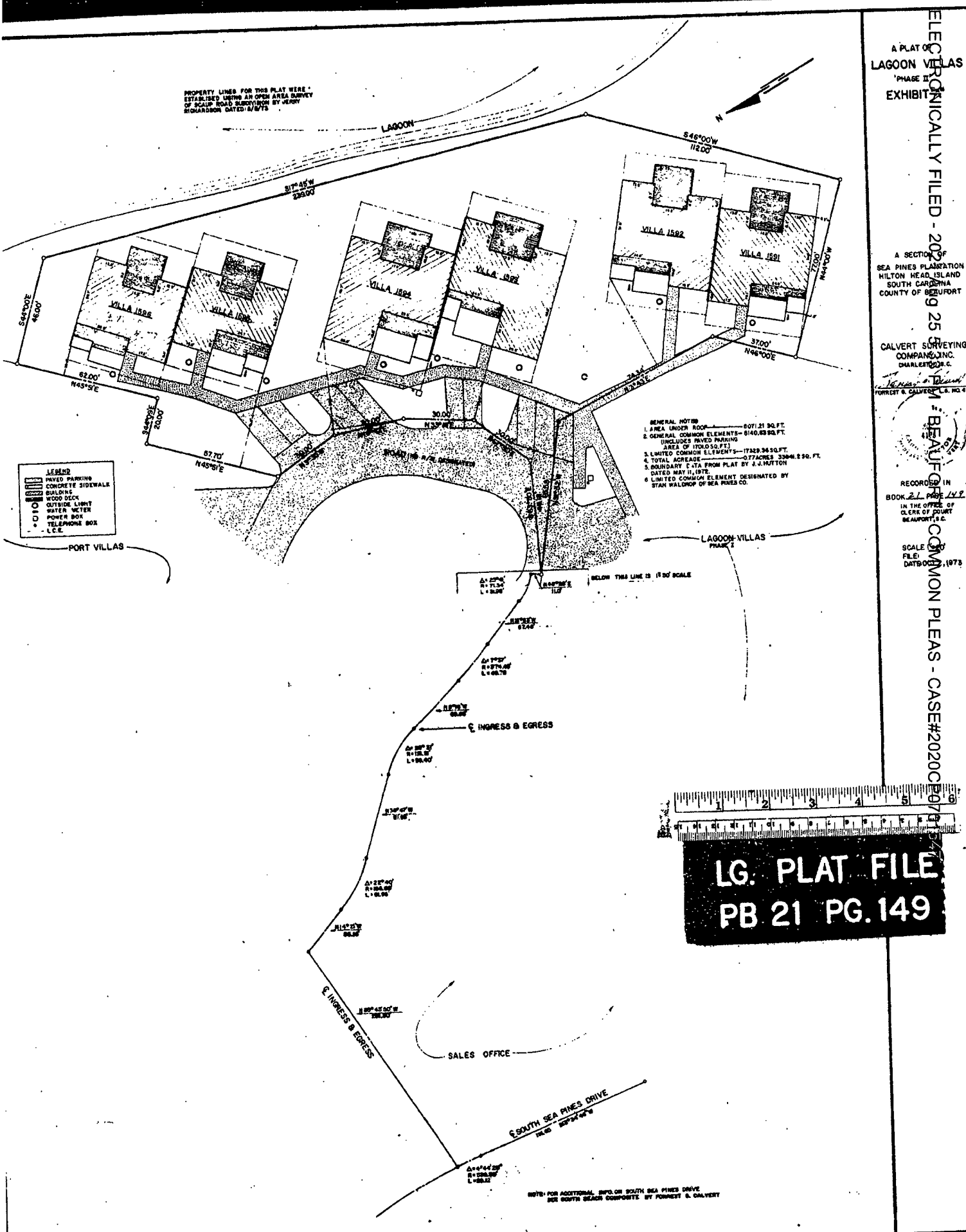
Section 1. Notice to Board. A co-owner who mortgages his Dwelling Unit shall notify the Board through the management agent, if any, or the President if there is no management agent of the name and address of his mortgagee; and the Regime shall maintain such information in a book entitled "Mortgages of Dwelling Units".

Section 2. Notice of Unpaid Assessments. The Board shall at the request of a mortagee of a Dwelling Unit report any unpaid assessments due to the Regime from the co-owner of such Dwelling Unit.

ARTICLE IX
COMPLIANCE

These By-Laws are intended to comply with the requirements of the Horizontal Property Act of South Carolina. In case any of these By-Laws conflict with the provisions of said Statute, it is hereby agreed and accepted that the provisions of the Statute will control.

FILED AT 9:30 O'CL'K A M
BEAUFORT COUNTY S. C.
NOV 2 1973
RECORDED IN BOOK 215 PAGE 1042
CLERK OF COURT OF COMMON PLEAS



ELECTRONICALLY FILED - 2020 Sep 25 5:37 PM - BEAUFORT COMMON PLEAS - CASE#2020CP0701571

EXHIBIT
B

CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

ELECTRONICALLY FILED - 2021 Aug 25 5:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

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Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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ELECTRONICALLY FILED - 2021 Aug 25 5:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII**
	)	
COUNTY OF BEAUFORT	)	

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of _____, 2019, by South Beach Lagoon Villas II Horizontal Property regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973 Sea Pines Plantation Company, (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 a Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners of the Regime; and

WHEREAS, all co-owners of the Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners in the Regime in order to avoid hardship to the owners of the Encroaching Units have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof by this Amendment to Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the co-owners by execution of that certain Consent Resolution dated _____ 2019 have approved the revised As-Built Survey and authorized Todd E. Taylor as the duly elected President and Kennie Lee Miller Gill, as the duly elected Secretary of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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NOW THEREFORE, KNOW ALL MEN THESE PRESENTS that the co-owners of the South Beach Villas Lagoon Villas II Horizontal Property Regime LVII do hereby state and declare:

1. The above "WHEREAS" clauses are hereby incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a ⅓" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community

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Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I. C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom Type "A" Villas: (Unit 1591) This Villas measures 40.50 feet wide and 43.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,280 feet.
2. Two-bedroom Type "B" Villas: (Unit 1592) This Villas measures 39.90 feet wide and 41.10 feet deep in their maximum interior dimensions and contains a net interior area of 1,138 feet.
3. Three-bedroom Type "C" Villas: (Unit 1593) This Villas measures 45.40 feet wide and 48.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,342 feet.
4. Three-bedroom Type "D" Villas: (Unit 1594) This Villas measures 45.40 feet wide and 54.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,799 feet.
5. Two-bedroom Type "E" Villas: (Unit 1595) This Villas measures 41.40 feet wide and 52.40 feet deep in their maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villas: (Unit 1596) This Villas measures 40.50 feet wide and 38.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,069 feet."

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5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:
I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners (the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the purchase price for which the Property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary of the Regime, swear and attest that the aforementioned modifications were approved by unanimous consent of the co-owners of the Regime as provided for in the Master Deed of the Regime.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina. In case any of the provisions state above conflict with the Horizontal Property Act, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, or other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein.

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this ___ day of _____ 2019, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina

WITNESSES:

_____

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
Todd E. Taylor
Its: President

Attest:
By: _____
Kennie Lee Miller Gill
Its: Secretary

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Todd E. Taylor, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kennie Lee Miller Gill, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

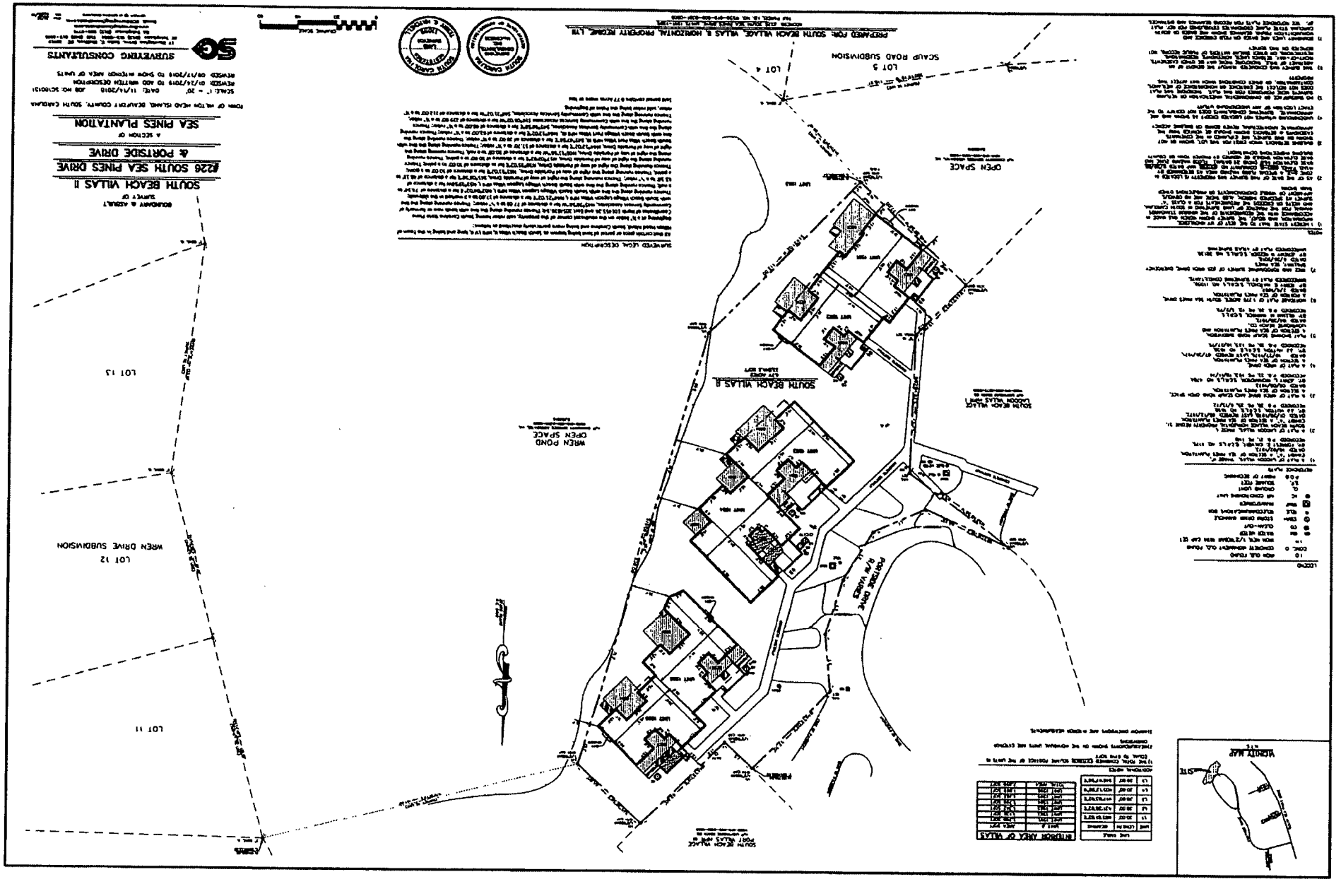

EXHIBIT
C

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CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

ELECTRONICALLY FILED - 2021 Aug 25 5:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

IN WITNESS WHEREOF, the undersigned has this 14th day of October 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

Denise A. Robertson

DENISE A. ROBERTSON NOTARY PUBLIC COLUMBIA COUNTY GA MY COMM. EXPIRES 10-27-2020

By: Kathy Sizemore Anderson
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 TRUST UAD JANUARY 4, 2013, Owner

By: _____
Lucy K. Landry
Its: Trustee of the 226 TRUST UAD JANUARY 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

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_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Sr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

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By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Hyvnis, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

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By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____

By: _____
Kennie Lee Miller Gill
Its: Trustee

_____

By: _____
Amar Singh Gill
Its: Trustee

ELECTRONICALLY FILED - 2021 Aug 25 5:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____ By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____ By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

ELECTRONICALLY FILED - 2021 Aug 25 5:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

DEFENDANTS.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII,

THIRD-PARTY DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

DEFENDANTS'/THIRD-PARTY PLAINTIFFS' RESPONSE TO THIRD-PARTY DEFENDANT LAGOON VILLAS II, HORIZONTAL PROPERTY REGIME, LVII'S PETITION FOR RELIEF PURSUANT TO S.C. CODE § 33-31-160

The Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller (together, "Defendants"), by and through their undersigned counsel, hereby respond to the Petition for Relief pursuant to S.C. Code § 33-31-160 filed by South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII ("Lagoon II Regime"). Defendants join in the request (1) for a special meeting to

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be held for the purpose of consideration by the Council of Co-Owners of the October 9, 2019 Proposed Amendment ("Proposed Amendment") and any alternatives thereto, and for voting to amend to the Master Deed; (2) that the Court order proper notice be provided to the co-owners of the special meeting; and (3) that all co-owners be required to attend the special meeting, which may be held via video-conferencing platform or other means to allow for remote attendance in an ADA compliant format.[1]

Defendants request that the Petition be denied insofar as it seeks to alter the unanimous voting requirement to amend the Master Deed. First, a vote with anything less than unanimous approval would violate the Horizontal Property Act, the express language of the Master Deed, and would be unreasonable in light of the contracting parties' original intent. Second, the Proposed Amendment, which Lagoon II Regime effectively asks this Court to approve by way of the Petition, disregards basic concepts of condominium association law by requiring owners to convey real property they do no own to the co-owners of the improved units. Third, even if the Proposed Amendment were legally feasible, it unfairly prejudices unimproved units by reducing their voting and ownership rights while requiring them to subsidize the maintenance costs of the improved units.

Finally, it bears acknowledgment that the Plaintiff's lawsuit which commenced this litigation – and now Lagoon II Regime's Petition – are a blatant attempt to force the passage of the Proposed Amendment after Defendants properly exercised their right to vote against it. Defendants have been unfairly targeted for voting against the Proposed Amendment, even though there are two additional units besides Defendants' which have been improved. As is discussed below, a meeting should be held to meaningfully debate and vote on any number of proposals to unanimously amend the Master Deed because the adverse consequences of the Proposed Amendment have never been disclosed to the owners.

[1] Defendant Anna M. Miller is hearing-impaired and relies on speech-reading (lip reading) to augment hearing aids.

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ARGUMENT

I. The unanimous voting requirement to amend the Master Deed should not be modified.

The Horizontal Property Act ("HPA") provides that "[a]n apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property." S.C. Code Ann. § 27-31-60(a). This percentage shall be "computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole... expressed at the time the [] regime is constituted, shall have a permanent nature, and ***shall not be altered without the acquiescence of the co-owners representing all of the apartments of the property***." Id. (emphasis added). The HPA further states that any covenant purporting to divide the common elements of the property shall be void. See S.C. Code Ann. § 27-31-70.

The HPA is expressly incorporated in the Master Deed, and provides that the "dedication of the Property to the Horizontal Property Regime shall not be revoked, or the Property removed from the Horizonal Property Regime, or any of the provisions herein amended ***unless all of the co-owners and the mortgagees of all the mortgages covering the Dwelling Units unanimously agree to such revocation, or amendment, or removal of the Property from the Horizontal Property Regime by duly recorded instrument***." (emphasis added). See Fourteenth Paragraph, Master Deed. The Master Deed reaffirms the unanimous voting requirement at the Eleventh Paragraph, which states that "the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the ***unanimous consent of all the co-owners*** expressed in amendment to this deed duly recorded." (emphasis added). The Master Deed also prohibits the division of the common elements and any action of a co-owner to partition or divide the common elements. See Tenth Paragraph, Master Deed.

By way of court order, the Petition seeks to alter the unanimous voting requirement mandated by the HPA and consented to by the co-owners with their purchase of property subject to the Master Deed. The Petition's attempt to alter this requirement without the co-owners' unanimous consent deprives the co-

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owners of due process and constitutes a significant infringement on their property rights; the only recourse for those co-owners who are not parties to this action is to bring a separate action to invalidate the resulting amendment. Unless and until a unanimous vote of all the co-owners and all mortgagees[2] is made to revoke the dedication of the property to the HPA and remove the property from the regime, any vote with less than unanimous consent – or decree to this effect – is invalid and subject to future challenge. *See Heritage Fed. Sav. & Loan Ass'n v. Eagle Lake & Golf Condo.*, 318 S.C. 535 (Ct. App. 1995) (declining to invalidate amendment to master deed made in accordance with Horizontal Property Act). A review of the applicable cases reveals no authority supporting a modification of the unanimous voting requirement under the HPA.

In addition, Lagoon II Regime's efforts to modify the unanimous voting requirement in order to cure a defect in the Master Deed after the commencement of litigation centered upon this defect, *i.e.*, the divergence between the actual structures and those depicted in the Master Deed, would substitute a new obligation for the original bargain of the covenanting co-owners. Through the recording of the Master Deed in Book 215 at Page 1092, Lagoon Villas II was established as a horizontal property regime. See S.C. Code §27-31-30. By purchasing their units, all co-owners are bound by the Master Deed and the HPA. See S.C. Code §27-31-40. Altering the unanimous vote requirement is an unreasonable change to the amendment process, when considering that at the time all co-owners acquired their units, they were on notice that any amendment of the Master Deed would require unanimous consent. In effect, Lagoon II Regime seeks to pass an amendment that was denied pursuant to the requisites of the HPA and Master Deed by modifying the voting requirement *after* a lawsuit was filed against the only co-owners who voted against the amendment. Modifying the unanimous vote requirement under these circumstances, when the original terms of the Master Deed have become unfavorable to those contracting parties who desire the approval of the Proposed Amendment, is against the weight of authority. *See Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) ("The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent reasonableness, or the parties' failure to guard their rights carefully."). *See also,*

[2] The public records of Beaufort County reflect that Plaintiff's unit, 1596, and unit 1594 are encumbered by mortgages.

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Armstrong v. Ledges Homeowners Ass'n. Inc., 360 N.C. 547, 633 S.E.2d 78, 87 (N.C. 2006) (citing to several other jurisdictions that employ a reasonableness standard when reviewing amendments to covenants and holding "a provision authorizing a homeowners' association to amend a declaration of covenants does not permit amendments of unlimited scope; rather, every amendment must be reasonable in light of the contracting parties' original intent").

If the Petition is granted in this regard, any amendment passed with less than a unanimous vote of the co-owners and all mortgagees will be invalid and subject to future legal challenges. The unanimous voting requirement to amend the Master Deed should not be modified, and the Petition should be denied in this respect.

II. The Proposed Amendment does not comport with applicable law.

In South Carolina, an owner of a fee or leasehold interest in certain real property may declare the property to be subject to a horizontal property regime. See S.C. Code Ann. § 27-31-30. "The term horizontal is a misnomer, for a condominium is actually a vertical property regime composed of horizontal slices of airspace . . . within the vertical column." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 360, 628 S.E.2d 902, 912 (Ct. App. 2006) (internal quotations omitted). "When land is submitted to a horizontal property regime, no new property is created, even though the structure as completed may include many floors of condominium units." *Id.* "Instead, condominium statutes, like South Carolina's Horizontal Property Act, merely created a new way to own and regulate airspace." *Id.* Each "co-owner," or owner of an apartment in a regime, acquires "condominium ownership," and owns his or her individual apartment, and has a common right to share, with other co-owners, in the common areas of the property. S.C. Code Ann. § 27-31-20(c) and (d); § 27-31-60.

The fifth "Whereas" paragraph in the Proposed Amendment states that the co-owners have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof. See Exhibit A, Proposed Amendment. This purported conveyance of the common elements runs afoul of the ownership rights conferred by property subject to the HPA: the co-owners do not own the

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common elements, but instead own the common right to share them with the other co-owners. S.C. Code Ann. § 27-31-20(c). The Petition ignores that what the co-owners have contracted to purchase by acquiring property subject to the HPA is ownership of airspace, not the dirt beneath the structures which together constitutes the property of the regime. Furthermore, the regime was incorporated as a nonprofit corporation pursuant to the South Carolina Nonprofit Corporation Act in March 2018, with the result that Lagoon II Regime holds title to the common elements and the co-owners own shares in the corporation. The effect of the Proposed Amendment is an impermissible division of the common elements so as to transfer that portion of the common elements under the three improvements from Lagoon II Regime to the owners of those units.

The Proposed Amendment is also flawed in its implicit assumption that the improvements to units 1591, 1594, and 1595 are encroachments upon the general common elements, rather than limited common elements. General common elements are defined as "the land...on which the apartment or building stands..." and includes foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed ... yards and gardens..." and "[a]ll other elements of the property, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep, and safety." S.C. Code Ann. § 27-31-20(f)(1)-(7). Limited common elements are defined as "those common elements which are agreed upon by all the co-owners to be reserved for the use of a certain number of apartments to the exclusion of the other apartments... such as special corridors, stairways, elevators... common to the apartments of a particular floor, and the like." S.C. Code Ann. § 27-31-20(g). Under the Master Deed, the "Dwelling Units may be conveyed and recorded as individual properties capable of independent use, and each having its own exit to the common elements of the Property, and each Dwelling Unit co-owner having an exclusive and particular right over his respective Dwelling Unit and in addition the specified undivided interest in the common elements of the property. See Paragraph Eighth, Master Deed. The Master Deed further provides that the limited common elements are the "rear and front yards and service areas... adjacent to each

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Dwelling Unit... and are each restricted to the use of the Dwelling Unit adjacent to such limited common elements, respectively." See Paragraph Fifth(II)(B), Master Deed.

The distinction between general common elements and limited common elements is important here. First, the three improvements were erected upon limited common elements adjacent to units 1591, 1594, and 1595, to which no other co-owner has a right of use. Clearly, no co-owner besides the co-owner of an improved Dwelling Unit has an expectation of use of that Dwelling Unit's yard or any areas immediately surrounding it. Second, the improvements themselves created new general common elements which the HPA expressly contemplates by including the phrase "in existence or to be constructed or installed" in the definition of general common elements. Thus, the Property itself has been expanded, resulting in an increase in square footage constituting the Dwelling Units, and a decrease in square footage constituting the common elements; specifically, the limited common elements in the Master Deed at Paragraph Fourth. Put differently, portions of the limited common elements have become general common elements where the structures comprising improvements to the Dwelling Units are located. And while not accounted for in the total square footage of the Property, the general common elements have also been increased with the erection of additional structures which increases the assessments required for common element maintenance. As is more fully detailed in the next section, the change in ratio of Dwelling Unit square footage to common element square footage does not automatically result in a corresponding change in the value of each respective Dwelling Unit, which the Master Deed divides into two categories: two-bedroom villas and three-bedroom villas. The Proposed Amendment creates six different categories of Dwelling Unit- one for each villa- based on the incorrect assumption that the HPA and Master Deed value the Dwelling Units based on square footage alone.

To the extent the Petition seeks the passage of the Proposed Amendment by altering the unanimous vote requirement of the HPA and Master Deed, it should be denied because the Proposed Amendment itself does not comport with the HPA or general ownership rights in a condominium association regime.

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III. The Proposed Amendment will unfairly prejudice unimproved units.

While the Petition clearly articulates the need for an amendment to reflect the various expansions made over the years, it omits that no substantive discussion of the corresponding impact on ownership and voting rights under the Proposed Amendment has taken place at any meeting of the co-owners. At no time was there a meeting, on the record, at which the details of the Proposed Amendment were explained and discussed, nor did then-president and Plaintiff's written communications with the owners of Lagoon Villas II explain how the values were reached or what, if any, effect the proposal would have on voting percentages. There was also no recognition that the purpose of the increased ownership percentages was to cover the ongoing maintenance cost of the improvements. And, importantly, the potential cost shifting of the on-going maintenance costs of the three improved units to the other co-owners under the Proposed Amendment was never disclosed nor discussed at any meeting, off-the-record discussion, or in any material provided by Plaintiff or any other officer of the Board.

The Proposed Amendment does not achieve the stated purpose, first articulated at the 1998 Annual Meeting during consideration of changes to the Master Deed, of ensuring that the owners of an improved unit fully pay for the ongoing maintenance costs of the improvements and do not shift those costs to the other co-owners. See Exhibit B, 1998 Meeting Minutes. Under the Proposed Amendment, the ownership percentage for Defendants' unit, Unit 1595, increases from 15.939 percent to 15.995 percent, for an increase of 0.056 percent. When applied to the 2021 Regime Special Roof Replacement Assessment of $41,665.00, Unit 1595 would have been assessed, under the language of the Proposed Amendment had it been adopted, an additional amount of $23.33 to cover the roofing cost of the 154 square foot improvement to the Unit. The actual cost to replace the roof on the Unit 1595 improvement was $999.40. See Exhibit C, Estimate for Roofing of Unit 1595 Improvement. Under the language of the Proposed Amendment, that would have resulted in an inequitable cost shift of $977.00 to the other co-owners. Defendants advised the other co-owners of the inequity by letter dated June 29, 2021, at which time Defendants paid the additional cost, in full, to roof the improvement to Unit 1595 in the amount of $999.40. See Exhibit D, June 29, 2021 Letter

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and Affidavits of Kenneth V.L. Miller, Anna M. Miller, and Kennie Miller Gill filed on November 11, 2021.

The Proposed Amendment changes the basis of ownership percentages from a value-based ratio to a square footage-based ratio and, simply put, does not work. By definition, it assumes that the basis of ownership percentages in the Master Deed are based on flawed measurements, even though neither interior nor exterior square footage were used to calculate the ownership percentages under the Master Deed under which all six current owners purchased their units. Instead, an arbitrary value, defined under the HPA as the value of the individual apartment in relation to the value of the property as a whole, was used to establish such. See S.C. Code Ann. § 27-31-60. The Proposed Amendment is based on the unsupported assumption that the reliance in the Master Deed on this arbitrary value, irrespective of actual square footage, is flawed and must be corrected. The Proposed Amendment misapprehends the language of the Master Deed and the HPA, unfairly resulting in revised ownership values that bear no relationship to the historic values and corresponding relationships between similar units assigned when the Regime was established. Under the Master Deed under which Plaintiff and all other co-owners purchased their units, all two-bedroom units were assigned ownership values equal to 15.939 percent share of the common elements of the property and, consequently, the assessments due and the voting percentages. Under the Proposed Amendment, Unit 1592 and Unit 1596, Plaintiff's unit, are identical unexpanded two-bedroom units; yet, Plaintiff's unit is assigned the lowest ownership value and its corresponding assessments in the Regime's shared expenses equal to 13.549 percent, while the identical two-bedroom Unit 1592 is assigned a higher ownership value equal to 14.423 percent.

The realignment of the ownership values among all units results, intentionally or not, in one super unit - Unit 1594 - having disproportionate voting power. Modifying the basis of ownership percentages from a value-based ratio to a square footage-based ratio overstates the value and, consequently, the voting percentage of Unit 1594 relative to the other units. In an attempt to create a value-based ratio, as required by the HPA, the Proposed Amendment creates six new types of units and establishes a square footage for each unit which is then used to determine the ownership percentage for each unit by taking the square

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footage of the individual unit in relation to the revised square footage total, contrary to the provisions of the HPA. See S.C. Code Ann. § 27-31-60. The resulting ownership percentages are then multiplied by the original value of the property as a whole to determine a resulting value. Under the Proposed Amendment, the values of the improvements to the three units vary significantly.[3] The improvement to Unit 1591 is estimated to be approximately 142 square feet, which increases the amount paid in assessments and the voting percentage by 0.284%, with a calculated increase to the value of the unit of $1,302.00. The improvement to Defendants' Unit 1595 is approximately 154 square feet, which increases the amount paid in assessments and the voting percentage by 0.056%, with a calculated increase to value of the unit of $267.00. The improvement to Unit 1594 is estimated to be approximately 459 square feet, which increases the amount paid in assessments and the voting percentage by 4.679%, with a calculated increase to the value of the unit of $21,429, thereby significantly overstating the value of Unit 1594 relative to the other units. The ownership percentages of the three unimproved units are correspondingly reduced, the cumulative effect of which is to vest disproportionate voting power in Unit 1594. See Exhibit E, Analysis of Voting Rights under Proposed Amendment.

Under the Master Deed, if both three-bedroom units are in agreement, a majority is reached with any other third unit. Under the Proposed Amendment, that is no longer the case. Unit 1594 can achieve a majority with any other two units regardless of bedroom number, while every other unit in the Regime requires between three and four other units to form a majority. ***Thus, the effect of passing the Proposed Amendment is twofold: it dilutes the relative ownership values, corresponding ownership percentages, and voting power of all other units in relation to Unit 1594, and forces the three units which have not been expanded to bear a disproportionate share of the maintenance costs of the expansions.***

An equitable alternative to the Proposed Amendment would be to revert to the original values under the Master Deed based on number of bedrooms, to update Exhibit A to the Master Deed with a current survey delineating the original structures and improvements, including a delineation of the common

[3] Measurements of the improvements to Unit 1591 and Unit 1594 are not available.

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elements, both limited and general, as required under § 27-31-110 of the HPA, and to require each unit to be responsible for the costs of maintaining any improvement to that unit. Another alternative to the Proposed Amendment that preserves relative ownership and voting rights is to change ownership values to incorporate relative value of the additions using the formula used to approve the ownership changes as a result of the improvements to units 1595 and 1594. See Affidavit of George Flathmann, filed on October 21, 2021. However, changes in the ownership percentages based on this formula alone would not ensure that the costs of maintaining any improvements to the unit would be incurred by the owner of that unit.

The co-owners should have the opportunity to meaningfully discuss and vote on the Proposed Amendment **and** any other proposals submitted by the owners. The lack of debate on the Proposed Amendment is highlighted by its very serious consequences, of which all co-owners should be apprised of before any vote is held. Insofar as the Petition seeks to have a vote on the Proposed Amendment without full and open debate of its adverse impacts and alternatives to it, the Proposed Amendment should be denied.

CONCLUSION

The Court should grant the Petition insofar as it calls for the Court to order a meeting of all the co-owners, via ADA-compliant remote or other practicable means, to hold a vote to amend the Master Deed which provides for full and open debate by all members of the Council of Co-Owners on the Proposed Amendment and any alternatives offered by a Co-Owner. The Court should deny the Petition to the extent it seeks to alter the unanimous voting requirement and approve the Proposed Amendment because it improperly circumvents the requisite procedures under the Master Deed and Horizontal Property Act.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

FINKEL LAW FIRM LLC

/S Magalie A. Creech (S.C. Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Defendants/Third-Party Plaintiffs

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EXHIBIT A

STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT**
	)	**TO MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT	)	**LAGOON VILLAS II HORIZONTAL**
		PROPERTY REGIME LVII

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of _____, 2019, by South Beach Lagoon Villas II Horizontal Property regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973 Sea Pines Plantation Company, (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 a Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners of the Regime; and

WHEREAS, all co-owners of the Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners in the Regime in order to avoid hardship to the owners of the Encroaching Units have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof by this Amendment to Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the co-owners by execution of that certain Consent Resolution dated _____ 2019 have approved the revised As-Built Survey and authorized Todd E. Taylor as the duly elected President and Kennie Lee Miller Gill, as the duly elected Secretary of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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NOW THEREFORE, KNOW ALL MEN THESE PRESENTS that the co-owners of the South Beach Villas Lagoon Villas II Horizontal Property Regime LVII do hereby state and declare:

1. The above "WHEREAS" clauses are hereby incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a ⅓" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community

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Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I. C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom Type "A" Villas: (Unit 1591) This Villas measures 40.50 feet wide and 43.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,280 feet.
2. Two-bedroom Type "B" Villas: (Unit 1592) This Villas measures 39.90 feet wide and 41.10 feet deep in their maximum interior dimensions and contains a net interior area of 1,138 feet.
3. Three-bedroom Type "C" Villas: (Unit 1593) This Villas measures 45.40 feet wide and 48.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,342 feet.
4. Three-bedroom Type "D" Villas: (Unit 1594) This Villas measures 45.40 feet wide and 54.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,799 feet.
5. Two-bedroom Type "E" Villas: (Unit 1595) This Villas measures 41.40 feet wide and 52.40 feet deep in their maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villas: (Unit 1596) This Villas measures 40.50 feet wide and 38.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,069 feet."

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5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:
I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners (the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the purchase price for which the Property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary of the Regime, swear and attest that the aforementioned modifications were approved by unanimous consent of the co-owners of the Regime as provided for in the Master Deed of the Regime.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina. In case any of the provisions state above conflict with the Horizontal Property Act, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, or other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein.

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this ___ day of _____ 2019, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina

WITNESSES:

_____

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
Todd E. Taylor
Its: President

Attest:
By: _____
Kennie Lee Miller Gill
Its: Secretary

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Todd E. Taylor, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kennie Lee Miller Gill, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

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CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____ By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____ By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

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Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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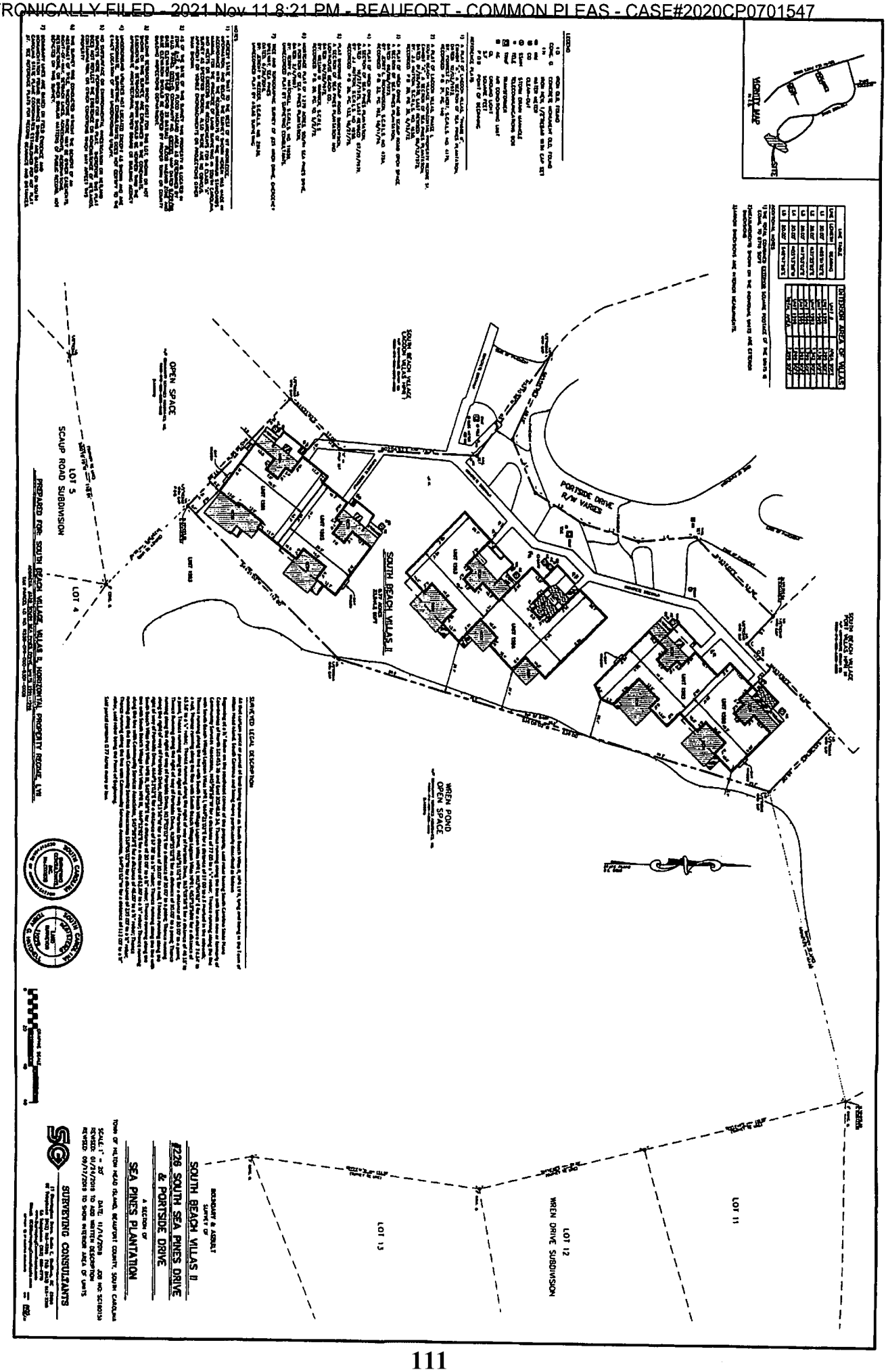
SOUTH BEACH VILLAS II
PORTSIDE DRIVE R/W VARIES
OPEN SPACE
SCAUP ROAD SUBDIVISION
LOT 5
LOT 4
WREN POND OPEN SPACE
WREN DRIVE SUBDIVISION
LOT 12
LOT 13
LOT 11
SURVEYED LEGAL DESCRIPTION
SURVEYING CONSULTANTS
SOUTH BEACH VILLAS II
#228 SOUTH SEA PINES DRIVE
& PORTSIDE DRIVE
SEA PINES PLANTATION

NOVIT &
SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

HILTON HEAD ISLAND:
THE JADE BUILDING, SUITE 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

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October 9, 2019

VIA OVERNIGHT MAIL

Mr. Kenneth E. Nyquist, Jr.
311 East Lake Street
South Lyon, MI 48178

VIA OVERNIGHT MAIL

Ms. Jennifer Ann Nyquist-Bivins
2133 Park Ridge Drive
Bloomfield Hills, MI 48304

VIA OVERNIGHT MAIL

Mr. John C. Hadley
226 Trust
226 S. Sea Pines Dr. #1592
Hilton Head Island, SC 29928

VIA OVERNIGHT MAIL

Mrs. Kennie Lee Miller Gill
Mr. Amar Singh Gill
1419 N. Glebe Road
Arlington, VA 22207

VIA OVERNIGHT MAIL

Mr. Todd E. Taylor
Mrs. Catherine C. Taylor
3606 Terwilleger Blvd.
Tulsa, OK 74105

VIA OVERNIGHT MAIL

Ms. Kathy Sizmore Anderson
Sizemore Properties, LLC
2116 Walton Way
Augusta, GA 30904

VIA HAND DELIVERY

Mr. William Tatum, Jr.
Maple Mont South, LLC
682 South Proctor Knott Ave.
Lebanon, KY 40033

VIA OVERNIGHT MAIL

Mr. Kenneth V.L. Miller
Mrs. Anna M. Miller
1412 Fincastle Road
Lexington, KY 40502

RE: South Beach Lagoon Villas II Horizontal Property Regime LVII – Amendment to Master Deed

Dear Owner:

This firm has been retained to prepare an Amendment to the Master Deed to reflect the current dimensions of certain Dwelling Units within the Regime. Over the past many years, the owners of Dwelling Units 1591, 1594, and 1595 (the "Encroaching Units") expanded the size of their Units with the permission of the Council of Co-Owners. The expansion resulted in an

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encroachment over Common Elements of the Regime as shown on the original As-Built Survey and Master Deed for the Regime. Common Elements of the Regime are owned in proportion jointly by all Dwelling Unit owners. Thus in effect the Encroaching Unit owners do not own the property over which part their respective Dwelling Units have been extended.

In order to correct this problem two (2) alternatives are available as follows:

(1) Demand the owners of the Encroaching Units tear down any improvement located on Common Elements; or

(2) Convey the property underneath the improvement to the owners of the Encroaching Units by amendment to the Master Deed.

Because the encroachments are relatively small and do not materially impact the remaining Common Elements, the Council of Co-Owners believes the first alternative is impractical and harsh. Your President has proposed the second alternative as a much more equitable solution.

The Master Deed for the Regime requires any amendment to the Master Deed to be unanimously approved by the Dwelling Unit owners in the Regime. I am enclosing with this letter the following items:

(1) Consent Resolution;
(2) Proposed Amendment to Master Deed; and
(3) Boundary & As-Built Survey showing the correct interior area of each Dwelling Unit.

If you are in agreement with the proposed solution, please execute the Consent Resolution in the space provided above your name and return the original in the enclosed self-addressed stamped envelope. Upon receipt of Consent Resolutions, we will cause the Amendment to be executed by the President and the Secretary and thereafter the new Survey and Amendment will be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. If all Dwelling Unit owners do not agree and return these documents, the Amendment cannot occur.

If you have any questions, please contact the undersigned

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll
Enclosures

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Mrs. Priegel requested that HHPM contact Port I and try to secure one waste hauler to serve this area.

Mr. Miller reported that he would evaluate the addition that he has added to his villa, in relation to the percentage of ownership of each owner, to insure that he pays his proportionate share of the associations expenses. Prior to the mailing of the coupons for the new fiscal year, Mr. Miller will report this to HHPM for adjustment to his percentage of ownership.

Election of Inspectors of Election – A motion was made, seconded and approved to appoint HHPM as Inspectors of Elections.

Election of Administrators – It has previously been determined that all the members of the association will be members of the Board.

Budget – George reviewed that the bulk of the increase in the regime fee was due to the increased cost of the landscape maintenance. A review of the proposed budget indicates those areas of change in the annual expenses. A motion was made, seconded and approved to accept the budget as presented.

New Business – Mr. Miller requested that HHPM prepare an estimate of needs for the association, coupled with a life expectancy of existing areas (i.e. roofs, exterior painting, etc.)

Annual Meeting – A motion was made, seconded and approved to hold the 1999 Annual Meeting on Friday, November 8, 1999.

There being no further business, a motion was made, seconded and approved to adjourn.

EXHIBIT C

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Roofing addition

04/27/2021

MONARCH ROOFING of Hilton Head LLC
Monarch Roofing HHI
4 Mathews Court Suite D
Hilton Head Island SC 29926
Phone: 843-683-7003

Company Representative
Don Faulk
Phone: (843) 333-1019
donfaulk@monarchroofing.biz

Lagoon Villas Unit 1595
226 South Sea Pines Drive
Hilton Head Island, SC 29928 (703) 300-0558

Job: Lagoon Villas Unit 1595

Repair Section

TOTAL $999.40

Note:
Re-roofing the condo addition.

To schedule your repair, please contact Carla Frangiose at 843-683-7003 and/or repairs@monarchroofing.biz

Thank you for choosing Monarch Roofing. All labor hours are based on one technician, obtaining materials, and transportation.

Project over $1,000.00 require the following payment schedule. 50% at signature and 50% at the completion.

DISCLAIMER: Coverages/Exclusions. This Monarch Roofing Pledge Limited Warranty covers the area of work completed by our Monarch Roofing Technician(s). Two (2) years of labor and materials are included for the following items: Shingles, Ridge Cap Shingles, Starter Strip Shingles, Leak Barrier. Roof Deck Protection, and Ridge Vent Ventilation. During the two (2) year period, we will repair or replace defective areas due to failing materials or workmanship issues at no cost to the homeowner. Limited liability applies to the above items if issues arise based on the roof deck sheeting. In addition, any interior damage and/or cost associate with interior damage due to repair failure is the homeowner's responsibility in full. Scope: Only the original property owner is covered by this warranty or if you are first subsequent owner (if this warranty was properly transferred).

Company Authorized Signature _____ Date _____

Customer Signature _____ Date _____

Customer Signature _____ Date _____

EXHIBIT D

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Miller - Gill Unit 1595
c/o Kennie Gill
1419 North Glebe Road
Arlington, Virginia 22207-2119

June 29, 2021
RE: Roof Assessment, Lagoon Villas, II

South Beach Village Lagoon Villas, II, HPR LVII
c/o IMC Resort Services, Inc.
2 Corpus Christi, Suite 302
Hilton Head Island, SC 29928
ATTN: Mr. Bryan Dorshimer, Property Manager

Dear Bryan:

This is to advise the Regime of action we have taken with regard to payment of our portion of the special roof assessment while litigation to resolve the Master Deed issue is pending.

We have remitted $7,711.63 for our share of the $41,665 total cost of the roof assessment, as follows:

$6,712.23	16.11% of $41,665 (ownership % used until 11.01.2020)
$ 999.40	Monarch cost estimate to roof our 154 sq. ft. addition
$7,711.63	**TOTAL Remitted by Unit 1595 PRIOR TO ADJUSTMENTS**

Attached is the cost estimate to roof our addition, submitted by Monarch, the same company which the Council of Owners approved to roof the entire Regime complex.

The total cost of the roof assessment should be reduced by the $999.40 we are paying to roof our improvement. The new total cost of the project is $40,665.60, for a reduction of $181.11 in the assessment for a 3-bedroom unit and a reduction of $159.29 for a 2-bedroom unit. We encourage the Regime to recalculate the roof assessments based on this revised total project cost. Otherwise, all owners will be entitled to credits against payments already made. NOTE: the calculation error made in the assessment for the 2-bedroom units is not accounted for in the above estimate.

We have consistently contended that any owner who has improved a unit should be financially responsible for the cost of maintaining that improvement. The Council of Owners ratified that position in 1998 when it adjusted the ownership percentages to reflect our improvement, and again in 2003 to reflect the improvement to Unit 1594. (The ownership percentages were never adjusted following improvements to Unit 1591 or other units.) Consequently, we are remitting our percentage of the roof assessment based on the revised ownership percentage of 16.11%, as approved by the Regime in 1998 and revised in 2003 to reflect the improvement to Unit 1594 and subsequently revised by GW Services, Inc. in 2004, 2007 and 2008 and used through the end of budget year 2019-2020 by IMC Resort Services, Inc.

However, in the case of the roof assessment, the 0.171% increase in our historic ownership percentage (.16110 - .15939 = .00171) would not result in sufficient additional funds to cover the cost of re-roofing our 154 square foot improvement ($41,665 x 0.00171 = $72.25). Consequently, in addition to submitting our portion of the assessment based on our historic increased ownership percentage, we are submitting the entire estimated cost of the job for our improvement, in the amount of $999.40.

Other owners should not have to pay for the roof upkeep on our improvement. Nor should owners have to pay for the roof upkeep on other units which have been improved by the owner, regardless of whether the Master Deed has been amended or the ownership percentage has been revised.

Sincerely,

Kenneth V. L. Miller, Owner, Unit 1595

Anna M. Miller, Owner, Unit 1595

Amar and Kennie Gill Living Trust, UAD March 15, 2019, Owner, Unit 1595
Kennie Lee Miller Gill, Trustee

Attachment: Monarch estimate

Cc: (by email) IMC Resort Services, Inc., Bryan Dorshimer, Property Manager
Unit 1591, Kenneth E. Nyquist, Owner
Unit 1592, 226 Trust UAD January 4, 2013, Owner, Lucy Landry, Trustee
Unit 1593, Sizemore Properties, LLC, Owner, Kathy Sizemore Anderson, Member
Unit 1594, Maple Mont South, LLC, Owner, William Tatum, Jr., Member
Unit 1596, Todd E. Taylor, Catherine C. Taylor, Owner

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MONARCH ROOFING of Hilton Head LLC
Monarch Roofing HHI
4 Mathews Court Suite D
Hilton Head Island SC 29926
Phone: 843-683-7003

Company Representative
Don Faulk
Phone: (843) 333-1019
donfaulk@monarchroofing.biz

Roofing addition

04/27/2021

Lagoon Villas Unit 1595
226 South Sea Pines Drive
Hilton Head Island, SC 29928 (703) 300-0558

Job: Lagoon Villas Unit 1595

Repair Section

TOTAL $999.40

Note:
Re-roofing the condo addition.

To schedule your repair, please contact Carla Frangiose at 843-683-7003 and/or repairs@monarchroofing.biz

Thank you for choosing Monarch Roofing. All labor hours are based on one technician, obtaining materials, and transportation.

Project over $1,000.00 require the following payment schedule. 50% at signature and 50% at the completion.

DISCLAIMER: Coverages/Exclusions. This Monarch Roofing Pledge Limited Warranty covers the area of work completed by our Monarch Roofing Technician(s). Two (2) years of labor and materials are included for the following items: Shingles, Ridge Cap Shingles, Starter Strip Shingles, Leak Barrier, Roof Deck Protection, and Ridge Vent Ventilation. During the two (2) year period, we will repair or replace defective areas due to failing materials or workmanship issues at no cost to the homeowner. Limited liability applies to the above items if issues arise based on the roof deck sheeting. In addition, any interior damage and/or cost associate with interior damage due to repair failure is the homeowner's responsibility in full. Scope: Only the original property owner is covered by this warranty or if you are first subsequent owner (if this warranty was properly transferred).

Company Authorized Signature _____ Date _____

Customer Signature _____ Date _____

Customer Signature _____ Date _____

The proposed language results, intentionally or not, in one super unit—Unit 1594—having disproportionate voting power. Under the proposed amendment, 1594 can pass assessments with fewer owners in agreement. Unit 1594 can form a majority with any other two units. All other units must have three other owners in agreement to support an initiative.

	Unit 1591	Unit 1592	Unit 1593	Unit 1594	Unit 1595	Unit 1596
Master Deed	**15.939%**	**15.939%**	**18.122%**	**18.122%**	**15.939%**	**15.939%**
>50%	+ Unit 1593 + Unit 1594 = 52.183% (3)	+ Unit 1593 + Unit 1594 = 52.183% (3)	+ Unit 1594 + Any 2-bedroom = 52.183% (3)	+ Unit 1593 + Any 2-bedroom = 52.183% (3)	+ Unit 1593 + Unit 1594 = 52.183% (3)	+ Unit 1593 +Unit 1594 = 52.183% (3)
	+ Any 3-bedroom + Any 2 2-bedroom = 65.939% (4)	+ Any 3-bedroom + Any 2 2-bedroom = 65.939% (4)	+ Any 3 2-bedroom = 65.939% (4)	+ Any 3 2-bedroom = 65.939% (4)	+ Any 3-bedroom + Any 2 2-bedroom = 65.939% (4)	+ Any 3-bedroom + Any 2 2-bedroom = 65.939% (4)
	+ Any 3 2-bedroom = 63.756% (4)	+ Any 3 2-bedroom = 63.756% (4)			+ Any 3 2-bedroom = 63.756% (4)	+ Any 3 2-bedroom = 62.756% (4)

	Unit 1591	Unit 1592	Unit 1593	Unit 1594	Unit 1595	Unit 1596
Amendment 10.09.2019	**16.223%**	**14.423%**	**17.009%**	**22.801%**	**15.995%**	**13.549%**
	+ Unit 1593 + Unit 1594 = 56.033% (3)	+ Unit 1593 + Unit 1594 = 54.223 (3)	+ Unit 1594 + Any 2-bedroom >/= 53.359% (3)	+ Unit 1593 + Any 2-bedroom >/= 53.359% (3)	+ Unit 1593 + Unit 1594 = 55.805 (3)	+ Unit 1593 + Unit 1594 = 53.359 (3)
	+ Unit 1593 + Any 2 2-bedroom >/= 61.204% (4)	+ Unit 1593 + Any 2 2-bedroom >/= 60.976% (4)	+ Any 3 2-bedroom >/=60.976% (4)	+ Any 2 2-bedroom >/= 50.773% (3)	+ Unit 1593 + Any 2 2-bedroom >/= 60.976% (4)	+ Unit 1593 + Any 2 2-bedroom >/= 60.976% (4)
	+ Unit 1594 + Any 2 bedroom >/= 52.573 (3)	+ Unit 1594 + Any 2-bedroom >/= 52.345% (3)			+ Unit 1594 + Any 2-bedroom >/= 52.345% (3)	+ Unit 1594 + Any 2-bedroom >/= 50.773% (3)
	+ Any 3 2-bedroom >/= 60.19% (4)	+ Any 3 2-bedroom >/= 60.19% (4)			+ Any 3 2-bedroom >/= 60.19% (4)	+ Any 3 2-bedroom >/= 60.19% (4)

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ELECTRONICALLY FILED - 2022 Feb 11 4:28 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

DEFENDANTS.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII,

THIRD-PARTY DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

DEFENDANTS' RULE 59(E) MOTION TO RECONSIDER AND ALTER OR AMEND

PLEASE TAKE NOTICE THAT the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller (together, "Defendants"), by and through their undersigned counsel, hereby move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure for reconsideration of the Order Granting Third Party Defendant South Beach Village Lagoon Villas, II,

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Horizontal Property Regime LVII's ("Lagoon II") Petition for Relief Pursuant to S.C. Code § 33-31-160 (the "Order"). The Order was entered on February 3, 2022 and notice of the entry of same was received by the undersigned on February 3, 2022. As set forth herein, the Order has the effect of rewriting the agreements to which the parties are bound and depriving the due process rights of Lagoon II's non-party Co-Owners. The Court exceeded its authority and therefore erred by modifying the unanimous voting requirement mandated by the Horizontal Property Regime Act ("HPA") and the Master Deed for the South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII and abrogating the voting rights of the Lagoon II Co-Owners.

Defendants respectfully request the Court to alter or amend the Order to address the following issues:

1. The Court erred by rewriting the unambiguous agreement of the parties in the following manner:

   a. Modifying the voting requirement to amend the Master Deed, as mandated by the HPA and the Master Deed itself, from unanimous consent of all Co-Owners and any mortgagees to a majority of Co-Owners only; and,

   b. Modifying the right of every Co-Owner to vote upon a proposed amendment to the Master Deed, as mandated by the HPA and the Master Deed itself, to one vote per Dwelling Unit regardless of the number of Co-Owners a Dwelling Unit has.

2. The Court erred by finding that, should a majority of Co-Owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order declaring the resulting amendment to constitute a lawful and valid amendment to the Master Deed with the same force and effect as if it complied with applicable legal requirements.

3. The Court erred by ordering a vote to amend the Master Deed in derogation of the non-party Co-Owners' due process rights, because non-party Co-Owners did not have notice and an opportunity to challenge the departures from the Master Deed and HPA's voting requirements.

Respectfully submitted,

FINKEL LAW FIRM LLC

/S Magalie A. Creech (S.C. Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Defendants/Third-Party Plaintiffs

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ELECTRONICALLY FILED - 2021 Nov 12 5:27 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	) IN THE COURT OF COMMON PLEAS) FOURTEENTH JUDICIAL CIRCUIT) CASE NO.: 2020-CP-07-01547 **Affidavit of Todd Taylor, Vice-President, South Beach Lagoon Villas II Horizontal Property Regime, LVII**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

Personally appearing before me the undersigned, Todd Taylor, hereafter being duly sworn, states and deposes as follows:

1. I am a citizen and resident of Tulsa County, Oklahoma, am over the age of 21 years, and am otherwise competent to give this Affidavit. I have personal knowledge of the matters set forth herein.

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2. I am the owner of residential real property in South Beach Lagoon Villas II Horizontal Property Regime, LVII (the "Regime"), located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina. I acquired ownership of this property on October 20, 2009.

3. I am the Plaintiff in the above-referenced Civil Action.

4. I was elected President of the Board of Directors of the Regime on October 28, 2018, and served in that capacity until October 15, 2020.

5. As of October 15, 2020, I served as Vice-President of the Board. On September 17, 2021, President of the Board Bill Tatum resigned. I am currently Vice President of the Board, but am filling the duties of President until such time as the Board fills the President position.

1. As Vice-President of the Board, I am familiar with the manner and method by which the Regime creates and maintains its business records pertaining to annual meeting minutes and other meeting minutes as required by law and in accordance with common standards. Minutes of annual meetings and other meetings, including those meeting minutes attached hereto as Exhibits A-J are kept in the regular course of business, and were made and kept by the Regime as a regular practice.

2. The meeting minutes attached hereto as Exhibits A-J were made at or near the time of the occurrence of the matters set forth in those documents. The meeting minutes attached hereto as Exhibits A-J were made by a person with knowledge of those matters or from information transmitted by a person with knowledge of those matters. The meeting minutes attached hereto as Exhibits A-J were made

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and kept in the course of regularly conducted business activity. The meeting minutes attached hereto as Exhibits A-J were made and kept by the Regime as a regular practice.

3. Attached hereto are true and correct copies of the following meeting minutes maintained by the Regime:

   a. 2003 Annual Meeting held 10-16-2003 **(Exhibit A)**

   b. 2004 Annual Meeting 10-14-2004 **(Exhibit B)**

   c. 2012 Annual Meeting held November 2, 2012 **(Exhibit C)**

   d. 2016 Annual Meeting held March 3, 2017 **(Exhibit D)**

   e. 2017 Annual Meeting held October 20, 2017 **(Exhibit E)**

   f. 2018 Annual Meeting held October 18, 2018 **(Exhibit F)**

   g. Board of Directors Meeting held May 9, 2019 **(Exhibit G)**

   h. Annual Meeting held October 17, 2019 **(Exhibit H)**

   i. Special Owners Meeting held 1-29-20 **(Exhibit I)**

   j. Annual Meeting held October 15, 2020 **(Exhibit J)**

4. The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units.

5. In my capacity as President of the Board, I became aware that Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime presently encroach into the Common Elements of the Regime.

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6. Upon information and belief, the expansion to Defendants' Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2002; the expansion to Unit 1591 was completed in approximately 2004.

7. The Regime's Master Deed establishes proportionate percentage interests for each dwelling unit which govern the title and interest of the owners of the dwelling unit in the common elements of the Regime, their proportionate share in the profits and expenses, and proportionate representation for voting purposes. In my capacity as President and Vice-President of the Board, it has come to my attention that at various points and as the expansions of the Encroaching Units were completed, the Regime co-owners conducted the business of the Regime and paid assessments based on ownership percentages that were different than those set out in the Master Deed.

8. During my tenure as President of the Board, I have observed and participated in discussions among the Regime co-owners regarding the need to amend the Master Deed for the Regime to reflect the expansion of the Encroaching Units.

9. The 2003 annual meeting minutes dated October 16, 2003, which pre-date my ownership in the Regime, reflect that the co-owners requested that Unit 1594 be re-assessed in light of its expansion, and that there be an amendment to the Master Deed reflecting this change. *See* Exhibit A.

10. The 2004 annual meeting minutes dated October 14, 2004, which pre-date my ownership in the Regime, reflect:

> [R]egarding additions to the units such as those at 1594 and 1595, when those additions are recorded as changes to the Master Deed, they will also

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be included under the regime's master policy. **[A co-owner] noted that when [counsel] was contracted to file an amendment to the deed for unit 1594 he discovered that there had never been one file for the addition to unit 1595. As there is a request before the owners for an addition to 1591, [property management] suggested that the deed be amended one time, inclusive of all 3 unit renovations, which will keep the cost down. All members were in agreement with this plan."...**

...The...owners of unit [1591] presented a plan for an addition to their unit for approval. They explained that the integrity of the footprint of the unit would not change, but that they would partially enclose the rear and extend the deck area...

See Exhibit B.

11. The 2016 annual meeting minutes dated March 3, 2017 reflect:

Kennie Gill expressed concern with the Master Deed, as it does not clearly distinguish what is owner responsibility vs. regime responsibility. [Property Management] advised most regimes pay around $5,000 for legal assistance pertaining to Master Deed and Bylaw changes. After some further discussion it was decided that the sidewalk and lighting discussion would be tabled until the master deed issues are looked into. It was agreed that kennie gill would make a list of the proposed changes and [Property Management] would contact an attorney to work with the Regime.

See Exhibit D.

12. The 2017 annual meeting minutes dated October 20, 2017 reflect:

Unfinished Business

Kennie Gill updated the ownership with stating she did some more research on the Master Deed and By-laws. She explained they were out of date, and they would eventually need to be updated. In addition, the percentage of ownership was not current, with the patio additions and improvements, and suggested to have them included for the insurance coverage....[property management] advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some discussion, it suggested to have the Master Deed and Bylaws updated when the funds were available.

See Exhibit E.

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13. From 2018 to the present, the Regime has been advised by Counsel, Charles Scarminach at Novit & Scarminach, P.A., that an amendment to the Master Deed is required to reflect the expansion of the Encroaching Units and the changes to the Regime property. As Regime President, I participated in numerous discussions with Mr. Scarminach in which he provided his advice and counsel to the Regime regarding the Master Deed issues. I have also received multiple emails and letters from Mr. Scarminach discussing the need to amend the Master Deed and Mr. Scarminach's advice and solutions for doing so.

14. In particular, counsel for the Regime advised that the expansion of the Encroaching Units into the common elements is prohibited under the Master Deed and the South Carolina Horizontal Property Act, regardless of whether the expansions were done with the consent of the Regime. Regime Counsel Scarminach has further advised that as a result of the expansion of the Encroaching Units, the description and depiction of the Regime property and the Encroaching Units as set forth in the Master Deed no longer conform to the physical layout of Regime property as it currently exists, which is not legally acceptable. Additionally, the Encroaching Units have in effect subdivided the Common Elements of the Regime. Attached hereto as **Exhibit K** is a letter I received from Charles Scarminach dated January 9, 2019.

15. Defendant Kennie Miller Gill sent an email to myself and fellow co-owners dated May 11, 2018, in which she raised concerns via email that immediate corrective action was required to address the problems regarding the Encroaching Units and

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the Master Deed. A true and correct copy of the email I received on or about May 11, 2018 from Ms. Gill is attached hereto as **Exhibit L**.

16. From the time I became President of the Board in late 2018 and throughout 2019, myself and other Regime co-owners continued to work with Mr. Scarminach to prepare proposed amendment documents to satisfy the ownership and address the issues created by the Encroaching Units.

17. The Regime engaged Survey Consultants to provide a revised survey of the Regime Property reflecting the current property, including the Encroaching Units, for use in the amendment process. Survey Consultants was recommended by Regime Counsel Scarminach to provide surveying services necessary to effectuate an amendment to the Master Deed.

18. The 2018 annual meeting minutes dated October 18, 2018 reflect:

> Master Deed update – Bill reported the attorney continues to work on the Master Deed update. The Association is the process of determining property lines and surveying in order to confirm percentages of ownership for the Master Deed amendment. The Board will first review the amendments before they are filed. The survey company will also determine who owns the lagoon bank.

See Exhibit F.

19. Board of Director meeting minutes dated May 9, 2019 reflect:

> Master Deed and By Laws Status – [President Taylor] reported the Association has been working on Master Deed and By Law amendments for a little over a year. Attorney Novit & Scarminach and Survey Consultants have both been retained during this process. Attorney Charles Scarminach advised that 100% agreement by the owners must be obtained to approve Master Deed amendments. [President] read 2 letters and an email from Attorney Charles Scarminach. [President] referenced plat "Exhibit A" originally filed with the Master Deed. He reported the original dwelling descriptions are no longer accurate due to villa remodeling and adding on to the square footage. [President] then went on to reference an "Interior/Exterior Measurements" excel spreadsheet as measured by

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> Survey Consultants....There are (2) options to reallocate and define values proportionately; 1.) use interior dimensions as measured by Survey Consultants. 2.) use exterior dimensions as measured by Survey Consultants. Discussion ensued regarding the (2) options. A special meeting will be called to officially vote on the proposed amendments. [President/Plaintiff] thanked Kennie Gill for her work on this project.
>
> *See* Exhibit G.

20. By letter dated August 2, 2019, the Regime was contacted by attorney John A. Elder, IV, representing owner Bill Tatum. Mr. Elder asserted that the Regime's Master Deed was in violation of the South Carolina Horizontal Property Act, and that the Regime has a duty to correct the issues with the Master Deed. Mr. Elder further advised he intended to explore judicial alternatives to effectuating a correction and amendment to the Master Deed. A true and correct copy of the letter I received from Mr. Elder dated August 2, 2019 is attached hereto as **Exhibit M.**

21. After much effort, discussion, and expense to the Regime, and at my request, Regime Counsel Scarminach prepared a package of documents to amend the Master Deed.

22. Via letter dated October 9, 2019, in an attempt to secure an amendment to the Master Deed, Regime Counsel Scarminach sent the co-owners a proposed Consent Resolution, proposed Amendment to Master Deed, and Boundary and As-Built survey ("October 9, 2019 Proposed Amendment"). A true and correct copy of the October 9, 2019 Proposed Amendment is attached hereto as **Exhibit N.**

23. All co-owners signed the October 9, 2019 Proposed Amendment prepared by Mr. Scarminach, except for Defendant Kennie Lee Miller Gill and Mr. Amar Singh

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Gill. True and correct copies of the co-owner signatures consenting to the October 9, 2019 are attached hereto as **Exhibit O.** However, following the filing of this lawsuit, some of the owners who previously consented withdrew their consent.

24. The 2019 annual meeting minutes dated October 17, 2019 reflect:

> Todd Taylor updated owners on the potential master deed amendments. Todd reminded everyone that 100% of the owners must agree to the proposed changes in order to pass the amendments. Todd feels positive about coming to a solution soon.
>
> Bill Tatum made a motion for the Association to call a Special Meeting within 30 days, if the MD amendments are not approved, and have attorney Chuck Scarminach present to advise of the rights of the Association going forward. Also, at that meeting, the Officers are to present details of a special assessment to include the funding the MD amendments, decks/stair repairs, landscape improvements and sewer line repairs. Kathy Anderson seconded the motion. The motion passed without opposition.

See Exhibit H.

25. The Regime held a special meeting on January 29, 2020, the minutes of which reflect:

> Update on master Deed: Todd reminded owners that Chuck Scarminach has been hired to draft amendments to the master deed. Todd pointed out that at some point in time, the owners agreed to change % of ownership without correctly amending the Master Deed. Todd suggested properly amending the Master Deed.
>
> Special Assessment and Vote: The master deed and survey expenses have cost approximately $16,000 with more expenses to come...

See Exhibit I.

26. Throughout the fall of 2019, and throughout 2020, as Board President, I continued to work to attempt to secure 100% approval of the October 9, 2019 Proposed Amendment, meaning that I continued to work to attempt to secure the approval of Defendant Kennie Gill.

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27. In July 2020, Regime Counsel Scarminach corresponded directly with Ms. Gill and attempted to obtain her approval of the October 9, 2019 Amendment, provided further explanation of the same, and addressed specific questions raised about the October 9, 2019 Amendment. True and correct copies of the correspondence from Regime Counsel Scarminach to Ms. Gill on which I was copied and received, dated July 6, 2020 and July 14, 2020 are attached hereto as **Exhibits P and Q**, respectively.

28. The 2020 annual meeting minutes dated October 15, 2020 reflect:

> Master Deed – The original proposal for Master Deed amendments failed due to not achieving 100% approval from owners. Jennifer Nyquist Bivins made a motion that the owners cure the defect in the current title and affirm/adopt the amended plat (the "revised as-built survey") and include the addition of the common elements. Revise the "apartment unit" descriptions and adjust the description of the limited common elements. Jennifer then rescinded her motion. A lengthy discussion ensued amongst the owners. Kennie Gill expressed her comments and concerns with amending the percentage of ownership in the Master Deed and read a letter that she had emailed to all owners prior to the meeting.

See Exhibit J.

29. The Regime has not been able to effectuate an Amendment to the Master Deed because it has not been able to procure 100% approval of all co-owners.

30. To date, the Regime has incurred the following expenses in its attempt to effectuate an amendment to the Master Deed, in a total amount not less than $20,017.50:

    a. Attorney's fees paid to Novit & Scarminach, P.A: $7,825.00;

    b. Fees paid to Surveying Consultants, Inc.: $11,192.50; and

    c. Insurance Deductible following being named as party to instant action: $1,000.

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31. Based on all the events which have transpired as set forth herein, as a Regime co-owner and current Vice-President, I believe it is impossible and impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed if 100% approval of the co-owners is required.

32. Based on all the events which have transpired as set forth herein, the communications among the owners, the effort and expense incurred on behalf of the Regime, I do not foresee any circumstances under which the Regime will be able to procure 100% approval of all co-owners to a proposal to amend the Master Deed.

33. The Regime's inability to amend the Master Deed has had a large negative impact on the Regime's financial health and ability to conduct business, particularly necessary maintenance items. The Regime is in need of upgrades to the sidewalks, parking areas, lighting, sewer lines, and other capital improvements. However, the Regime has been unable to move forward with these projects due to continuing disputes over the Master Deed.

FURTHER AFFIANT SAYETH NOT.

Todd E. Taylor

Todd Taylor
Vice-President, South Beach Village Lagoon Villas II, Horizontal Property Regime LVII

Sworn to and subscribed before
me this 12th day of November, 2021.

Katie M. Welch

Notary Public for the State of OK

My Commission Expires:

03/17/2025

(AFFIX NOTARY SEAL)

KATIE M. WELCH NOTARY # 21003686 EXP. 03/17/25 PUBLIC STATE OF OKLAHOMA

6247379v.1

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EXHIBIT
A

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LAGOON II ANNUAL MEETING
OCTOBER 16, 2003

The Annual Meeting of the Lagoon II homeowners association was held on October 16th, 2003 at the management company office. There were 67.46% of the owners present, either in person or by proxy, so proof of notice of the meeting was waived.

There was a motion made, seconded and unanimously approved to accept the minutes of the previous annual meeting as written.

Mr. Ken Nyquist, Board President, reported that the gutters had finally been completed on all buildings, with the invaluable help of Mr. Ken Miller. Appreciation was expressed for his assistance in obtaining the lowest possible quote for this work.

Mrs. Anne Trent, Board Vice President, reported that the landscaping looks better, however, there is still a bare area behind the Sanders' unit. It was explained that the sod behind this unit would be replaced at the owner's expense, due to major construction that has caused the grass to die. Ken Nyquist reported that the palm installed at the side of 1591 might be too tall and requested that Second Nature, the landscape company, look at the tree. Mrs. Trent also reported that her gate should be fixed and that there are a number of lights that are currently burned out. She also complimented the pest control company for a job well done.

The members requested that the square footage of the Sanders' unit be reassessed in light of their recent renovations and that there be an amendment to the Master Deed reflecting this change. The budget was presented and unanimously approved, and coupons will be issued reflecting the new percentages of ownership.

The next meeting of the homeowners will be held on October 14, 2004 at 10:00 a.m. As there was no further business before the Association, the meeting was adjourned.

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EXHIBIT B

Annual Meeting of the Lagoon II Property Owners Association

The Annual Meeting of the Lagoon Villas Horizontal Property Regime LVII was held on Thursday, October 14, 2004 at 10:00 A.M. at the management company offices. Property Manager Greg Wynn called the meeting to order.

Roll Call & Certification of Meeting Notice:

Greg Wynn reported that 100% of the homeowners were present, either in person or by proxy. He requested that Proof of Notice be waived, due to 100% attendance, and those present approved the request.

Approval of Minutes:

A motion was made, seconded and passed to dispense with the reading of the minutes of last year's Annual Meeting. The minutes were approved as written.

Reports of Officers & Committees:

Greg Wynn introduced himself and his company, G.W. Services, to the owners present. He also introduced Rob Ellison, property manager, and explained Rob's duties as they relate to the Lagoon II residents. He noted that Rob would be responsible for walking the property on a regular basis, coordinating repairs and vendors and trouble-shooting for the owners. Dr. Trent complimented the management team on their performance, as well as the landscape and maintenance staff.

Expanding on his report, Greg reported on the insurance the regime currently holds with State Farm. It was noted that the regime is currently insured for a total value of $940,000.00 that, Greg suggested, might best be reevaluated to ensure that the property is correctly valued for insurance purposes. This is best done, Greg explained, utilizing an independent insurance appraiser, as neither the State Farm agent nor the property manager should be entrusted with this duty. Independent insurance appraisals, while costly, should be done every 3-4 years, likely at a total cost of $1800.00 for all 3 buildings. After discussion, the property owners requested that G.W. Services forward this information to all the owners with a ballot, indicating their approval of this appraisal. After the votes are tallied, G.W. Services will report to the homeowners. Greg also explained that, in the event of a total loss (over 50% of the property), the regime's insurance would restore the units in accordance with the Master Deed. That is, any upgrades, additions or betterments that owners have installed or were installed at the time they purchased their unit would be covered under their own HO6 policy in the event of a loss. Regarding additions to the units such as those at 1594 and 1595, when these additions are recorded as changes to the Master Deed, they will also be included under the regime's master policy. Annie Ginn noted that when Jack Qualey was contacted to file an amendment to the deed for unit 1594 he discovered that there had never been one filed for the addition to unit 1595. As there is a request before the owners for an addition to 1591, Greg suggested that the deed be amended one time, inclusive of all 3-unit renovations, which will keep the cost down. All members were in agreement with this plan.

Financial Presentation:

Greg Wynn reviewed the financial reports, copies of which were distributed to the members. He reported that the association is in good shape financially, with $7890.29 in the operating account and $2385.21 currently being held in reserve. Suzie Priegel, association Treasurer, requested that excess money in the operating account be moved to the reserve account in order to maximize growth. This will be done

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immediately. In addition, Greg explained that G.W. Services would like authorization to issue quarterly, instead of monthly, financial statements to the members, which was agreed to by all present.

Election of Officers:

A motion to reelect the present slate of officers on the Board was made, seconded and unanimously approved. All homeowners serve on the Board and Ken Nyquist will continue as President, Anne Trent as Vice-President and Suzie Priegel agreed to serve as Secretary/Treasurer for another year.

New Business:

Greg Wynn presented a copy of a letter he had received from Ken Miller, owner of unit 1595, wherein Mr. Miller offered to act as liaison on matters concerning regime projects. Greg explained that, while he had no problem dealing with specific owners on areas of concern to the association, i.e.: a landscape contact person, a maintenance contact, the management company would prefer it if there is a clearly defined chain of command. The owners, after discussion, agreed that Ken Nyquist, as Board President, should be the contact person for the management company.

In other maintenance matters, Greg Wynn presented a proposal in the amount of $1,800.00-$2,400.00 from Piper Plumbing to take care of a sewer problem at 1595. He reported that K & K Plumbing had also given a bid for the job that would include a camera-shot at a cost of $230.00 to define the problem and subsequent estimates to repair could be completed at a total cost of $700.00-$800.00. Greg stated that he felt very comfortable hiring K & K Plumbing to do this work, so a motion was made, seconded and approved unanimously to proceed. Wood rot was also discussed, and Greg recommended that G.W. Services be authorized to do a visual inspection of all 6 units, removing and replacing rotten wood, then paint to match. The money for this could come from the general maintenance fund, and the work would be billed on a time & materials basis. The owners approved this work as well. Mrs. Trent asked how often G.W. Services planned to power wash the buildings, and Greg informed her that it is scheduled to be done on an annual basis, with roofs being cleaned 4 times per year. Mrs. Trent also asked whether there is a plan in place to replace old, dying azaleas and she suggested a "confederate rose" might be a good substitute.

The Nyquist's, owners of unit 1592, presented a plan for an addition to their unit for approval. They explained that the integrity of the footprint of the unit would not change, but that they would partially enclose the rear and extend the deck area. An easement for the steps, which will encroach slightly on the common area, will be obtained. The homeowners approved the plan and approval will be sent to the Sea Pines ARB. Mrs. Trent asked whether there was any area available on the property where an outdoor storage shed could be erected for use by all owners, and Greg replied that in order to accomplish this, a 2/3 majority of the homeowners would have to approve such a change to the common area. The matter was not discussed further.

Greg then presented the proposed budget for the fiscal year. He pointed out areas where the regime had either over- or under-budgeted the previous year, and explained the changes made. The regime fees increased slightly and a motion was made, seconded and unanimously approved to accept the budget as presented. In a related matter, Greg offered the owners 3 options for billing and paying the monthly fees. He stated that coupons could be issued for monthly payments at a cost to the regime or invoices could be sent each month for payment. The other option, which he recommended, is to invoice the owners on a quarterly system, which would require owners to pay their fees only four (4) times per year, thereby cutting down on bookkeeping and check writing. This idea was approved by unanimous vote by the owners.

As there was no further business, the meeting was adjourned at 11:30 A.M.

EXHIBIT
C

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LAGOON II
2012 Annual Meeting
November 2nd, 2012

The 2012 Lagoon II Annual Meeting was held on Friday, November 2nd, 2012 at 1 pm at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

The meeting was called to order and 2 of the 6 owners were in attendance.

Owners in attendance included: Ken Miller and daughter Kennie Gill, #1595 & Todd Taylor #1596. Also in attendance from GW Services, Inc, were Valerie Chism and Gregory A. Wynn.

Owners represented by proxy included: Ann Trent #1593, Bill Tatum #1594, Bruce Hadley #1592

A motion was made, seconded and carried to approve the 2011 annual meeting minutes as mailed.

Insurance
Greg Wynn discussed the insurance coverage for the property. Greg informed the owners that he anticipates the property premiums to increase by 8-15% in the coming year. He explained that he is seeing this in properties that are 20+ years old and also that have framed construction. Greg stated that he would know more when the policy is put out to bid in March. Ken Miller inquired about the % of ownership and if those people that have added on to their units would be fully covered by the Regime's insurance. After pulling the Master Deed Greg informed the ownership that according to the percentages of ownership given to GW Services when they took over management it looked like the Regime had changed them since the Master Deed reflected different percentages. Kennie Gill stated that the Regime needs to look into this further so that in the event there would be a rebuild there would be no confusion as to what the Regime insurance covered. Greg reminded the ownership the importance of updating your "betterments and improvements" in your HO6 policy adding that a loss assessment clause should be added as well.

Financials
Greg presented the financial report of the Regime noting that currently, the operating account has $1,505.32; and there was no reserve account due to the fence and painting project. The fiscal year ends 10/31/12 and there are no receivables, no account payables and there are no reserve funds being deposited at this time.

Old Business
There were no items discussion under Old Business.

New Business
Greg began by informing the owners that he had replaced Valley Crest Landscaping with The Greenery. He explained that he had started seeing a change in the quality of work. Greg also explained that three of the other Regimes on the street were all using The Greenery as well.

Next item discussed was the erosion along the lagoon bank. Todd Taylor inquired about who would be responsible for adding more rock along the area. Ken Miller confirmed that CSA had supplied the rock that was there now. Greg stated that he would assume CSA would be responsible for adding more. Ken Miller affirmed that he would get with Frank Nettles (CSA) regarding the issue.

Todd Taylor inquired about the terra cotta sewer lines and future need to be replaced with PVC in the next few years due to tree root growth and corrosion. Greg suggested that the Regime build up at least $12k in the reserves for a cushion and start saving for other capital projects as well. Todd Taylor motioned that $250 per quarter be assessed for 1 year in order to replenish the Reserve account; the motion was seconded and carried.

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Greg presented the proposed budget. A motion was made, seconded and passed to approve the proposed budget as presented.

All Regime owners are members of the Board. Todd Taylor was elected as President.

The 2013 Annual Meeting will be November 1st. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 2:10 pm.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager

: VLC

EXHIBIT
D

LAGOON II
2016 Annual Meeting
March 3rd, 2017

The 2016 Lagoon II Annual Meeting was held on Friday, March 3rd, 2017 at 10:00 am at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

The meeting was called to order and 3 of the 6 owners were in attendance.

Owners in attendance included: Ken Miller and Kennie Gill #1591, Sizemore Properties #1593, and Bill Tatum #1594. Also in attendance from GW Services, Inc., were Sarah Gebauer and Gregory A. Wynn.

Owners represented by proxy included: Todd Taylor #1596.

A motion was made, seconded and carried to approve the 2015 Annual Meeting minutes as mailed.

Insurance
Greg Wynn reviewed the Insurance Summary (copy enclosed). He stated Hurricane Matthew was the major item of 2016, and that the property fared well overall, with minor tree damage to unit 1596. Greg continued, advising that the property was insured for $1.3 million, with a 2% deductible for named storms. Greg advised once the policy was up for renewal he was going to look into lowering the deductible to 1% or less, and does not expect any major increases in the premium come June.

Financials
Greg Wynn presented the Financials for Lagoon II as of October 31st, 2016 (copy enclosed). He advised there was $27,035.46 in the bank, with no Accounts Receivable. Greg then presented the year-to-date financials as of February 28th, 2017 (copy enclosed). He advised the Regime had received a credit in the amount of $1,462.22 for Hurricane related expenses. Greg noted there was currently $6,823.29 in Accounts Receivable, but that was due to the Quarterly fees being billed on February 1st. Bill Tatum inquired if those units behind in their payments received additional Finance charges. Greg confirmed they were billed 18% per annum. Greg continued, stating Lagoon II was in good financial standing overall, and living within their means.

Unfinished Business
There was no Unfinished Business to discuss.

New Business
Next item on the Agenda was New Business. Greg Wynn advised that the lighting and sidewalk upgrades were the main topic of discussion. Bill Tatum agreed that replacing the lights should be discussed, since Lagoon I had recently re-done theirs. Ken Miller advised he believes most are in fairly good condition. Greg advised the lighting project is a fairly significant investment, between running conduits and any unforeseen expenses, reminding those present that the sidewalks would have to be torn up to replace the conduits. Kennie Gill inquired if the electricity is already running to the lights why not just change the fixtures. Greg advised the current conduits are not up to code, that the wiring is at least 30 years old. He continued, stating that when it rains it shorts the electrical system and simply replacing the fixtures would not solve the underlying issues. Bill Tatum inquired if the roofs needed to be replaced. Greg noted they are between 12-14 years old, and does not believe it is in the Regime's best interest to wait until leaks and other issues occur, but they could likely be put off another year or two at the most. Bill Tatum stated he believes the lighting and sidewalks would be the best investments, as they would directly impact the curb appeal if an Owner decides to sell their villa. Kennie Gill expressed concern with the Master Deed, as it does not clearly distinguish what is Owner responsibility vs. Regime responsibility. Greg advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some further discussion it was decided that the sidewalk and lighting discussion would be tabled until the

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Master Deed issues are looked into. It was agreed that Kennie Gill would make a list of the proposed changes and Greg Wynn would contact an attorney to work with the Regime.

Proposed Budget

Greg presented the Proposed Budget. He advised there would be a slight increase in the Association fees to supplement the Reserve fund. A motion was made, seconded and passed to approve the Budget as presented.

Election of the Board of Directors

All Regime Owners are members of the Board. Bill Tatum was re-elected to serve as President.

2017 Annual Meeting Date

The 2017 Annual Meeting will be held Friday, October 20th, with the time and location to be determined at a later date. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 11:15 AM.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager
:SCG

EXHIBIT
E

LAGOON II
2017 Annual Meeting
October 20th, 2017

The 2017 Lagoon II Annual Meeting was held on Friday, October 20, 2017 at 10:00 am at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

Greg Wynn called the meeting in order. No roll call was necessary, and a quorum was represented either in person or by proxy. It was noted that 84.84% of the ownership was represented.

Owners in attendance included: Ken Miller and Kennie Gill #1595, Sizemore Properties #1593, and Bill Tatum #1594. Also in attendance from GW Services, Inc., were Allison Baroni and Gregory A. Wynn.

Owners attended via conference call; Todd Taylor #1596.

Owners represented by proxy included: Hadley HPM Realty Trust #1592.

A motion was made, to approve the 2016 Annual Meeting minutes. Kennie Gill stated she would like to revise the minutes, that she was not providing any legal advice to the regime. After some discussion the motion was made seconded and carried to change the 2016 minutes and approve the revised 2016 Annual Meeting.

Insurance
Greg Wynn reviewed the Insurance Summary (copy enclosed). He stated the property was insured for $1.3 million, with including the 10% Building Ordinance to build back to code. He continued with explaining the Flood insurance policy went with a private provider, which also mirrors the property coverage, and the $5K per building deductible. Greg then reminded the ownership that "betterments & improvements" should be included on an owner's individual H06 homeowner policy **and** he strongly urged all owners to carry a "loss assessment rider."

Financials
Greg Wynn presented the Financials for Lagoon II as of September 30th, 2017 (copy enclosed). He advised that Lagoon II has $6,504.68 in the Operating account, and $22,202.39 in the Reserve account. Greg then presented the year-to-date financials (copy enclosed). He noted the general maintenance was a little over due to the sewer line and Hurricane repairs. Greg continued, stating Lagoon II was still in a strong financial standing overall, and living within their means.

Unfinished Business
Kennie Gill updated the ownership with stating she did some more research on the Master Deed and By-laws. She explained they were out of date, and they would eventually need to be updated. In addition, the percentage of ownership was not current, with the patio additions and improvements, and suggested to have them included for the insurance coverage. She continued with explaining the By Laws would need to be amended with being able to charge any interest. Greg advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some discussion, it suggested to have the Master Deed and Bylaws updated when the funds were available.

New Business
Next item on the Agenda was New Business. Greg Wynn explained Lagoon II suffered some flooding from the Hurricane Irma storm surge. Some of the foundation around the lagoon had washed out, bushes and grass suffered salt intrusion. He continued with noting the washed out bank, #1593-1594 no rock left in the area, that he received some estimates using rip-rapp, and netting to repair the damage. Greg also noted SIPSD did come out and clear the ditches to correct some of the drainage issues.

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Greg continued with explaining some of the common area lighting had shortages after the Hurricane Irma storm surge, and was then noted to have the entrance lighting checked as it was not working correctly. Another owner stated there was a storage shed, this being an exterior structure on the side of unit #1591 that is not permitted on property and will need to be removed, it was also stated the deck color of Unit #1592 was blue, and then asked how it was approved. The next item of discussion was the decks, as some are in bad shape with wood rot, and becoming a potential hazard. After some discussion, it was decided to have GW Services retain quotes for the wood rot repairs. Greg then noted the landscaping, and explained the storm surge caused a lot of salt intrusions with killing the bushes on the property. He suggested that the Lagoon II owners establish a landscape committee to enhance the curb appeal of the property. Todd Taylor then mentioned the leaning tree on the back side of his unit #1596, that is growing out of the Lagoon, he stated CSA claims it is not their responsibility, after they marked it for removal, but never did He then asked if there were any plats to show the boundary lines of the property. Greg then stated he would look, and advise Todd of the findings. The lighting and sidewalks were also mentioned, suggesting this remain on the list of capital projects, with keeping the landscaping priority. Greg then noted the roofs are between 12-14 years old, and does not suggest waiting until leaks occur for the roof replacement. Then suggested Lagoon II invests in a Reserve Study, which will give a timeline on how these capital projects should be prioritized.

Proposed Budget

Greg presented the Proposed Budget. He advised there was a slight increase in the Association fees to supplement the increase in utilities, water electric, etc.. There was some discussion about the $600 decrease into the Reserve account for the fiscal year. A motion was then made, and seconded to increase the proposed budget reflecting an additional $600 increase, and passed to approve the revised Budget.

Election of the Board of Directors

All Regime Owners are members of the Board. Bill Tatum was re-elected to serve as President, Kathy Anderson as Vice President, and Todd Taylor as Treasurer.

2018 Annual Meeting Date

The 2018 Annual Meeting will be held Friday, October 19th, with the time and location to be determined at a later date. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 11:25 AM.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager
:AMB

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EXHIBIT
F

MINUTES

Lagoon Villas II
2018 Annual Meeting
Thursday, October 18, 2018 | 2:00 PM

I. Roll Call – Confirming a quorum, Bill Tatum called the meeting to order at 2:12 pm.

a. **Board Members present** – Bill Tatum, Kathy Anderson, Todd Taylor, Kenneth Nyquist, Kenneth Miller

b. **Owners present** – 84.061%

c. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Kathleen Smith, Minutes

II. Proof of Notice of Meeting – Notice of the Annual Meeting was mailed and emailed to all owners of record on October 11, 2018.

III. Appointment of Secretary – Kathleen Smith with IMC Resort Services will record the minutes of the 2018 Annual Meeting.

IV. Acceptance of Minutes

a. **2017 Annual meeting minutes** – Kennie Gill asked to amend the minutes to reflect Bill as absent and also to remove the election of Todd Taylor as Treasurer. **Kennie then motioned to approve the 2017 Annual Meeting minutes as amended. Todd Taylor seconded the motion. The motion passed unanimously.**

b. **2018 Special meeting minutes – Kennie Gill motioned to approve the minutes from the 2018 Special meeting. Todd Taylor seconded. The motion passed without opposition.**

V. Reports of Officers & Committees

a. **Master Deed update** – Bill reported the attorney continues to work on the Master Deed update. The Association is in the process of determining property lines and surveying in order to confirm percentages of ownership for the Master Deed amendment. The Board will first review the amendments before they are filed. The survey company will also determine who owns the lagoon bank.

b. **Landscape company change** – The Board discussed the proposed US Lawns contract. Bryan will speak with US Lawns to request they do not use RoundUp weed killer. Bryan will also request the 30-day out clause be amended to state 'without cause'. Bryan will contact The Greenery to inquire about the breakdown of the annual flower rotation costs. **Kennie Gill motioned to approve the US Lawns contract to begin November 1, 2018. Kathy Anderson seconded the motion. The motion passed unanimously.** Bryan reported US Lawns will audit

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the irrigation system when they begin servicing the property.

c. **Incorporation of the regime** – Lagoon Villas II is incorporated.

VI. Scheduling of a semi-annual board meeting in June – The Board discussed holding (2) Board meetings per year. Bill will circulate possible dates to the Board.

VII. Review late fee policy – Bryan suggested the Board adopt a collections policy. Bryan will send examples for the Board's review.

VIII. Projects

a. **Termite and rat inspection/treatment** – The Association has monthly pest control services. Discussion regarding a termite bond ensued. Bryan will contact Island Pest Control for a termite and rat inspection quote.

b. **Sewer lines** – Bill reported the Board has had ongoing discussions regarding replacement of the sewer lines as well as annual maintenance. Bryan recommended hydro-jetting the lines at least twice a year to deter villa backups. After some discussion, Bryan will contact Island Plumbing to set up a semi-annual schedule beginning March 2019.

c. **Landscaping** –

i. **Greenery** – Kennie mentioned there are dead limbs in trees around property. Bryan reported the trees will be limbed up early next week. Kennie also mentioned the Greenery had agreed to replace dead bushes around the property. Kennie recommends the final payment to the Greenery be lessened by the amount of the cost of the (5) bushes that were not replaced.

ii. **Trees** – Todd mentioned Hurricane Matthew took down part of a tree near his unit. He requested the stump be ground down and the area seeded in order for grass to grow.

d. **Parking** – The Board discussed the challenges of parking, as there are 6 units and only 8 parking spots. Jennifer Nyquist Bivins asked for an email to be sent reminding owners to limit renters' vehicles. Kennie pointed out that owners do not have assigned parking spaces. Bryan will solicit quotes for signage to install in front of each parking bay "Parking for Lagoon Villas II".

e. **Decks** – IMC has submitted a bid for the replacement of the decks. The Board discussed the proposal and the pros and cons of necessary repairs vs. total replacement. Bryan will solicit two more bids for replacement for the Board's review.

IX. Approval of annual budget and assessment – The Board discussed the 2018/2019 budget. Kennie expressed her concern with the increase in water and how the

common water is allocated. **Kennie then motioned to approve the budget. Kathy Anderson seconded the motion. The motion passed without opposition.**

X. Election of Administrators – **Bill Tatum motioned for Todd Taylor to serve as President; Kathy Anderson as VP and Kennie Gill as Secretary/Treasurer. Jennifer Nyquist Bivins seconded the motion. The motion passed without opposition.**

XI. Kudos – Jennifer thanked Bill for his hard work.

XII. Appendix 5C-1 – Bryan explained that by the owners ratifying Appendix 5C-1, any excess of membership income over membership expenses for the year ended 2018, shall be applied against the subsequent tax year member assessments. **Todd motioned to ratify Appendix 5C-1. Kennie seconded the motion. The motion passed without opposition.**

XIII. Adjournment – There being no further business, Bill adjourned the meeting at 4:30 pm.

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EXHIBIT
G

MINUTES

Lagoon Villas II HPR
Board of Directors Meeting
Thursday, May 9, 2019 | 10:00 am

I. Roll Call / Call to Order – Todd Taylor called the meeting to order at 10:05 am.
   A. **Board Members present** – Todd Taylor, President; Jennifer Nyquist Bivins, Director at Large; Bruce Hadley, Director at Large (via telephone); Bill Tatum, Director at Large (via telephone)

   B. **Board Members absent** – Kathy Anderson, Vice President; Kennie Gill, Treasurer

   C. **Owners present** – Ken Miller (1595); Lucy Hadley (1592)

   D. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Julie Smith, Director of Operations; Kathleen Smith, Minutes

II. Approval of Minutes
   A. **None at this time**

III. Financial Report
   A. **General** – Bryan reported on the unreconciled cash position as of May 9, 2019. He then went on to report there are no owners in arrears or in jeopardy of going to collections. Bryan explained the budgeted vs. actual expenses. He mentioned the 'Landscape Other' line item is slightly over due to recent irrigation repairs. All in all, the Association is running well within the existing parameters of the operating budget.

   B. **Collections, Executive Session** – Nothing to report at this time.

IV. Manager's Report – Bryan stated he has not received any reports of missed pest control or live pests in the units. Also, he has not been made aware of any missed trash service. Bryan has received some concerns with the landscaping and has reported these to US Lawns, who have been very responsive. Sewer lines were hydro-jetted and cleaned by Degler Waste at the beginning of April. Irrigation repairs were recently completed; Bryan to follow up with US Lawns regarding possible non-functioning zone near the Hadley's. Property wide soft washing and power washing is scheduled for May 20-22. Regular monthly walk through for light bulb replacement will be completed soon.

V. Old Business
   A. **Master Deed and By Laws Status** – Todd reported the Association has been working on Master Deed and By Law amendments for a little over a year. Attorney Novit & Scarminach and Survey Consultants have both been retained during this process. Attorney Charles Scarminach advised that 100% agreement by the owners must be obtained to approve Master Deed amendments. Todd read 2 letters and an email from Attorney Charles Scarminach. Todd referenced plat "Exhibit A" originally filed with the Master Deed. He reported the original dwelling descriptions are no longer accurate due to villa remodeling and adding on to the square footage. Todd then went on to reference an "Interior/Exterior Measurements" excel spreadsheet as measured by Survey Consultants. Todd noted that there is a discrepancy in the measurement of villas #1593 and #1594 by Survey Consultants. The re-measuring of these two units by Survey Consultants will cost approximately $500. There are (2) options to reallocate and define values proportionately; 1.) use interior dimensions as measured by Survey

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Consultants 2.) use exterior dimensions as measured by Survey Consultants. Discussion ensued regarding the (2) options. A special meeting will be called to officially vote on the proposed amendments. Todd thanked Kennie Gill for her work on this project.

B. **Survey Consultants Invoice** – The $9,950 invoice has been paid in full.

C. **Attorney's Fees** – Attorney fees will total roughly $5,000 once all legal has been completed regarding the Master Deed amendments.

D. **Lagoon Bank Stabilization** – Erosion has begun at the lagoon bank. Kennie has been working on this project for some time. Town of HH, State of SC and Sea Pines CSA have all been notified of the erosion issue.

E. **Insurance** – Current insurance policy does not cover additions to villas; owners have been insuring the additional dwelling space. If and when the Master Deed is amended, the Association will be responsible for insuring the property. IMC recommended a property appraisal with a cost of approximately $1,500. **Todd Taylor made a motion to engage an insurance broker appraisal of the property at an approximate expense of $1,500 prior to underwriting the policy, with funds to be taken from the replacement reserve account. Bill Tatum seconded the motion. The motion passed without opposition.**

F. **Decks** – Todd reported the attorney opinion states Lagoon Villas II HPR (the Association) has the responsibility of maintaining the decks – not the owners. An estimate of approximately $17,000 was received by Charlie Weaver of Clear-Cut Construction for repair and repainting of the decks. The Board discussed how to pay for the repairs (Association funds vs. individual owner). A decision was tabled.

G. **Water bill allocation** – Tabled.

VI. New Business

A. **Landscaping and irrigation** – Todd presented (3) proposals from US Lawns for landscape upgrades including pine straw installation. After discussion, the Hadley's would like a quote to install turf at the front of their villa as opposed to pine straw. No decision on approving the proposals was made at this time.

B. **Request for a retractable awning** – Bill Tatum is requesting to install a retractable awning at his villa. With no objection from the Board, and with Mr. Tatum abstaining, the request was approved. Bryan to send an approval letter to Bill for his records.

VII. Next Board Meeting – To be determined.

VIII. Adjournment – There being no further business, the meeting was adjourned at 11:56am.

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EXHIBIT H

MINUTES

Lagoon Villas II
2019 Annual Meeting
Thursday, October 17, 2019 | 2:00 PM

I. Roll Call – Confirming a quorum of 68.122%, Todd Taylor called the meeting to order at 2:07 pm.

a. **Board Members present** – Todd Taylor, President (via telephone); Kathy Anderson, Vice President; Jennifer Nyquist Bivins, Director at Large (via telephone); William (Bill) Tatum, Director at Large

b. **Board Members absent** – Kennie Gill, Treasurer; Bruce Hadley, Director at Large

c. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Kathleen Smith, Minutes

II. Proof of Notice of Meeting or Waiver of Notice – Notice of the Annual Meeting was mailed to all owners of record on September 19, 2019.

III. Reading of Minutes of Preceding Meeting – **Bill Tatum made a motion to approve the minutes of the 2018 Annual Meeting. Kathy Anderson seconded the motion. The motion passed without opposition.**

IV. Reports of Officers

a. **President Report** – Todd Taylor updated owners on the potential Master Deed amendments. Todd reminded everyone that 100% of the owners must agree to the proposed changes in order to pass the amendments. Todd feels positive about coming to a solution soon.

b. **Financials** – Bryan reported on the unreconciled balance sheet as of October 17, 2019. Bryan then went on to review budgeted vs. actual expenses; the Association is running well within the parameters of the current operating budget.

c. **2019 Accomplishments** – Property wide tree trimming, property wide soft and power washing were all performed this year. Individual landscape enhancements performed by US Lawns have also been completed at owners' villas who elected to have these upgrades done. Bryan reported plumbing updates are forthcoming once Island Plumbing investigates further. **Bill Tatum made a motion for the Association to call a Special Meeting within 30 days, if the MD amendments are not approved, and have attorney Chuck Scarminach present to advise of the rights of the Association going forward. Also, at that meeting, the Officers are to present details of a special assessment to include funding the MD amendments, decks/stair repairs, landscape improvements and sewer line repairs. Kathy Anderson seconded the motion. The motion passed without opposition.**

V. Reports of Committees – There are currently no active committees.

VI. Election of Inspectors of Election – Election of Inspector of Election was waived.

VII. Election of Administrators – All incumbents are up for re-election and will all run. There being no contest, all incumbents were re-elected to serve 1-year terms.

a. **Board Restructure – Bill Tatum made a motion for Todd Taylor to remain as President, Kathy Anderson to remain as Vice President and Bill Tatum to take the Secretary/Treasurer position. Kathy Anderson seconded the motion. The motion passed without opposition.**

VIII. Unfinished Business

a. **Parking Signs** – The Board agreed to table the parking signs until funds are available.

IX. New Business

a. **2019/2020 Budget Approval** – Bryan reviewed the proposed 2019/2020 with the owners. Bryan reported a potential 10-15% increase in insurance renewals this year. After some discussion, **Bill Tatum made a motion to approve the 2019/2020 budget. Kathy Anderson seconded the motion. The motion passed unanimously.**

b. **Appendix 5C-1 – Jennifer Nyquist Bivins made a motion to approve Appendix 5C-1. Kathy Anderson seconded the motion. The motion passed unanimously.**

X. Adjournment – There being no further business, the meeting was adjourned at 2:55 pm.

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EXHIBIT
I

MINUTES

Lagoon Villas II, HPR
Special Owners Meeting
January 29, 2020
9:00 a.m. | IMC Resort Services, Inc.

A. Roll Call / Call to Order – Todd Taylor called the meeting to order at 9:05am.

1. **Board Members present via telephone** – Todd Taylor, President; Kathy Anderson, Vice President; Bill Tatum, Secretary/Treasurer; Jennifer Nyquist Bivins, Director at large; Bruce Hadley, Director at Large

2. **Owners Present via telephone** – Ken Miller, 1595; Lucy Hadley, 1592

3. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Julie Smith, Director of Operations; Kathleen Smith, Minutes; Alyssa Dolan, Administrative Assistant

B. Proof of Notice of Meeting or Waiver or Notice – Notice of the meeting was mailed to all owners of record on January 23, 2020.

C. Financial Report – Bryan reported on the unreconciled cash position as of January 29, 2020. There are currently no owners in arrears. Bryan also reviewed budgeted vs. actual expenses.

D. Reading of Minutes of Preceding Meetings – None at this time.

E. Reports of Officers – Nothing to report at this time.

F. Update on the Master Deed – Todd reminded owners that Chuck Scarminach has been hired to draft amendments to the Master Deed. Todd pointed out that at some point in time, the owners agreed to change % of ownership without correctly amending the Master Deed. Todd suggested properly amending the Master Deed.

G. Special Assessment Discussion & Vote – The Master Deed and survey expenses have cost approximately $16,000, with more expenses to come. Regime landscaping had previously been tabled. Todd suggested reimbursing owners who paid for common area landscape upgrades. Todd also reminded owners that many decks are in dire need of repairs and/or replacement. Bill sent a proposed special assessment spreadsheet to all owners for review. Discussion ensued regarding deck repairs. Todd reminded owners that the exterior of the units should all conform. **Todd Taylor made a motion for the paint colors on file at Sherwin Williams to be the official color scheme for Lagoon Villas II. Kathy Anderson seconded the motion. The motion passed without opposition**. Todd made all owners aware that the special assessment, if approved, will align with the Master Deed proportionate interest, not what was agreed upon years ago. Julie Smith advised that if a motion is made to approve the special assessment today, it would be based off of the current Master Deed % of ownership, not what the intended amendments will be. Julie also suggested the owners continue to make payments per the approved 2019/2020 budget until the Master Deed revisions are voted on and approved. The Board will revisit after the amendment.

H. Adjournment – There being no further business, Todd Taylor adjourned the meeting at 10:24am.

EXHIBIT
J

MINUTES

Lagoon Villas II
2020 Annual Meeting
Thursday, October 15, 2020 via Zoom - 2:00 PM

I. Roll Call – Todd Taylor called the meeting to order at 2:07 PM. Todd noted owners are in attendance in person and via Zoom. For that reason, he asked everyone to be respectful of time and to state name and unit number when a motion is made.

a. **Board Members present in person** – Todd Taylor, President; Bill Tatum, Secretary/Treasurer

b. **Board Members present via Zoom** – Kathy Anderson, Vice President; Jennifer Nyquist Bivins, Director at Large; Bruce Hadley, Director at Large

c. **Owners present** – 100%
   i. In person – 34.061%
   ii. Via Zoom – 65.939%

d. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Bill Gephart, Manager in Training; Kathleen Smith, Minutes

II. Proof of Notice of Meeting or Waiver of Notice – Todd stated the governing documents note that the Annual Meeting should be held on the 3rd Saturday of October each year. Per Chuck Scarminach's opinion, as long as notice of the meeting is given per the Bylaws, there is not an issue with changing the date of the meeting. Todd advised third parties or non-Members cannot attend the Annual meeting. Todd noted the meeting will run via a general proxy – he believes all owners should be able to participate, make motions and vote. Kennie Gill suggested all owners agree to hold the 2020 Annual Meeting via Zoom; there was no opposition to Kennie's suggestion. Todd then advised voting percentages will be per the Master Deed. Todd provided the agenda's unfinished and new business topics of discussion and asked for additional topics from the owners. There being none, **Bill Tatum made a motion to approve the agenda. Kathy Anderson seconded the motion. The motion passed unanimously.**

III. Reading of Minutes of Preceding Meeting – **Bill Tatum made a motion to waive the reading of the 2019 Annual meeting minutes and accept them into record as presented. Todd Taylor seconded. The motion passed unanimously.**

IV. Reports of Officers – To be discussed throughout the agenda.

V. Reports of Committees – There are no current committees.

VI. Election of Inspectors of Election – Kathleen Smith with IMC Resort Services, Inc. will serve as Inspector of Election.

VII. Election of Administrators – Jennifer Nyquist-Bivins will not stand for re-election. **Bill Tatum made a motion to re-elect incumbents Todd Taylor, Bill Tatum, Kathy Anderson and Bruce Hadley and to elect Ken Nyquist, and to reduce to a Board of 5-persons. Todd and Bill will both serve 1-year terms, Kathy will serve a 2-year term, & Ken and Bruce will serve 3-year terms. Todd Taylor seconded the motion. Bill Tatum, Todd Taylor, Kathy Anderson, Jennifer Nyquist Bivins, and Bruce Hadley voted in favor of the motion. Kennie Gill voted against the motion. The motion passed.**

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VIII. Unfinished Business

a. **Water Bills** – Todd mentioned the regime is responsible for not only irrigation but the individual units' water bills as well. Todd recently met with the water company to discuss how the property is metered – essentially, all units are individually metered. Per the Bylaws, water bills are the responsibility of the unit owner and suggested the Association revert back to this practice. Bryan Dorshimer will contact the water company to inquire the best. **Kennie Gill made a motion to follow the Bylaws which requires all water usage to be billed to the individual unit owner. Todd Taylor seconded the motion. The motion passed unanimously.**

b. **Decks** – In the past, repairing/replacing of the decks has been a topic of discussion. Todd noted a few owners have replaced their decks. An attorney opinion was obtained which stated that the regime is responsible for repairs/replacement. Kennie noted that an attorney opinion from 2017 stated that limited common elements which have been improved should be maintained by the owner going forward. The owners discussed obtaining an additional opinion from the current Association attorney.

c. **Landscaping/Irrigation** – The landscaping was lost in 2016 due to flooding. Three owners had their landscaping replaced. Todd suggested reimbursing these three owners, as landscaping is the responsibility of the regime. **Todd Taylor made a motion to reimburse on a quarterly basis over the next year 1591, 1593, & 1594 for their landscaping. Lucy Hadley seconded the motion. The motion passed without opposition.** Todd went on to mention an increase in the budget line item to repair irrigation throughout the property.

d. **Master Deed** – The original proposal for Master Deed amendments failed due to not achieving 100% approval from owners. **Jennifer Nyquist Bivins made a motion that the owners cure the defect in the current title and affirm/adopt the amended plat (the "revised as-built survey") and include the addition of the common elements. Revise the "apartment unit" descriptions and adjust the description of the limited common elements.** Jennifer then rescinded her motion. A lengthy discussion ensued amongst the owners. Kennie Gill expressed her comments and concerns with amending the percentage of ownership in the Master Deed and read a letter that she had emailed to all owners prior to the meeting.

IX. New Business

a. **2020/2021 Budget Approval – Todd Taylor made a motion to approve the 2020/2021 budget as presented. Kathy Anderson seconded the motion. Todd, Kathy, Bill, and Jennifer voted in favor. Kennie Gill voted "present". Bruce Hadley abstained. The motion passed.**

Bruce and Lucy Hadley left the meeting at 4:13 PM.

b. **Appendix 5C-1 – Bill Tatum made a motion to ratify Appendix 5C-1. Todd Taylor seconded the motion. The motion passed without opposition.**

c. **Roofs** – A hail storm in March 2018 caused damage to the roof which resulted in a hail claim. Bids for roof replacement have been obtained but are not "apples to apples". The Board will review the specs and go back out to the vendors for revised bids.

d. **Replacement Reserve** – Discussion ensued over rebuilding the replacement reserve fund.

X. Adjournment – There being no further business, **Bill Tatum made a motion to adjourn the meeting at 4:36 PM. Kathy seconded the motion. The motion passed without opposition.**

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NOVIT & SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

HILTON HEAD ISLAND:
THE JADE BUILDING, SUITE 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

EXHIBIT K

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January 9, 2019

VIA EMAIL ONLY

Todd Taylor, President
South Beach Village Lagoon Villas II
Horizontal Property Regime LVII
tetaylor@cox.net

RE: South Beach Village Lagoon Villas II Horizontal Property Regime LVII – Master Deed Amendment

Dear Todd:

I have reviewed the as-built survey recently delivered to me by Surveying Consultants, and I have asked Terry Hatchell for a meeting at my office to discuss some relatively minor technical changes. Once the survey is completed to our satisfaction we will commence the actual process to amend the Master Deed. The S.C. Horizontal Property Act ("Act') expressly prohibits the conveyance or subdivision of Common Property. Since segments of the Regime Common Property already, in effect, have been subdivided or "confiscated", the only absolute fix that would be to require Owners to tear down improvements. That of course is impractical. Our choice is to amend the Master Deed (by consent of ALL Unit Owners) to reflect the current building lines in accordance with the new survey, thus redefining the unit boundaries. We would then record the survey, the Amendment and Quit Claim Deeds of each unit as currently existing to each Unit Owner.

The Amendment would include restatement of any section of the Master Deed referencing the existing plat of record and replacing it with the recoding information for the new plat. In addition we can change the valuation of the units reflected in the Master Deed although this is not necessary. The description of the total square footage of the Property and the Common Elements in paragraph Fourth will be revised. The description of the "Villas" at paragraph Fifth C will be revised to reflect the new dimensions.

We have not yet determined the actual language we will use but the general intent is to cause the Amended Master Deed to reflect what is actually on the ground.

Simultaneously we will prepare a Quit Claim Deed from the Regime to each Unit Owner describing said Unit Owner unit as that shown on the new survey. This will result in the Unit

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Owner having title to all the dirt under his improved unit and eliminate the problem of structures existing on Common Elements.

We will also do a Consent Resolution for execution by all Unit Owners approving the survey and the Amendment.

All Unit Owners must approve and sign the Amendment. While this process is not approved or recognized under the Act, with all Unit Owners consenting to the Amendment, there would be no one to object.

We do not believe mortgage holders need to be part of this since it would be time consuming and costly to seek their approval of the Amendment. We are not disturbing existing mortgages. In the event a foreclosure does occur we can resolve any problems at that time. Once each current mortgage is satisfied the problem goes away. Any new Unit Owner will take title based on the new survey.

It is somewhat difficult to provide an exact amount for legal fees in light of the fact that we may run into something unexpected where we circulate documents to all Unit Owners for approval. Nevertheless a general estimate would be in the $4,000 range. This would be in addition to whatever we have charged to date and does not include surveyor costs, title abstract fees and recording fees.

If we need to discuss any of the above before we move forward please let me know. We do need some guidance on whether you want to change the valuations.

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll

Subject: **Fwd: Lagoon Villas II Master Deed/By-Laws Issues**
Date: 5/24/2018 1:30:43 PM Eastern Standard Time
From: greg@gwserviceshhi.com
To: gwatgwservice@aol.com

EXHIBIT L

Best Regards,

Greg

Gregory A. Wynn
President
GW Services, Inc.
Office- 843.686.4052
Fax- 843.686.4055

---------- Forwarded message ----------
From: **Kennie Gill** <kenniegill@yahoo.com>
Date: Fri, May 11, 2018 at 11:50 AM
Subject: Lagoon Villas II Master Deed/By-Laws Issues
To: Bill Tatum <btatum238@gmail.com>, Kathy Sizemore-Anderson <ksizemore@sizemoreinc.com>, Jennifer Nyquist <jnyquistbivins@gmail.com>, Bruce Hadley <lucysund143@gmail.com>, Todd Taylor <tetaylor@cox.net>
Cc: Greg Wynn <greg@gwserviceshhi.com>, Kenneth Miller <kvlm1412@yahoo.com>

Dear Fellow Owners -

We are writing to make you aware of a legal issue that affects the Master Deed for all of our villas at Lagoon Villas II at Hilton Head Island, SC.

We became aware of this issue when we recently consulted a realtor regarding potential sale of our property. Bill Tatum mentioned this issue in his email of February 21 regarding the proposed capital projects and funding sources. Bill has asked that we share this information with you.

We have been advised by our attorneys that the Regime is operating in violation of the Master Deed and South Carolina property law. A copy of our attorneys' letter is attached for your information only.

By way of this letter, we want to make all Regime owners aware of the defects in the Master Deed and the corrective action that the Board needs to take immediately.

The good news is, these defects are curable. It is our hope that the Board will consult its attorneys and address these issues before any action is proposed to amend the By-Laws or approve further capital projects or special assessments.

The Master Deed for the Regime is not up-to-date. Three units have been enlarged and are encroaching on the common elements: #1595 (built in 1998), #1594 (built in 2003), and #1591 (approved 2004). Although these enlargements presumably were built with the permission of the Regime Board, and Sea Pines CSA, the Master Deed has never been amended to reflect that approval. Attorneys for the Regime did draft an amendment to the Master Deed following approval of the enlargement to #1595, but that amendment to the Master Deed was never filed.

Additionally, the current ownership percentages, used for voting and fee and assessment allocation under the By-Laws, must follow the percentages laid out in the Master Deed and are therefore incorrect. The ownership percentages were adjusted for

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two of the three units: #1595 (adjusted in December, 1998) and #1594 (adjusted in December, 2003). The ownership percentage for #1591 has never been adjusted.

We would suggest that GW Services, Inc. contact the Regime attorneys to begin the process of amending the Master Deed with the goal of having an action item ready for discussion and approval by the Board at the annual meeting on October 19, 2018. If the Board wishes to create a committee to investigate this issue and report back, we are willing to serve on such a committee.

In the meantime, we intend to continue paying our share of fees and assessments based on the revised ownership percentages assigned to us in 1998, as we volunteered to do then and have continued to do since.

We look forward to putting these issues behind us so that we can move forward to improve and maintain this property that we jointly own and enjoy.

Sincerely,

Ken & Ann Miller
Kennie & Amar Gill
Unit #1595
Lagoon Villas II

Attachment: Novit & Scarminach, P.A. letter of 4.9.18

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EXHIBIT
M

[redacted]

From: Todd Taylor [mailto:tetaylor@cox.net]
Sent: Monday, August 05, 2019 3:03 PM
To: btatum238@gmail.com; jnyquistbivins@gmail.com; kenniegill@yahoo.com; knyquistjr@yahoo.com; ksizemore@sizemoreinc.com; kvlm1412@yahoo.com; lucysund143@gmail.com
Cc: Bryan Dorshimer <Bryan@IMCResortServices.com>; tetaylor@cox.net
Subject: Lagoon Villa - Legal Notice
Importance: High

Dear Fellow Villa Owners:

I am contacting you with time sensitive information pertaining to the Master Deed of Lagoon Villa II:

On August 2nd, I received a letter, via email, from an attorney representing an owner, Bill Tatum. The letter is attached above. I have forwarded the letter to our attorney, Charles (Chuck) Scarminach. The letter is a notice stating that, 1) "the Ma8ter Deed is in violation of the South Carolina Horizontal Property Act, Section 27-31-10. 2) "The Board's deliberate non-actions are in direct violation of the By-Laws of South Beach Village Lagoon Villas Horizontal Property Regime. And, 3) "the Board has the absolute duty to address and correct the issues stated within the legal opinion (dated April 9th, 2018). The notice gives the Board 30 days to correct the issues, or he "will be forced to explore said legal judicial alternatives".

Due to the receipt of this notice, I have taken the following actions:

1) As stated above, I have forwarded the legal notice to our attorney.
2) In an effort to alleviate all owner concerns over unit dimensions, I have once again engaged Survey Consultants to come back out and re-measure four of the units, 1592, 1593, 1594 and 1596. The cost for doing so was quoted at $1,500. IMC Resort Services will be on-site while the measurements will be taken, and they will be done on a Saturday morning, as to not interfere with any guest. The date will either be August 10th or August 17th. I will let everyone know as soon as I found out.
3) I have scheduled a Special Board Meeting to be held on Thursday, August 22nd at 10:00, eastern time. IMC Resort Services will be hosting the meeting. You will be able to participate in person, via conference call or by proxy. The date of the meeting was selected from a limited amount of options of available times and for allowing the longest time-frame to prepare for the meeting. A formal meeting notice will be sent to all owners. A formal quorum request will be sent to the Board Secretary, Kennie Gill to call for the Special Meeting. The meeting will allow for open discussion about the Master Deed. A motion will be introduced and a vote will take place regarding a suggested solution to amend the Master Deed. Any owner may recommend a solution to amend the Master Deed to the Board. **A 100% participation of the unit owners is needed to amend to Master Deed.** If the motion to amend to the Master Deed is not approved, I will then declare that an impasse has

occurred with the Board. The Board has a duty to correct the Deed. A second motion will be introduced at that time to instruct our attorney to pursue any and all legal remedies to correct the Board impasse. A simple majority of the Board is needed to approve this motion. The Board has been working to amend the Master Deed for over a year and a half now. The time and expense of such has far out-weighted all expectations. The lack of valid Master Deed and listing of correct proportionate interest is making the day to day management of our association more difficult, placing it at financial risk, and is now exposing us to possible legal liabilities. Now is the time for all owners to participate in the process, express their opinions and move forward with the amendments.

Regards,
Todd
(918) 231-0400

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LAW OFFICE OF
JOHN A. ELDER, IV, ESQ., PLLC
104 West Main Street - P.O. Box 678
Lebanon, Kentucky 40033
Writer's Email: jae4@johnaelderlaw.com

John Arthur Elder, IV

Telephone: (270) 321-4429
Telefax: (270) 692-1249

August 2, 2019

Lagoon Villas II, Homeowners Association
% Todd Taylor, President
3606 Terwilleger Blvd.
Tulsa, Oklahoma 74105

Re: South Beach Village Lagoon Villas II Horizontal Property Regime LVII—Master Deed Amendment.

To whom it may concern:

Please be advised that I have been retained by William Lawrence Tatum, Jr. (hereinafter referred to as "Mr. Tatum"), in regards to the Board's non-compliance with the Master Deed Amendment involving property at South Beach Village Lagoon Villas II Horizontal Property Regime LVII in Beaufort County, South Carolina. Respectfully, please let this correspondence serve as Mr. Tatum's formal notice of his intentions to wholly resolve the issues identified in numerical paragraphs 1 through 7 of the valid legal opinion issued via Novit & Scarminach, P.A.

Based on the aforesaid legal opinion, the following are undisputed: (i) the Master Deed is in violation of the South Carolina Horizontal Property Act, Section 27-31-10; (ii) the Board's deliberate non-actions are in direction violation of the By-Laws of South Beach Village Lagoon Villas Horizontal Property Regime LVII; and (iii) the Board has the absolute duty to address *and* correct the issues stated within the legal opinion.

If the aforementioned issues cannot be resolved, I have been directed to obtain legal counsel in Beaufort County on Mr. Tatum's behalf to explore judicial alternatives such as having a Court declare the rights and responsibilities of the parties in the Regime. Candidly, such action would be a costly, unnecessary, expenditure, for all parties, as the Regime's noncompliance is self-evident. However, Mr. Tatum would prefer to resolve these issues amicably with the Board, directly, for the benefit of the occupants of the property and for their successors in title.

In the event that I have not heard from you within 30 days from the date of this letter, I will assume that you have no interest resolving this matter and will be forced to explore said judicial alternatives, and, if attainable, damages for the Board's willful, continuous breach of its respective duties and obligations per the By-Laws of South Beach Village Lagoon Villas Horizontal Property Regime LVII.

I look forward to hearing from you in this matter and, I remain,

Very truly yours,

JOHN A. ELDER, IV, ESQ., PLLC

By:_____
JOHN A. ELDER, IV

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NOVIT &
SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

HILTON HEAD ISLAND:
THE JADE BUILDING, SUITE 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

EXHIBIT
N

October 9, 2019

VIA OVERNIGHT MAIL

Mr. Kenneth E. Nyquist, Jr.
311 East Lake Street
South Lyon, MI 48178

VIA OVERNIGHT MAIL

Ms. Jennifer Ann Nyquist-Bivins
2133 Park Ridge Drive
Bloomfield Hills, MI 48304

VIA OVERNIGHT MAIL

Mr. John C. Hadley
226 Trust
226 S. Sea Pines Dr. #1592
Hilton Head Island, SC 29928

VIA OVERNIGHT MAIL

Mrs. Kennie Lee Miller Gill
Mr. Amar Singh Gill
1419 N. Glebe Road
Arlington, VA 22207

VIA OVERNIGHT MAIL

Mr. Todd E. Taylor
Mrs. Catherine C. Taylor
3606 Terwilleger Blvd.
Tulsa, OK 74105

VIA OVERNIGHT MAIL

Ms. Kathy Sizmore Anderson
Sizemore Properties, LLC
2116 Walton Way
Augusta, GA 30904

VIA HAND DELIVERY

Mr. William Tatum, Jr.
Maple Mont South, LLC
682 South Proctor Knott Ave.
Lebanon, KY 40033

VIA OVERNIGHT MAIL

Mr. Kenneth V.L. Miller
Mrs. Anna M. Miller
1412 Fincastle Road
Lexington, KY 40502

RE: South Beach Lagoon Villas II Horizontal Property Regime LVII – Amendment to Master Deed

Dear Owner:

This firm has been retained to prepare an Amendment to the Master Deed to reflect the current dimensions of certain Dwelling Units within the Regime. Over the past many years, the owners of Dwelling Units 1591, 1594, and 1595 (the "Encroaching Units") expanded the size of their Units with the permission of the Council of Co-Owners. The expansion resulted in an

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encroachment over Common Elements of the Regime as shown on the original As-Built Survey and Master Deed for the Regime. Common Elements of the Regime are owned in proportion jointly by all Dwelling Unit owners. Thus in effect the Encroaching Unit owners do not own the property over which part their respective Dwelling Units have been extended.

In order to correct this problem two (2) alternatives are available as follows:

(1) Demand the owners of the Encroaching Units tear down any improvement located on Common Elements; or

(2) Convey the property underneath the improvement to the owners of the Encroaching Units by amendment to the Master Deed.

Because the encroachments are relatively small and do not materially impact the remaining Common Elements, the Council of Co-Owners believes the first alternative is impractical and harsh. Your President has proposed the second alternative as a much more equitable solution.

The Master Deed for the Regime requires any amendment to the Master Deed to be unanimously approved by the Dwelling Unit owners in the Regime. I am enclosing with this letter the following items:

(1) Consent Resolution;
(2) Proposed Amendment to Master Deed; and
(3) Boundary & As-Built Survey showing the correct interior area of each Dwelling Unit.

If you are in agreement with the proposed solution, please execute the Consent Resolution in the space provided above your name and return the original in the enclosed self-addressed stamped envelope. Upon receipt of Consent Resolutions, we will cause the Amendment to be executed by the President and the Secretary and thereafter the new Survey and Amendment will be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. If all Dwelling Unit owners do not agree and return these documents, the Amendment cannot occur.

If you have any questions, please contact the undersigned

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll
Enclosures

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CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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STATE OF SOUTH CAROLINA)	**DECLARATION OF AMENDMENT**
)	**TO MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT)	**LAGOON VILLAS II HORIZONTAL**
	PROPERTY REGIME LVII

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of _____, 2019, by South Beach Lagoon Villas II Horizontal Property regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973 Sea Pines Plantation Company, (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 a Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners of the Regime; and

WHEREAS, all co-owners of the Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners in the Regime in order to avoid hardship to the owners of the Encroaching Units have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof by this Amendment to Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the co-owners by execution of that certain Consent Resolution dated _____ 2019 have approved the revised As-Built Survey and authorized Todd E. Taylor as the duly elected President and Kennie Lee Miller Gill, as the duly elected Secretary of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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NOW THEREFORE, KNOW ALL MEN THESE PRESENTS that the co-owners of the South Beach Villas Lagoon Villas II Horizontal Property Regime LVII do hereby state and declare:

1. The above "WHEREAS" clauses are hereby incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a ½" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community

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Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I. C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom Type "A" Villas: (Unit 1591) This Villas measures 40.50 feet wide and 43.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,280 feet.
2. Two-bedroom Type "B" Villas: (Unit 1592) This Villas measures 39.90 feet wide and 41.10 feet deep in their maximum interior dimensions and contains a net interior area of 1,138 feet.
3. Three-bedroom Type "C" Villas: (Unit 1593) This Villas measures 45.40 feet wide and 48.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,342 feet.
4. Three-bedroom Type "D" Villas: (Unit 1594) This Villas measures 45.40 feet wide and 54.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,799 feet.
5. Two-bedroom Type "E" Villas: (Unit 1595) This Villas measures 41.40 feet wide and 52.40 feet deep in their maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villas: (Unit 1596) This Villas measures 40.50 feet wide and 38.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,069 feet."

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5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:
I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners (the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the purchase price for which the Property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary of the Regime, swear and attest that the aforementioned modifications were approved by unanimous consent of the co-owners of the Regime as provided for in the Master Deed of the Regime.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina. In case any of the provisions state above conflict with the Horizontal Property Act, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, or other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein.

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this ___ day of _____ 2019, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina

WITNESSES:

_____

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
Todd E. Taylor
Its: President

Attest:
By: _____
Kennie Lee Miller Gill
Its: Secretary

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Todd E. Taylor, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kennie Lee Miller Gill, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

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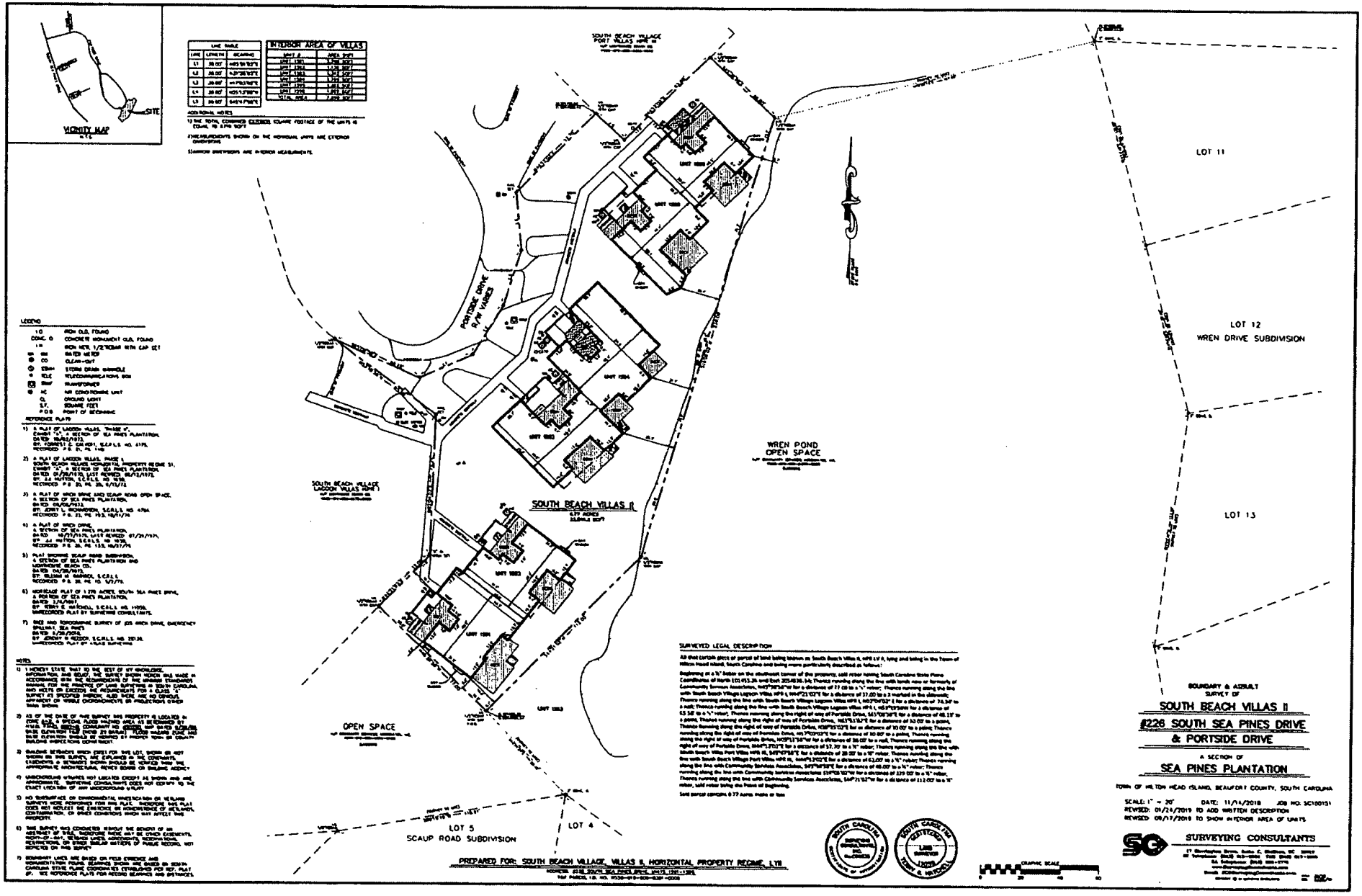

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EXHIBIT O

ELECTRONICALLY FILED 2020 Nov 25 2:37 PM BEAUFORT - COMMON PLEAS - CASE#2020CP0701847

IN WITNESS WHEREOF, the undersigned has this 14th day of October 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____ By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

Denise A. Robertson By: Kathy Sizemore Anderson
Kathy Sizemore Anderson
Its: Member

DENISE A. ROBERTSON NOTARY PUBLIC COLUMBIA COUNTY GA MY COMM. EXPIRES 10-27-2020

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

2

ELECTRONICALLY FILED 2020 Aug 25 5:23 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0705447

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

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_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 TRUST UAD JANUARY 4, 2013, Owner

By: _____
Lucy K. Landry
Its: Trustee of the 226 TRUST UAD JANUARY 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____ By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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ELECTRONICALLY FILED 2020 Nov 25 2:38 PM BEAUFORT - COMMON PLEAS - CASE#2020CP0701647

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

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DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

ELECTRONICALLY FILED 2020 Aug 25 2:23 PM BEAUFORT - COMMON PLEAS - CASE#2020CP0701647

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

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_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Myhis, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

ELECTRONICALLY FILED 2021 Nov 25 2:28 PM BEAUFORT - COMMON PLEAS - CASE#2020CP0701647

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

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_____

_____

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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NOVIT & SCARMINACH, P.A.

Attorneys at Law

C[illegible]ES A. SCARMINACH*
D[illegible]L A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

HILTON HEAD ISLAN[illegible]
THE JADE BUILDING[illegible]E 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

EXHIBIT P

ELECTRONICALLY FILED - 2021 Nov 12 5:27 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

July 6, 2020

VIA EMAIL ONLY

Kennie Miller Gill, Esq.
1419 N. Glebe Rd.
Arlington, VA 22207
kennie.gill@gmail.com

RE: South Beach Lagoon Villas II Horizontal Property Regime LVII – Amendment to Master Deed

Dear Kennie:

Attached please find the following:

1. Declaration of Amendment to Master Deed for South Beach Lagoon Villas II Horizontal Property Regime LVII; and
2. Consent Resolution – Council of Co-Owners South Beach Lagoon Villas II Horizontal Property Regime LVII (signed copies).

The Consent Resolution when signed by all owners authorizes an amendment to the Master Deed which:

1. Converts common elements located beneath unauthorized expansions to owners of Units 1591, 1594 and 1595 to a part of each Unit;
2. Adjusts the proportionate share of ownership in the common elements;
3. Approves the revised as-built survey which describes the as-built dimensions of the expanded Units referred to above, and reduces the amount of common element acreage to reflect the improvements constructed by said owners; and
4. Authorizes Mr. Taylor and you or your successors as President and Secretary to execute the actual amendment.

The Amendment to the Master Deed was drafted to incorporate the aforesaid Consent Resolution.

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The Amendment reflects the following revisions to the Master Deed:

1. Redefines the land included in the Regime Property to reflect the dimension referred to in the new as-built survey;
2. Redistributes the acreage included in Dwelling Units and common elements (the surveyor will provide this exact measurement);
3. Reflect the actual measurement of each Unit as described on the new as-built survey and defines the Type of Units by size rather than bedroom;
4. Revises the proportionate value of each Unit to reflect the difference in size as actually measured and reflected in the new as-built survey. The total value remained the same but since each Unit was now different in the size referred to in the original Master Deed it was concluded by the Board, the values should be revised. Adjustment of the proportionate values can be made provided 100% of the Unit owners agree.

The intention of the Board was to cause the Master Deed to conform with the new as-built survey. This would resolve the issue of unauthorized expansion and configuration of common elements by the owners of Units 1591, 1594 and 1595 without resorting to the draconian solution of tear down. Furthermore, the changes would eliminate disparity between the Mater Deed size and measurements as reflected in the existing as-built survey and actual size and measurement shown on the new as-built survey.

The Board apparently determined this was fair to all owners rather than punishing the owners of Units 1591, 1594 and 1595. We also believe this solution is in line with our discussions when you disclosed the problem to me at our first meeting. Frankly the Board's decision to have the Regime absorb the cost on a pro rata basis rather than impose the burden on the encroaching owners is a benefit to you.

An easement alternative was discussed but we believe this would also have required and Amendment to the Master Deed since it would have resulted in an in perpetuity conveyance of an interest in the common elements. The easement solution would be something the encroaching owners and their successors in title would have to explain to prospective purchasers and lenders in the future and could conceivably be a negative factor.

I hope the foregoing helps you to understand the rather complicated process the Board approved based on our recommendations.

If you have additional questions, please advise. If not, we would appreciate your early execution and delivery of the Consent Resolution.

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll
Attachments
cc: Mr. Todd E. and Catherine C. Taylor
Mr. Kenneth E. Nyquist, Jr. and Ms. Jennifer Ann Nyquist-Bivins
Ms. Lucy K. Landry
Ms. Kathy Sizemore Anderson
Mr. William Tatum, Jr.
Mr. Kenneth V.L. Miller and Ms. Anna M. Miller

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STATE OF SOUTH CAROLINA)	**DECLARATION OF AMENDMENT**
)	**TO MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT)	**LAGOON VILLAS II HORIZONTAL**
	PROPERTY REGIME LVII

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of _____, 2020, by South Beach Lagoon Villas II Horizontal Property regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973 Sea Pines Plantation Company, (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 a Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners of the Regime; and

WHEREAS, all co-owners of the Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners in the Regime in order to avoid hardship to the owners of the Encroaching Units have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof by this Amendment to Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the co-owners by execution of that certain Consent Resolution dated _____ 2019 have approved the revised As-Built Survey and authorized Todd E. Taylor as the duly elected President and William Tatum, Jr., as the duly elected Secretary/Treasurer of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

IN WITNESS WHEREOF, the undersigned has this 14th day of October 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

Denise A. Robertson

DENISE A. ROBERTSON NOTARY PUBLIC COLUMBIA COUNTY, GA MY COMM EXPIRES 10 27 2020

By: Kathy Sizemore Anderson
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____

By: _____
Kennie Lee Miller Gill
Its: Trustee

_____

By: _____
Amar Singh Gill
Its: Trustee

TAYLOR DOCS 000049

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

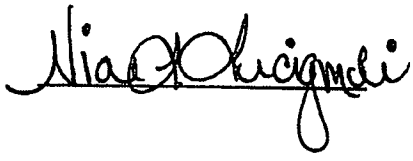
DWELLING UNIT 1591

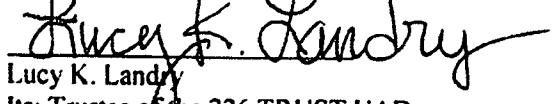
_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 TRUST UAD JANUARY 4, 2013, Owner



By: 
Lucy K. Landry
Its: Trustee of the 226 TRUST UAD JANUARY 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____ By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

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Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

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_____

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Sr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d
January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

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IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

_____

_____

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Blyth, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____

By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____

By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____

By: _____
Kennie Lee Miller Gill
Its: Trustee

_____

By: _____
Amar Singh Gill
Its: Trustee

ELECTRONICALLY FILED - 2021 Nov 12 5:27 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

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DWELLING UNIT 1591

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Kenneth E. Nyquist, Jr., Owner

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Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

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By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

By: _____
Kennie Lee Miller Gill
Its: Trustee

By: _____
Amar Singh Gill
Its: Trustee

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Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

TAYLOR DOCS 000055

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NOVIT & SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

HILTON HEAD ISLAND:
THE JADE BUILDING, SUITE 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

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EXHIBIT Q

July 14, 2020

VIA EMAIL ONLY

Kennie Miller Gill, Esq.
1419 N. Glebe Rd.
Arlington, VA 22207
kennie.gill@gmail.com

Mr. Todd E. Taylor, President
South Beach Lagoon Villas II, HPR LVII
3606 Terwilleger Blvd
Tulsa, OK 74105
tetaylor@cox.net

RE: South Beach Lagoon Villas II Horizontal Property Regime LVII – (the "Regime") Amendment to Master Deed

Dear Mrs. Gill and Mr. Taylor:

At Mr. Taylor's request, I have reviewed Mrs. Gill's email to the Regime Co-Owners of July 7 which poses three questions of concern. Mr. Taylor asked that I provide specific responses to those questions.

1. *The Regime attorney has changed his opinion as to what is needed to amend the Master Deed.*

In both my letters referenced by Ms. Gill, I have always maintained that an amendment to the Master Deed will be required to resolve the issues of the apartment expansions into the common elements of the Regime. I have changed my opinion as to the necessity of quit claim deeds from the Regime to the Co-Owners after a full review of all documents and applicable law. This change is not significant and does not alter my opinion of the ultimate requirements to resolve the issue.

A horizontal property regime is created by the recording of a Master Deed compliant with the South Carolina Horizontal Property Act (the "Act"). The purpose of the Master Deed is essentially to create apartments (severed from land) which are then treated as real property in and of themselves. The land becomes a common element of the Regime as a whole. The Master Deed defines the specific boundaries of the apartments themselves and those boundaries are incorporated into subsequent deeds of conveyance by reference to the Master Deed in the legal descriptions. In other words, the land is "converted" into apartment units by the Master Deed,

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and the boundaries of the apartment units are defined (strictly) by the Master Deed. The Act at Section 27-31-20(f) includes the land on which "the apartment or building stands" in its definition of general common elements. The Master Deed currently does not include the land as part of the Dwelling Unit in its description of the Dwelling Unit.

By changing the boundaries of certain apartment units by an amendment to the Master Deed, the descriptions of the apartment units are changed by the Amendment itself. Given that all Co-Owner's will be required to consent to the Amendment to the Master Deed, we do not believe subsequent quit claim deeds are a necessity since there has been no conveyance of land.

2. *The Amendment to the Master Deed changes the basis on which the Regime ownership is based from a value basis to a square footage basis.*

The Master Deed at Section Eleventh permits the percentage of undivided interest to be modified with the unanimous consent of all the Co-Owners expressed in an amendment to the Master Deed. The Master Deed at Section Fifth established two types of apartment units based on the two-bedroom and the three-bedroom apartments. It would appear that each type of apartment was substantially similar and was of the same size, thus creating two models. The Section indicates the net interior area of the two-bedroom Type A apartment to be 1,086 square feet, and the net interior area of the three-bedroom Type B apartment to be 1,400 square feet. Section Sixth then established at $73,000 statutory value for the four two-bedroom apartments, and an $83,000 statutory value for the two three-bedroom apartments. The purpose of the statutory value is solely for the calculation of each Co-Owner's interest in common elements, which then becomes the Co-Owner's voting percentage and responsibility for common expenses.

The statutory value as contemplated by the Act is or certainly can be an arbitrary value. It is not required to be based on the size of the apartment, nor the cost of construction or replacement, nor the selling price thereof. I believe this flexibility is by design. It allows a developer to consider (i) differing statutory values for two identical apartments, based on the desirability (based on location, view or otherwise); or (ii) disregard any such desirability and value the apartments as equal.

We prepared the proposed amendment to Section Fifth and Section Sixth of the Master Deed based on the request and under the direction of first Mr. Tatum and later Mr. Taylor as presidents of the Regime (subsequent to Mrs. Gill's discovery of the problem). The amendment to Section Fifth adjusts the net interior area of each of the six apartments comprising the Regime based on the current net interior area as indicated by the revised "as-built" survey. This Section is a description of the apartment units themselves. The amendment to Section Sixth revises the statutory value for each apartment and this valuation was based on the net interior area divided into original net total statutory value of the Master Deed. We do not believe revising the description of apartments to contain the actual net interior area as determined by surveyor's measurements is violative of the Act. Likewise, we do not believe adjusting the statutory values of the apartment units or the percentage of ownership in the common elements creates a violation of the Act.

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That being said, nothing in the Act would require an amendment or revision of the statutory value or percent ownership in the common elements to effect the change in the boundaries (or sizes) of the apartment units. The basing of the percentage ownership and the common expenses on the statutory value of an apartment certainly implies an intentional increase the allocated voting right and common expenses to the more "valuable" apartments although there is no statutory requirement that this be done.

In responding to Mrs. Gill's question on whether the original Master Deed was defective based on the issue of valuations, my response is that neither the original Master Deed, nor the proposed Amendment revising the sizes and statutory valuations are defective. In responding to the question, I assume the stated measurements of the surveyor used in the revised apartment unit descriptions are accurate.

3. *The Regime attorney has changed his opinion with regard to the need for a mortgagee joinder.*

With regard to the need of a mortgagee joinder from each mortgage holder, my opinion has not changed. However, I was advised that only Mr. Taylor's apartment unit is currently encumbered by a mortgage, and at one point was considering refinancing his apartment after the recording of the Amendment. Now, it is my understanding that he is considering paying the outstanding mortgage off in total. If the refinance were to occur, Mr. Taylor's subsequent mortgage would be subject to the Master Deed as amended by the Amendment, and no mortgagee joinder would be needed. Regardless, Mr. Taylor would be subject to the Amendment, as would his predecessor in title to the property. However, in the event the refinance does not occur, and in the event his current lender were to foreclose its mortgage, then Mr. Taylor's apartment would be conveyed as described in the original Master Deed. I am advised that Mr. Taylor's apartment was never changed or expanded, and thus the original Master Deed does currently accurately describe his apartment. The Amendment to the Master Deed would remain effective as the six Co-Owners and their predecessors in title. Of course, if Mr. Taylor chooses not to refinance, having Mr. Taylor's lender execute and record a mortgagee joinder (or a refinance after the Amendment) remains the most desirable outcome.

I believe we all are aware of the issues related to this problem:

A. Three of the six apartments comprising the Regime have been expanded onto the common elements (land) of the Regime;

B. This expansion is prohibited under the Master Deed and the Act, as the Act specifically prohibits the partition of Regime common elements;

C. Although the three Co-Owners may have sought and received the Regime Board's consent for the expansions, the Regime should not have granted its consent without first obtaining the approval of all Co-Owners and the recording of an amendment to the

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Master Deed revising the apartment unit descriptions and adjusting the description of the common elements;

D. The expansions create a title "issue" as the legal description of the expanded apartments does not match the actual boundaries of the expanded apartments; and

E. The issue would be difficult to a real estate closing attorney or title company to detect because the legal description of the Co-Owner's deed would match the description of the Master Deed. Detection would literally require a physical inspection of the apartment with a comparison against the Master Deed, or an "as-built" survey of the expanded apartment. This does happen from time to time.

The resolution of the issue will require the consent of all Co-Owners and the execution and recording of an Amendment to the Master Deed addressing, at least, those items stated at C above.

At this point and at the request of Mr. Taylor, as President of the Regime, I have prepared the proposed Amendment to the Master Deed and distributed a Consent Resolution for each Co-Owner to consent to the Amendment. The surveyor has prepared a revised 'as-built" survey to show all changes. To date all Co-Owners other than Mrs. Gill have in fact executed and delivered the Consent Resolution. The major issue of contention appears to be the reallocation of the statutory values of the apartments, which will result in an adjustment of the allocation of voting rights and responsibility for common expenses. The revision to the statutory values is neither required, nor prohibited, under the Act. However, the Co-Owners must reach unanimous consent to create the Amendment. This is a practical matter rather than a legal issue, and as such, one that the Co-Owners should resolve.

I remain available to answer any questions you may have or work on further revisions to the Amendment if the Co-Owners reach a consensus.

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll
cc: Mr. Kenneth E. Nyquist, Jr. and Ms. Jennifer Ann Nyquist-Bivins
Ms. Lucy K. Landry
Ms. Kathy Sizemore Anderson
Mr. William Tatum, Jr.
Mr. Kenneth V.L. Miller

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547 **Affidavit of John A. Elder, IV**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

Personally appearing before me the undersigned, John A. Elder, IV, hereafter being duly sworn, states and deposes as follows:

1. I am a citizen and resident of Marion County, Kentucky, am over the age of 21 years, and am otherwise competent to give this Affidavit. I have personal knowledge of the matters set forth herein.

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2. I have an ownership interest in residential real property in South Beach Lagoon Villas II Horizontal Property Regime, LVII (the "Regime"), located at 226 Sea Pines Drive, Apt. 1594, Hilton Head Island, South Carolina. I acquired an ownership interest in this property on December 25, 2020.

3. I acquired my ownership interest in Regime property from my father-in-law, William Tatum, who until recently served as President of the Regime.

4. I am familiar with the manner and method by which the Regime creates and maintains its business records pertaining to annual meeting minutes and other meeting minutes as required by law and in accordance with common standards. Minutes of annual meetings and other meetings, including those meeting minutes attached hereto as Exhibits A-J are kept in the regular course of business, and were made and kept by the Regime as a regular practice.

5. The meeting minutes attached hereto as Exhibits A-J were made at or near the time of the occurrence of the matters set forth in those documents. The meeting minutes attached hereto as Exhibits A-J were made by a person with knowledge of those matters or from information transmitted by a person with knowledge of those matters. The meeting minutes attached hereto as Exhibits A-J were made and kept in the course of regularly conducted business activity. The meeting minutes attached hereto as Exhibits A-J were made and kept by the Regime as a regular practice.

6. Attached hereto are true and correct copies of the following meeting minutes maintained by the Regime:

   a. 2003 Annual Meeting held 10-16-2003 **(Exhibit A)**

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b. 2004 Annual Meeting 10-14-2004 **(Exhibit B)**

c. 2012 Annual Meeting held November 2, 2012 **(Exhibit C)**

d. 2016 Annual Meeting held March 3, 2017 **(Exhibit D)**

e. 2017 Annual Meeting held October 20, 2017 **(Exhibit E)**

f. 2018 Annual Meeting held October 18, 2018 **(Exhibit F)**

g. Board of Directors Meeting held May 9, 2019 **(Exhibit G)**

h. Annual Meeting held October 17, 2019 **(Exhibit H)**

i. Special Owners Meeting held 1-29-20 **(Exhibit I)**

j. Annual Meeting held October 15, 2020 **(Exhibit J)**

7. The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units.

8. I have been made aware that over the years, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime presently encroach into the Common Elements of the Regime.

9. Upon information and belief, the expansion to Defendants' Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2002; the expansion to Unit 1591 was completed in approximately 2004.

10. Far prior to my acquisition of an ownership interest in Regime property, the 2003 annual meeting minutes dated October 16, 2003 reflect that the co-owners

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requested that Unit 1594 be re-assessed in light of its expansion, and that there be an amendment to the Master Deed reflecting this change. *See* Exhibit A.

11. The 2004 annual meeting minutes dated October 14, 2004 reflect:

> [R]egarding additions to the units such as those at 1594 and 1595, when those additions are recorded as changes to the Master Deed, they will also be included under the regime's master policy. **[A co-owner] noted that when [counsel] was contracted to file an amendment to the deed for unit 1594 he discovered that there had never been one file for the addition to unit 1595. As there is a request before the owners for an addition to 1591, [property management] suggested that the deed be amended one time, inclusive of all 3 unit renovations, which will keep the cost down. All members were in agreement with this plan."...**
>
> ...The...owners of unit [1591] presented a plan for an addition to their unit for approval. They explained that the integrity of the footprint of the unit would not change, but that they would partially enclose the rear and extend the deck area...

See Exhibit B.

12. The 2016 annual meeting minutes dated March 3, 2017 reflect:

> Kennie Gill expressed concern with the Master Deed, as it does not clearly distinguish what is owner responsibility vs. regime responsibility. [Property Management] advised most regimes pay around $5,000 for legal assistance pertaining to Master Deed and Bylaw changes. After some further discussion it was decided that the sidewalk and lighting discussion would be tabled until the master deed issues are looked into. It was agreed that kennie gill would make a list of the proposed changes and [Property Management] would contact an attorney to work with the Regime.

See Exhibit D.

13. The 2017 annual meeting minutes dated October 20, 2017 reflect:

> <u>Unfinished Business</u>
>
> Kennie Gill updated the ownership with stating she did some more research on the Master Deed and By-laws. She explained they were out of date, and they would eventually need to be updated. In addition, the percentage of ownership was not current, with the patio additions and improvements, and suggested to have them included for the insurance coverage....[property management] advised most Regimes pay around

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$5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some discussion, it suggested to have the Master Deed and Bylaws updated when the funds were available.

See Exhibit E.

14. The 2018 annual meeting minutes dated October 18, 2018 reflect:

Master Deed update – Bill reported the attorney continues to work on the Master Deed update. The Association is the process of determining property lines and surveying in order to confirm percentages of ownership for the Master Deed amendment. The Board will first review the amendments before they are filed. The survey company will also determine who owns the lagoon bank.

See Exhibit F.

15. Board of Director meeting minutes dated May 9, 2019 reflect:

Master Deed and By Laws Status – [President Taylor] reported the Association has been working on Master Deed and By Law amendments for a little over a year. Attorney Novit & Scarminach and Survey Consultants have both been retained during this process. Attorney Charles Scarminach advised that 100% agreement by the owners must be obtained to approve Master Deed amendments. [President] read 2 letters and an email from Attorney Charles Scarminach. [President] referenced plat "Exhibit A" originally filed with the Master Deed. He reported the original dwelling descriptions are no longer accurate due to villa remodeling and adding on to the square footage. [President] then went on to reference an "Interior/Exterior Measurements" excel spreadsheet as measured by Survey Consultants....There are (2) options to reallocate and define values proportionately; 1.) use interior dimensions as measured by Survey Consultants. 2.) use exterior dimensions as measured by Survey Consultants. Discussion ensued regarding the (2) options. A special meeting will be called to officially vote on the proposed amendments. [President/Plaintiff] thanked Kennie Gill for her work on this project.

See Exhibit G.

16. The 2019 annual meeting minutes dated October 17, 2019 reflect:

Todd Taylor updated owners on the potential master deed amendments. Todd reminded everyone that 100% of the owners must agree to the proposed changes in order to pass the amendments. Todd feels positive about coming to a solution soon.

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Bill Tatum made a motion for the Association to call a Special Meeting within 30 days, if the MD amendments are not approved, and have attorney Chuck Scarminach present to advise of the rights of the Association going forward. Also, at that meeting, the Officers are to present details of a special assessment to include the funding the MD amendments, decks/stair repairs, landscape improvements and sewer line repairs. Kathy Anderson seconded the motion. The motion passed without opposition.

See Exhibit H.

17. The Regime held a special meeting on January 29, 2020, the minutes of which reflect:

Update on master Deed: Todd reminded owners that Chuck Scarminach has been hired to draft amendments to the master deed. Todd pointed out that at some point in time, the owners agreed to change % of ownership without correctly amending the Master Deed. Todd suggested properly amending the Master Deed.

Special Assessment and Vote: The master deed and survey expenses have cost approximately $16,000 with more expenses to come…

See Exhibit I.

18. The 2020 meeting minutes dated October 15, 2020 reflect:

Master Deed – The original proposal for Master Deed amendments failed due to not achieving 100% approval from owners. Jennifer Nyquist Bivins made a motion that the owners cure the defect in the current title and affirm/adopt the amended plat (the "revised as-built survey") and include the addition of the common elements. Revise the "apartment unit" descriptions and adjust the description of the limited common elements. Jennifer then rescinded her motion. A lengthy discussion ensued amongst the owners. Kennie Gill expressed her comments and concerns with amending the percentage of ownership in the Master Deed and read a letter that she had emailed to all owners prior to the meeting.

See Exhibit J.

19. During the time I have been involved with the Regime, I have observed and participated in discussions among the Regime co-owners regarding the need to

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amend the Master Deed for the Regime to reflect the expansion of the Encroaching Units.

20. The Regime has not been able to effectuate an Amendment to the Master Deed because it has not been able to procure 100% approval of all co-owners.

21. To date, the Regime has incurred the following expenses in its attempt to effectuate an amendment to the Master Deed, in a total amount not less than $20,017.50:

    a. Attorney's fees paid to Novit & Scarminach, P.A: $7,825.00;

    b. Fees paid to Surveying Consultants, Inc.: $11,192.50; and

    c. Insurance Deductible following being named as party to instant action: $1,000.

22. Based on all the events which have transpired as set forth herein, I believe it is impossible and impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed if 100% approval of the co-owners is required.

23. Based on all the events which have transpired as set forth herein, the communications among the owners, the effort and expense incurred on behalf of the Regime, I do not foresee any circumstances under which the Regime will be able to procure 100% approval of all co-owners to a proposal to amend the Master Deed.

24. The Regime's inability to amend the Master Deed has had a large negative impact on the Regime's financial health and ability to conduct business, particularly necessary maintenance items. The Regime is in need of upgrades to the sidewalks,

parking areas, lighting, and other capital improvements. However, the Regime has been unable to move forward with these projects due to continuing disputes over the Master Deed.

FURTHER AFFIANT SAYETH NOT.

John A. Elder, IV

Sworn to and subscribed before
me this 12th day of November, 2021.

Notary Public for the State of Kentucky
County of Marion

My Commission Expires: 5/9/2022

ERIN T. BLAND
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
ID # 599254
MY COMMISSION EXPIRES 05/09/2022

(AFFIX NOTARY SEAL)

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EXHIBIT
A

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LAGOON II ANNUAL MEETING
OCTOBER 16, 2003

The Annual Meeting of the Lagoon II homeowners association was held on October 16th, 2003 at the management company office. There were 67.46% of the owners present, either in person or by proxy, so proof of notice of the meeting was waived.

There was a motion made, seconded and unanimously approved to accept the minutes of the previous annual meeting as written.

Mr. Ken Nyquist, Board President, reported that the gutters had finally been completed on all buildings, with the invaluable help of Mr. Ken Miller. Appreciation was expressed for his assistance in obtaining the lowest possible quote for this work.

Mrs. Anne Trent, Board Vice President, reported that the landscaping looks better, however, there is still a bare area behind the Sanders' unit. It was explained that the sod behind this unit would be replaced at the owner's expense, due to major construction that has caused the grass to die. Ken Nyquist reported that the palm installed at the side of 1591 might be too tall and requested that Second Nature, the landscape company, look at the tree. Mrs. Trent also reported that her gate should be fixed and that there are a number of lights that are currently burned out. She also complimented the pest control company for a job well done.

The members requested that the square footage of the Sanders' unit be reassessed in light of their recent renovations and that there be an amendment to the Master Deed reflecting this change. The budget was presented and unanimously approved, and coupons will be issued reflecting the new percentages of ownership.

The next meeting of the homeowners will be held on October 14, 2004 at 10:00 a.m. As there was no further business before the Association, the meeting was adjourned.

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EXHIBIT B

Annual Meeting of the Lagoon II Property Owners Association

The Annual Meeting of the Lagoon Villas Horizontal Property Regime LVII was held on Thursday, October 14, 2004 at 10:00 A.M. at the management company offices. Property Manager Greg Wynn called the meeting to order.

Roll Call & Certification of Meeting Notice:

Greg Wynn reported that 100% of the homeowners were present, either in person or by proxy. He requested that Proof of Notice be waived, due to 100% attendance, and those present approved the request.

Approval of Minutes:

A motion was made, seconded and passed to dispense with the reading of the minutes of last year's Annual Meeting. The minutes were approved as written.

Reports of Officers & Committees:

Greg Wynn introduced himself and his company, G.W. Services, to the owners present. He also introduced Rob Ellison, property manager, and explained Rob's duties as they relate to the Lagoon II residents. He noted that Rob would be responsible for walking the property on a regular basis, coordinating repairs and vendors and trouble-shooting for the owners. Dr. Trent complimented the management team on their performance, as well as the landscape and maintenance staff.

Expanding on his report, Greg reported on the insurance the regime currently holds with State Farm. It was noted that the regime is currently insured for a total value of $940,000.00 that, Greg suggested, might best be reevaluated to ensure that the property is correctly valued for insurance purposes. This is best done, Greg explained, utilizing an independent insurance appraiser, as neither the State Farm agent nor the property manager should be entrusted with this duty. Independent insurance appraisals, while costly, should be done every 3-4 years, likely at a total cost of $1800.00 for all 3 buildings. After discussion, the property owners requested that G.W. Services forward this information to all the owners with a ballot, indicating their approval of this appraisal. After the votes are tallied, G.W. Services will report to the homeowners. Greg also explained that, in the event of a total loss (over 50% of the property), the regime's insurance would restore the units in accordance with the Master Deed. That is, any upgrades, additions or betterments that owners have installed or were installed at the time they purchased their unit would be covered under their own HO6 policy in the event of a loss. Regarding additions to the units such as those at 1594 and 1595, when these additions are recorded as changes to the Master Deed, they will also be included under the regime's master policy. Annie Ginn noted that when Jack Qualey was contacted to file an amendment to the deed for unit 1594 he discovered that there had never been one filed for the addition to unit 1595. As there is a request before the owners for an addition to 1591, Greg suggested that the deed be amended one time, inclusive of all 3-unit renovations, which will keep the cost down. All members were in agreement with this plan.

Financial Presentation:

Greg Wynn reviewed the financial reports, copies of which were distributed to the members. He reported that the association is in good shape financially, with $7890.29 in the operating account and $2385.21 currently being held in reserve. Suzie Priegel, association Treasurer, requested that excess money in the operating account be moved to the reserve account in order to maximize growth. This will be done

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immediately. In addition, Greg explained that G.W. Services would like authorization to issue quarterly, instead of monthly, financial statements to the members, which was agreed to by all present.

Election of Officers:

A motion to reelect the present slate of officers on the Board was made, seconded and unanimously approved. All homeowners serve on the Board and Ken Nyquist will continue as President, Anne Trent as Vice-President and Suzie Priegel agreed to serve as Secretary/Treasurer for another year.

New Business:

Greg Wynn presented a copy of a letter he had received from Ken Miller, owner of unit 1595, wherein Mr. Miller offered to act as liaison on matters concerning regime projects. Greg explained that, while he had no problem dealing with specific owners on areas of concern to the association, i.e.: a landscape contact person, a maintenance contact, the management company would prefer it if there is a clearly defined chain of command. The owners, after discussion, agreed that Ken Nyquist, as Board President, should be the contact person for the management company.

In other maintenance matters, Greg Wynn presented a proposal in the amount of $1,800.00-$2,400.00 from Piper Plumbing to take care of a sewer problem at 1595. He reported that K & K Plumbing had also given a bid for the job that would include a camera-shot at a cost of $230.00 to define the problem and subsequent estimates to repair could be completed at a total cost of $700.00-$800.00. Greg stated that he felt very comfortable hiring K & K Plumbing to do this work, so a motion was made, seconded and approved unanimously to proceed. Wood rot was also discussed, and Greg recommended that G.W. Services be authorized to do a visual inspection of all 6 units, removing and replacing rotten wood, then paint to match. The money for this could come from the general maintenance fund, and the work would be billed on a time & materials basis. The owners approved this work as well. Mrs. Trent asked how often G.W. Services planned to power wash the buildings, and Greg informed her that it is scheduled to be done on an annual basis, with roofs being cleaned 4 times per year. Mrs. Trent also asked whether there is a plan in place to replace old, dying azaleas and she suggested a "confederate rose" might be a good substitute.

The Nyquist's, owners of unit 1592, presented a plan for an addition to their unit for approval. They explained that the integrity of the footprint of the unit would not change, but that they would partially enclose the rear and extend the deck area. An easement for the steps, which will encroach slightly on the common area, will be obtained. The homeowners approved the plan and approval will be sent to the Sea Pines ARB. Mrs. Trent asked whether there was any area available on the property where an outdoor storage shed could be erected for use by all owners, and Greg replied that in order to accomplish this, a 2/3 majority of the homeowners would have to approve such a change to the common area. The matter was not discussed further.

Greg then presented the proposed budget for the fiscal year. He pointed out areas where the regime had either over- or under-budgeted the previous year, and explained the changes made. The regime fees increased slightly and a motion was made, seconded and unanimously approved to accept the budget as presented. In a related matter, Greg offered the owners 3 options for billing and paying the monthly fees. He stated that coupons could be issued for monthly payments at a cost to the regime or invoices could be sent each month for payment. The other option, which he recommended, is to invoice the owners on a quarterly system, which would require owners to pay their fees only four (4) times per year, thereby cutting down on bookkeeping and check writing. This idea was approved by unanimous vote by the owners.

As there was no further business, the meeting was adjourned at 11:30 A.M.

EXHIBIT
C

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LAGOON II
2012 Annual Meeting
November 2nd, 2012

The 2012 Lagoon II Annual Meeting was held on Friday, November 2nd, 2012 at 1 pm at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

The meeting was called to order and 2 of the 6 owners were in attendance.

Owners in attendance included: Ken Miller and daughter Kennie Gill, #1595 & Todd Taylor #1596. Also in attendance from GW Services, Inc, were Valerie Chism and Gregory A. Wynn.

Owners represented by proxy included: Ann Trent #1593, Bill Tatum #1594, Bruce Hadley #1592

A motion was made, seconded and carried to approve the 2011 annual meeting minutes as mailed.

Insurance
Greg Wynn discussed the insurance coverage for the property. Greg informed the owners that he anticipates the property premiums to increase by 8-15% in the coming year. He explained that he is seeing this in properties that are 20+ years old and also that have framed construction. Greg stated that he would know more when the policy is put out to bid in March. Ken Miller inquired about the % of ownership and if those people that have added on to their units would be fully covered by the Regime's insurance. After pulling the Master Deed Greg informed the ownership that according to the percentages of ownership given to GW Services when they took over management it looked like the Regime had changed them since the Master Deed reflected different percentages. Kennie Gill stated that the Regime needs to look into this further so that in the event there would be a rebuild there would be no confusion as to what the Regime insurance covered. Greg reminded the ownership the importance of updating your "betterments and improvements" in your HO6 policy adding that a loss assessment clause should be added as well.

Financials
Greg presented the financial report of the Regime noting that currently, the operating account has $1,505.32; and there was no reserve account due to the fence and painting project. The fiscal year ends 10/31/12 and there are no receivables, no account payables and there are no reserve funds being deposited at this time.

Old Business
There were no items discussion under Old Business.

New Business
Greg began by informing the owners that he had replaced Valley Crest Landscaping with The Greenery. He explained that he had started seeing a change in the quality of work. Greg also explained that three of the other Regimes on the street were all using The Greenery as well.

Next item discussed was the erosion along the lagoon bank. Todd Taylor inquired about who would be responsible for adding more rock along the area. Ken Miller confirmed that CSA had supplied the rock that was there now. Greg stated that he would assume CSA would be responsible for adding more. Ken Miller affirmed that he would get with Frank Nettles (CSA) regarding the issue.

Todd Taylor inquired about the terra cotta sewer lines and future need to be replaced with PVC in the next few years due to tree root growth and corrosion. Greg suggested that the Regime build up at least $12k in the reserves for a cushion and start saving for other capital projects as well. Todd Taylor motioned that $250 per quarter be assessed for 1 year in order to replenish the Reserve account; the motion was seconded and carried.

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Greg presented the proposed budget. A motion was made, seconded and passed to approve the proposed budget as presented.

All Regime owners are members of the Board. Todd Taylor was elected as President.

The 2013 Annual Meeting will be November 1st. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 2:10 pm.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager

: VLC

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EXHIBIT
D

LAGOON II
2016 Annual Meeting
March 3rd, 2017

The 2016 Lagoon II Annual Meeting was held on Friday, March 3rd, 2017 at 10:00 am at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

The meeting was called to order and 3 of the 6 owners were in attendance.

Owners in attendance included: Ken Miller and Kennie Gill #1591, Sizemore Properties #1593, and Bill Tatum #1594. Also in attendance from GW Services, Inc., were Sarah Gebauer and Gregory A. Wynn.

Owners represented by proxy included: Todd Taylor #1596.

A motion was made, seconded and carried to approve the 2015 Annual Meeting minutes as mailed.

Insurance
Greg Wynn reviewed the Insurance Summary (copy enclosed). He stated Hurricane Matthew was the major item of 2016, and that the property fared well overall, with minor tree damage to unit 1596. Greg continued, advising that the property was insured for $1.3 million, with a 2% deductible for named storms. Greg advised once the policy was up for renewal he was going to look into lowering the deductible to 1% or less, and does not expect any major increases in the premium come June.

Financials
Greg Wynn presented the Financials for Lagoon II as of October 31st, 2016 (copy enclosed). He advised there was $27,035.46 in the bank, with no Accounts Receivable. Greg then presented the year-to-date financials as of February 28th, 2017 (copy enclosed). He advised the Regime had received a credit in the amount of $1,462.22 for Hurricane related expenses. Greg noted there was currently $6,823.29 in Accounts Receivable, but that was due to the Quarterly fees being billed on February 1st. Bill Tatum inquired if those units behind in their payments received additional Finance charges. Greg confirmed they were billed 18% per annum. Greg continued, stating Lagoon II was in good financial standing overall, and living within their means.

Unfinished Business
There was no Unfinished Business to discuss.

New Business
Next item on the Agenda was New Business. Greg Wynn advised that the lighting and sidewalk upgrades were the main topic of discussion. Bill Tatum agreed that replacing the lights should be discussed, since Lagoon I had recently re-done theirs. Ken Miller advised he believes most are in fairly good condition. Greg advised the lighting project is a fairly significant investment, between running conduits and any unforeseen expenses, reminding those present that the sidewalks would have to be torn up to replace the conduits. Kennie Gill inquired if the electricity is already running to the lights why not just change the fixtures. Greg advised the current conduits are not up to code, that the wiring is at least 30 years old. He continued, stating that when it rains it shorts the electrical system and simply replacing the fixtures would not solve the underlying issues. Bill Tatum inquired if the roofs needed to be replaced. Greg noted they are between 12-14 years old, and does not believe it is in the Regime's best interest to wait until leaks and other issues occur, but they could likely be put off another year or two at the most. Bill Tatum stated he believes the lighting and sidewalks would be the best investments, as they would directly impact the curb appeal if an Owner decides to sell their villa. Kennie Gill expressed concern with the Master Deed, as it does not clearly distinguish what is Owner responsibility vs. Regime responsibility. Greg advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some further discussion it was decided that the sidewalk and lighting discussion would be tabled until the

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Master Deed issues are looked into. It was agreed that Kennie Gill would make a list of the proposed changes and Greg Wynn would contact an attorney to work with the Regime.

Proposed Budget

Greg presented the Proposed Budget. He advised there would be a slight increase in the Association fees to supplement the Reserve fund. A motion was made, seconded and passed to approve the Budget as presented.

Election of the Board of Directors

All Regime Owners are members of the Board. Bill Tatum was re-elected to serve as President.

2017 Annual Meeting Date

The 2017 Annual Meeting will be held Friday, October 20th, with the time and location to be determined at a later date. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 11:15 AM.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager
:SCG

EXHIBIT
E

LAGOON II
2017 Annual Meeting
October 20th, 2017

The 2017 Lagoon II Annual Meeting was held on Friday, October 20, 2017 at 10:00 am at the office of GW Services, Inc. at 10 Office Way, Suite 105, Hilton Head Island, South Carolina.

Greg Wynn called the meeting in order. No roll call was necessary, and a quorum was represented either in person or by proxy. It was noted that 84.84% of the ownership was represented.

Owners in attendance included: Ken Miller and Kennie Gill #1595, Sizemore Properties #1593, and Bill Tatum #1594. Also in attendance from GW Services, Inc., were Allison Baroni and Gregory A. Wynn.

Owners attended via conference call; Todd Taylor #1596.

Owners represented by proxy included: Hadley HPM Realty Trust #1592.

A motion was made, to approve the 2016 Annual Meeting minutes. Kennie Gill stated she would like to revise the minutes, that she was not providing any legal advice to the regime. After some discussion the motion was made seconded and carried to change the 2016 minutes and approve the revised 2016 Annual Meeting.

Insurance
Greg Wynn reviewed the Insurance Summary (copy enclosed). He stated the property was insured for $1.3 million, with including the 10% Building Ordinance to build back to code. He continued with explaining the Flood insurance policy went with a private provider, which also mirrors the property coverage, and the $5K per building deductible. Greg then reminded the ownership that "betterments & improvements" should be included on an owner's individual H06 homeowner policy **and** he strongly urged all owners to carry a "loss assessment rider."

Financials
Greg Wynn presented the Financials for Lagoon II as of September 30th, 2017 (copy enclosed). He advised that Lagoon II has $6,504.68 in the Operating account, and $22,202.39 in the Reserve account. Greg then presented the year-to-date financials (copy enclosed). He noted the general maintenance was a little over due to the sewer line and Hurricane repairs. Greg continued, stating Lagoon II was still in a strong financial standing overall, and living within their means.

Unfinished Business
Kennie Gill updated the ownership with stating she did some more research on the Master Deed and By-laws. She explained they were out of date, and they would eventually need to be updated. In addition, the percentage of ownership was not current, with the patio additions and improvements, and suggested to have them included for the insurance coverage. She continued with explaining the By Laws would need to be amended with being able to charge any interest. Greg advised most Regimes pay around $5,000 for legal assistance pertaining to Master Deeds and By-Law changes. After some discussion, it suggested to have the Master Deed and Bylaws updated when the funds were available.

New Business
Next item on the Agenda was New Business. Greg Wynn explained Lagoon II suffered some flooding from the Hurricane Irma storm surge. Some of the foundation around the lagoon had washed out, bushes and grass suffered salt intrusion. He continued with noting the washed out bank, #1593-1594 no rock left in the area, that he received some estimates using rip-rapp, and netting to repair the damage. Greg also noted SIPSD did come out and clear the ditches to correct some of the drainage issues.

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Greg continued with explaining some of the common area lighting had shortages after the Hurricane Irma storm surge, and was then noted to have the entrance lighting checked as it was not working correctly. Another owner stated there was a storage shed, this being an exterior structure on the side of unit #1591 that is not permitted on property and will need to be removed, it was also stated the deck color of Unit #1592 was blue, and then asked how it was approved. The next item of discussion was the decks, as some are in bad shape with wood rot, and becoming a potential hazard. After some discussion, it was decided to have GW Services retain quotes for the wood rot repairs. Greg then noted the landscaping, and explained the storm surge caused a lot of salt intrusions with killing the bushes on the property. He suggested that the Lagoon II owners establish a landscape committee to enhance the curb appeal of the property. Todd Taylor then mentioned the leaning tree on the back side of his unit #1596, that is growing out of the Lagoon, he stated CSA claims it is not their responsibility, after they marked it for removal, but never did He then asked if there were any plats to show the boundary lines of the property. Greg then stated he would look, and advise Todd of the findings. The lighting and sidewalks were also mentioned, suggesting this remain on the list of capital projects, with keeping the landscaping priority. Greg then noted the roofs are between 12-14 years old, and does not suggest waiting until leaks occur for the roof replacement. Then suggested Lagoon II invests in a Reserve Study, which will give a timeline on how these capital projects should be prioritized.

Proposed Budget

Greg presented the Proposed Budget. He advised there was a slight increase in the Association fees to supplement the increase in utilities, water electric, etc.. There was some discussion about the $600 decrease into the Reserve account for the fiscal year. A motion was then made, and seconded to increase the proposed budget reflecting an additional $600 increase, and passed to approve the revised Budget.

Election of the Board of Directors

All Regime Owners are members of the Board. Bill Tatum was re-elected to serve as President, Kathy Anderson as Vice President, and Todd Taylor as Treasurer.

2018 Annual Meeting Date

The 2018 Annual Meeting will be held Friday, October 19th, with the time and location to be determined at a later date. There being no further business to discuss and after a motion duly made and seconded the meeting was adjourned at 11:25 AM.

Respectfully submitted by:

Gregory A. Wynn, Regime Manager
:AMB

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EXHIBIT
F

MINUTES

Lagoon Villas II
2018 Annual Meeting
Thursday, October 18, 2018 | 2:00 PM

I. Roll Call – Confirming a quorum, Bill Tatum called the meeting to order at 2:12 pm.

a. **Board Members present** – Bill Tatum, Kathy Anderson, Todd Taylor, Kenneth Nyquist, Kenneth Miller

b. **Owners present** – 84.061%

c. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Kathleen Smith, Minutes

II. Proof of Notice of Meeting – Notice of the Annual Meeting was mailed and emailed to all owners of record on October 11, 2018.

III. Appointment of Secretary – Kathleen Smith with IMC Resort Services will record the minutes of the 2018 Annual Meeting.

IV. Acceptance of Minutes

a. **2017 Annual meeting minutes** – Kennie Gill asked to amend the minutes to reflect Bill as absent and also to remove the election of Todd Taylor as Treasurer. **Kennie then motioned to approve the 2017 Annual Meeting minutes as amended. Todd Taylor seconded the motion. The motion passed unanimously.**

b. **2018 Special meeting minutes – Kennie Gill motioned to approve the minutes from the 2018 Special meeting. Todd Taylor seconded. The motion passed without opposition.**

V. Reports of Officers & Committees

a. **Master Deed update** – Bill reported the attorney continues to work on the Master Deed update. The Association is in the process of determining property lines and surveying in order to confirm percentages of ownership for the Master Deed amendment. The Board will first review the amendments before they are filed. The survey company will also determine who owns the lagoon bank.

b. **Landscape company change** – The Board discussed the proposed US Lawns contract. Bryan will speak with US Lawns to request they do not use RoundUp weed killer. Bryan will also request the 30-day out clause be amended to state 'without cause'. Bryan will contact The Greenery to inquire about the breakdown of the annual flower rotation costs. **Kennie Gill motioned to approve the US Lawns contract to begin November 1, 2018. Kathy Anderson seconded the motion. The motion passed unanimously.** Bryan reported US Lawns will audit

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the irrigation system when they begin servicing the property.

c. **Incorporation of the regime** – Lagoon Villas II is incorporated.

VI. Scheduling of a semi-annual board meeting in June – The Board discussed holding (2) Board meetings per year. Bill will circulate possible dates to the Board.

VII. Review late fee policy – Bryan suggested the Board adopt a collections policy. Bryan will send examples for the Board's review.

VIII. Projects

a. **Termite and rat inspection/treatment** – The Association has monthly pest control services. Discussion regarding a termite bond ensued. Bryan will contact Island Pest Control for a termite and rat inspection quote.

b. **Sewer lines** – Bill reported the Board has had ongoing discussions regarding replacement of the sewer lines as well as annual maintenance. Bryan recommended hydro-jetting the lines at least twice a year to deter villa backups. After some discussion, Bryan will contact Island Plumbing to set up a semi-annual schedule beginning March 2019.

c. **Landscaping** –

i. **Greenery** – Kennie mentioned there are dead limbs in trees around property. Bryan reported the trees will be limbed up early next week. Kennie also mentioned the Greenery had agreed to replace dead bushes around the property. Kennie recommends the final payment to the Greenery be lessened by the amount of the cost of the (5) bushes that were not replaced.

ii. **Trees** – Todd mentioned Hurricane Matthew took down part of a tree near his unit. He requested the stump be ground down and the area seeded in order for grass to grow.

d. **Parking** – The Board discussed the challenges of parking, as there are 6 units and only 8 parking spots. Jennifer Nyquist Bivins asked for an email to be sent reminding owners to limit renters' vehicles. Kennie pointed out that owners do not have assigned parking spaces. Bryan will solicit quotes for signage to install in front of each parking bay "Parking for Lagoon Villas II".

e. **Decks** – IMC has submitted a bid for the replacement of the decks. The Board discussed the proposal and the pros and cons of necessary repairs vs. total replacement. Bryan will solicit two more bids for replacement for the Board's review.

IX. Approval of annual budget and assessment – The Board discussed the 2018/2019 budget. Kennie expressed her concern with the increase in water and how the

common water is allocated. **Kennie then motioned to approve the budget. Kathy Anderson seconded the motion. The motion passed without opposition.**

X. Election of Administrators – **Bill Tatum motioned for Todd Taylor to serve as President; Kathy Anderson as VP and Kennie Gill as Secretary/Treasurer. Jennifer Nyquist Bivins seconded the motion. The motion passed without opposition.**

XI. Kudos – Jennifer thanked Bill for his hard work.

XII. Appendix 5C-1 – Bryan explained that by the owners ratifying Appendix 5C-1, any excess of membership income over membership expenses for the year ended 2018, shall be applied against the subsequent tax year member assessments. **Todd motioned to ratify Appendix 5C-1. Kennie seconded the motion. The motion passed without opposition.**

XIII. Adjournment – There being no further business, Bill adjourned the meeting at 4:30 pm.

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EXHIBIT
G

MINUTES

Lagoon Villas II HPR
Board of Directors Meeting
Thursday, May 9, 2019 | 10:00 am

I. Roll Call / Call to Order – Todd Taylor called the meeting to order at 10:05 am.
   A. **Board Members present** – Todd Taylor, President; Jennifer Nyquist Bivins, Director at Large; Bruce Hadley, Director at Large (via telephone); Bill Tatum, Director at Large (via telephone)

   B. **Board Members absent** – Kathy Anderson, Vice President; Kennie Gill, Treasurer

   C. **Owners present** – Ken Miller (1595); Lucy Hadley (1592)

   D. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Julie Smith, Director of Operations; Kathleen Smith, Minutes

II. Approval of Minutes
   A. **None at this time**

III. Financial Report
   A. **General** – Bryan reported on the unreconciled cash position as of May 9, 2019. He then went on to report there are no owners in arrears or in jeopardy of going to collections. Bryan explained the budgeted vs. actual expenses. He mentioned the 'Landscape Other' line item is slightly over due to recent irrigation repairs. All in all, the Association is running well within the existing parameters of the operating budget.

   B. **Collections, Executive Session** – Nothing to report at this time.

IV. Manager's Report – Bryan stated he has not received any reports of missed pest control or live pests in the units. Also, he has not been made aware of any missed trash service. Bryan has received some concerns with the landscaping and has reported these to US Lawns, who have been very responsive. Sewer lines were hydro-jetted and cleaned by Degler Waste at the beginning of April. Irrigation repairs were recently completed; Bryan to follow up with US Lawns regarding possible non-functioning zone near the Hadley's. Property wide soft washing and power washing is scheduled for May 20-22. Regular monthly walk through for light bulb replacement will be completed soon.

V. Old Business
   A. **Master Deed and By Laws Status** – Todd reported the Association has been working on Master Deed and By Law amendments for a little over a year. Attorney Novit & Scarminach and Survey Consultants have both been retained during this process. Attorney Charles Scarminach advised that 100% agreement by the owners must be obtained to approve Master Deed amendments. Todd read 2 letters and an email from Attorney Charles Scarminach. Todd referenced plat "Exhibit A" originally filed with the Master Deed. He reported the original dwelling descriptions are no longer accurate due to villa remodeling and adding on to the square footage. Todd then went on to reference an "Interior/Exterior Measurements" excel spreadsheet as measured by Survey Consultants. Todd noted that there is a discrepancy in the measurement of villas #1593 and #1594 by Survey Consultants. The re-measuring of these two units by Survey Consultants will cost approximately $500. There are (2) options to reallocate and define values proportionately; 1.) use interior dimensions as measured by Survey

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Consultants 2.) use exterior dimensions as measured by Survey Consultants. Discussion ensued regarding the (2) options. A special meeting will be called to officially vote on the proposed amendments. Todd thanked Kennie Gill for her work on this project.

B. **Survey Consultants Invoice** – The $9,950 invoice has been paid in full.

C. **Attorney's Fees** – Attorney fees will total roughly $5,000 once all legal has been completed regarding the Master Deed amendments.

D. **Lagoon Bank Stabilization** – Erosion has begun at the lagoon bank. Kennie has been working on this project for some time. Town of HH, State of SC and Sea Pines CSA have all been notified of the erosion issue.

E. **Insurance** – Current insurance policy does not cover additions to villas; owners have been insuring the additional dwelling space. If and when the Master Deed is amended, the Association will be responsible for insuring the property. IMC recommended a property appraisal with a cost of approximately $1,500. **Todd Taylor made a motion to engage an insurance broker appraisal of the property at an approximate expense of $1,500 prior to underwriting the policy, with funds to be taken from the replacement reserve account. Bill Tatum seconded the motion. The motion passed without opposition.**

F. **Decks** – Todd reported the attorney opinion states Lagoon Villas II HPR (the Association) has the responsibility of maintaining the decks – not the owners. An estimate of approximately $17,000 was received by Charlie Weaver of Clear-Cut Construction for repair and repainting of the decks. The Board discussed how to pay for the repairs (Association funds vs. individual owner). A decision was tabled.

G. **Water bill allocation** – Tabled.

VI. New Business

A. **Landscaping and irrigation** – Todd presented (3) proposals from US Lawns for landscape upgrades including pine straw installation. After discussion, the Hadley's would like a quote to install turf at the front of their villa as opposed to pine straw. No decision on approving the proposals was made at this time.

B. **Request for a retractable awning** – Bill Tatum is requesting to install a retractable awning at his villa. With no objection from the Board, and with Mr. Tatum abstaining, the request was approved. Bryan to send an approval letter to Bill for his records.

VII. Next Board Meeting – To be determined.

VIII. Adjournment – There being no further business, the meeting was adjourned at 11:56am.

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EXHIBIT
H

MINUTES

Lagoon Villas II
2019 Annual Meeting
Thursday, October 17, 2019 | 2:00 PM

I. Roll Call – Confirming a quorum of 68.122%, Todd Taylor called the meeting to order at 2:07 pm.

a. **Board Members present** – Todd Taylor, President (via telephone); Kathy Anderson, Vice President; Jennifer Nyquist Bivins, Director at Large (via telephone); William (Bill) Tatum, Director at Large

b. **Board Members absent** – Kennie Gill, Treasurer; Bruce Hadley, Director at Large

c. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Kathleen Smith, Minutes

II. Proof of Notice of Meeting or Waiver of Notice – Notice of the Annual Meeting was mailed to all owners of record on September 19, 2019.

III. Reading of Minutes of Preceding Meeting – **Bill Tatum made a motion to approve the minutes of the 2018 Annual Meeting. Kathy Anderson seconded the motion. The motion passed without opposition.**

IV. Reports of Officers

a. **President Report** – Todd Taylor updated owners on the potential Master Deed amendments. Todd reminded everyone that 100% of the owners must agree to the proposed changes in order to pass the amendments. Todd feels positive about coming to a solution soon.

b. **Financials** – Bryan reported on the unreconciled balance sheet as of October 17, 2019. Bryan then went on to review budgeted vs. actual expenses; the Association is running well within the parameters of the current operating budget.

c. **2019 Accomplishments** – Property wide tree trimming, property wide soft and power washing were all performed this year. Individual landscape enhancements performed by US Lawns have also been completed at owners' villas who elected to have these upgrades done. Bryan reported plumbing updates are forthcoming once Island Plumbing investigates further. **Bill Tatum made a motion for the Association to call a Special Meeting within 30 days, if the MD amendments are not approved, and have attorney Chuck Scarminach present to advise of the rights of the Association going forward. Also, at that meeting, the Officers are to present details of a special assessment to include funding the MD amendments, decks/stair repairs, landscape improvements and sewer line repairs. Kathy Anderson seconded the motion. The motion passed without opposition.**

V. Reports of Committees – There are currently no active committees.

VI. Election of Inspectors of Election – Election of Inspector of Election was waived.

VII. Election of Administrators – All incumbents are up for re-election and will all run. There being no contest, all incumbents were re-elected to serve 1-year terms.

a. **Board Restructure – Bill Tatum made a motion for Todd Taylor to remain as President, Kathy Anderson to remain as Vice President and Bill Tatum to take the Secretary/Treasurer position. Kathy Anderson seconded the motion. The motion passed without opposition.**

VIII. Unfinished Business

a. **Parking Signs** – The Board agreed to table the parking signs until funds are available.

IX. New Business

a. **2019/2020 Budget Approval** – Bryan reviewed the proposed 2019/2020 with the owners. Bryan reported a potential 10-15% increase in insurance renewals this year. After some discussion, **Bill Tatum made a motion to approve the 2019/2020 budget. Kathy Anderson seconded the motion. The motion passed unanimously.**

b. **Appendix 5C-1 – Jennifer Nyquist Bivins made a motion to approve Appendix 5C-1. Kathy Anderson seconded the motion. The motion passed unanimously.**

X. Adjournment – There being no further business, the meeting was adjourned at 2:55 pm.

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EXHIBIT
I

MINUTES

Lagoon Villas II, HPR
Special Owners Meeting
January 29, 2020
9:00 a.m. | IMC Resort Services, Inc.

A. Roll Call / Call to Order – Todd Taylor called the meeting to order at 9:05am.

1. **Board Members present via telephone** – Todd Taylor, President; Kathy Anderson, Vice President; Bill Tatum, Secretary/Treasurer; Jennifer Nyquist Bivins, Director at large; Bruce Hadley, Director at Large

2. **Owners Present via telephone** – Ken Miller, 1595; Lucy Hadley, 1592

3. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Julie Smith, Director of Operations; Kathleen Smith, Minutes; Alyssa Dolan, Administrative Assistant

B. Proof of Notice of Meeting or Waiver or Notice – Notice of the meeting was mailed to all owners of record on January 23, 2020.

C. Financial Report – Bryan reported on the unreconciled cash position as of January 29, 2020. There are currently no owners in arrears. Bryan also reviewed budgeted vs. actual expenses.

D. Reading of Minutes of Preceding Meetings – None at this time.

E. Reports of Officers – Nothing to report at this time.

F. Update on the Master Deed – Todd reminded owners that Chuck Scarminach has been hired to draft amendments to the Master Deed. Todd pointed out that at some point in time, the owners agreed to change % of ownership without correctly amending the Master Deed. Todd suggested properly amending the Master Deed.

G. Special Assessment Discussion & Vote – The Master Deed and survey expenses have cost approximately $16,000, with more expenses to come. Regime landscaping had previously been tabled. Todd suggested reimbursing owners who paid for common area landscape upgrades. Todd also reminded owners that many decks are in dire need of repairs and/or replacement. Bill sent a proposed special assessment spreadsheet to all owners for review. Discussion ensued regarding deck repairs. Todd reminded owners that the exterior of the units should all conform. **Todd Taylor made a motion for the paint colors on file at Sherwin Williams to be the official color scheme for Lagoon Villas II. Kathy Anderson seconded the motion. The motion passed without opposition**. Todd made all owners aware that the special assessment, if approved, will align with the Master Deed proportionate interest, not what was agreed upon years ago. Julie Smith advised that if a motion is made to approve the special assessment today, it would be based off of the current Master Deed % of ownership, not what the intended amendments will be. Julie also suggested the owners continue to make payments per the approved 2019/2020 budget until the Master Deed revisions are voted on and approved. The Board will revisit after the amendment.

H. Adjournment – There being no further business, Todd Taylor adjourned the meeting at 10:24am.

EXHIBIT
J

MINUTES

Lagoon Villas II
2020 Annual Meeting
Thursday, October 15, 2020 via Zoom - 2:00 PM

I. Roll Call – Todd Taylor called the meeting to order at 2:07 PM. Todd noted owners are in attendance in person and via Zoom. For that reason, he asked everyone to be respectful of time and to state name and unit number when a motion is made.

a. **Board Members present in person** – Todd Taylor, President; Bill Tatum, Secretary/Treasurer

b. **Board Members present via Zoom** – Kathy Anderson, Vice President; Jennifer Nyquist Bivins, Director at Large; Bruce Hadley, Director at Large

c. **Owners present** – 100%
   i. In person – 34.061%
   ii. Via Zoom – 65.939%

d. **IMC Resort Services representatives** – Bryan Dorshimer, Association Manager; Bill Gephart, Manager in Training; Kathleen Smith, Minutes

II. Proof of Notice of Meeting or Waiver of Notice – Todd stated the governing documents note that the Annual Meeting should be held on the 3rd Saturday of October each year. Per Chuck Scarminach's opinion, as long as notice of the meeting is given per the Bylaws, there is not an issue with changing the date of the meeting. Todd advised third parties or non-Members cannot attend the Annual meeting. Todd noted the meeting will run via a general proxy – he believes all owners should be able to participate, make motions and vote. Kennie Gill suggested all owners agree to hold the 2020 Annual Meeting via Zoom; there was no opposition to Kennie's suggestion. Todd then advised voting percentages will be per the Master Deed. Todd provided the agenda's unfinished and new business topics of discussion and asked for additional topics from the owners. There being none, **Bill Tatum made a motion to approve the agenda. Kathy Anderson seconded the motion. The motion passed unanimously.**

III. Reading of Minutes of Preceding Meeting – **Bill Tatum made a motion to waive the reading of the 2019 Annual meeting minutes and accept them into record as presented. Todd Taylor seconded. The motion passed unanimously.**

IV. Reports of Officers – To be discussed throughout the agenda.

V. Reports of Committees – There are no current committees.

VI. Election of Inspectors of Election – Kathleen Smith with IMC Resort Services, Inc. will serve as Inspector of Election.

VII. Election of Administrators – Jennifer Nyquist-Bivins will not stand for re-election. **Bill Tatum made a motion to re-elect incumbents Todd Taylor, Bill Tatum, Kathy Anderson and Bruce Hadley and to elect Ken Nyquist, and to reduce to a Board of 5-persons. Todd and Bill will both serve 1-year terms, Kathy will serve a 2-year term, & Ken and Bruce will serve 3-year terms. Todd Taylor seconded the motion. Bill Tatum, Todd Taylor, Kathy Anderson, Jennifer Nyquist Bivins, and Bruce Hadley voted in favor of the motion. Kennie Gill voted against the motion. The motion passed.**

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VIII. Unfinished Business

a. **Water Bills** – Todd mentioned the regime is responsible for not only irrigation but the individual units' water bills as well. Todd recently met with the water company to discuss how the property is metered – essentially, all units are individually metered. Per the Bylaws, water bills are the responsibility of the unit owner and suggested the Association revert back to this practice. Bryan Dorshimer will contact the water company to inquire the best. **Kennie Gill made a motion to follow the Bylaws which requires all water usage to be billed to the individual unit owner. Todd Taylor seconded the motion. The motion passed unanimously.**

b. **Decks** – In the past, repairing/replacing of the decks has been a topic of discussion. Todd noted a few owners have replaced their decks. An attorney opinion was obtained which stated that the regime is responsible for repairs/replacement. Kennie noted that an attorney opinion from 2017 stated that limited common elements which have been improved should be maintained by the owner going forward. The owners discussed obtaining an additional opinion from the current Association attorney.

c. **Landscaping/Irrigation** – The landscaping was lost in 2016 due to flooding. Three owners had their landscaping replaced. Todd suggested reimbursing these three owners, as landscaping is the responsibility of the regime. **Todd Taylor made a motion to reimburse on a quarterly basis over the next year 1591, 1593, & 1594 for their landscaping. Lucy Hadley seconded the motion. The motion passed without opposition.** Todd went on to mention an increase in the budget line item to repair irrigation throughout the property.

d. **Master Deed** – The original proposal for Master Deed amendments failed due to not achieving 100% approval from owners. **Jennifer Nyquist Bivins made a motion that the owners cure the defect in the current title and affirm/adopt the amended plat (the "revised as-built survey") and include the addition of the common elements. Revise the "apartment unit" descriptions and adjust the description of the limited common elements.** Jennifer then rescinded her motion. A lengthy discussion ensued amongst the owners. Kennie Gill expressed her comments and concerns with amending the percentage of ownership in the Master Deed and read a letter that she had emailed to all owners prior to the meeting.

IX. New Business

a. **2020/2021 Budget Approval – Todd Taylor made a motion to approve the 2020/2021 budget as presented. Kathy Anderson seconded the motion. Todd, Kathy, Bill, and Jennifer voted in favor. Kennie Gill voted "present". Bruce Hadley abstained. The motion passed.**

Bruce and Lucy Hadley left the meeting at 4:13 PM.

b. **Appendix 5C-1 – Bill Tatum made a motion to ratify Appendix 5C-1. Todd Taylor seconded the motion. The motion passed without opposition.**

c. **Roofs** – A hail storm in March 2018 caused damage to the roof which resulted in a hail claim. Bids for roof replacement have been obtained but are not "apples to apples". The Board will review the specs and go back out to the vendors for revised bids.

d. **Replacement Reserve** – Discussion ensued over rebuilding the replacement reserve fund.

X. Adjournment – There being no further business, **Bill Tatum made a motion to adjourn the meeting at 4:36 PM. Kathy seconded the motion. The motion passed without opposition.**

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

DEFENDANTS.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII,

THIRD-PARTY DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

AFFIDAVIT OF KENNETH V.L. MILLER

Kenneth V.L. Miller, being duly sworn, deposes and says:

1. I am of the age of majority and am competent to testify with respect to the following matters, of which I have personal knowledge.

2. I have been a co-owner of Unit 1595 in the South Beach Lagoon Villas, II, HPR LVII ("Lagoon II") since September 2, 1992.

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3. I am a retired certified architect/engineer, and in 1995 was registered in 13 states including South Carolina under registration No. 4495 dated October 19, 1992. I was also a member of the National Council of Architectural Review Board (NCARB), registration No. 6636, dated November 18, 1966.

4. In 1995, I prepared blueprints and a plat for a proposed improvement to Unit 1595. That same year, I submitted these blueprints to the Sea Pines ARB and to Ed McCullough, who at the time was the president of New Leaf Management, Inc., Lagoon II's management company. True and correct copies of the blueprints are attached here as Exhibit A, and a true and correct copy of the plat is attached hereto as Exhibit B.

5. Sea Pines ARB approved the application for construction of the improvement to Unit 1595. A true and correct copy of the Sea Pines ARB approval is attached hereto as Exhibit C.

6. It is my understanding that Ed McCullough spoke with every other Co-Owner at Lagoon II to obtain their approval for the construction of the improvement to Unit 1595. Based on the communications I had with Mr. McCullough, my understanding that all Co-Owners at Lagoon II had approved the construction of this improvement, and the written approval from Sea Pines ARB, construction proceeded and was completed sometime in 1998.

7. The improvement itself is 154 square feet and was constructed upon the Limited Common Element immediately adjacent to Unit 1595.

8. At my request, the Co-Owners of Lagoon II held a vote at the 1998 Annual Meeting of the Council of Co-Owners to increase the percentage ownership for Unit 1595 as a result of the improvement in order to ensure that the Co-Owners did not have to pay for the continuing maintenance costs of the improvement. The vote unanimously passed and resulted in a corresponding change of ownership percentages. A true and correct copy of a portion of the 1998 Minutes of Annual Meeting is attached hereto as Exhibit D.

9. The management company for Lagoon II in 1998 was Hilton Head Property Management, Inc., and George W. Flathmann was its administrator. Mr. Flathmann met with me sometime in November 1998 to review the addition to Unit 1595 and to confirm the amount of space added by the improvement.

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As a result of that meeting, Mr. Flathmann issued a memo on December 2, 1998, in which the calculation used for the new ownership values was set forth. A true and correct copy of the December 2, 1998 Memo is attached hereto as Exhibit E.

10. In January 1999, Sea Pines ARB inspected the completed improvement, found it to be in compliance with the approved plans I previously submitted, and refunded me the corresponding escrow deposit. A true and correct copy of the related correspondence from Sea Pines ARB is attached hereto as Exhibit F.

11. Lagoon II's attorney, Michael Olivetti, was asked to prepare a draft amendment of the Master Deed for Lagoon II to reflect the unanimous vote of the Co-Owners to approve the change in ownership percentages as a result of the improvement to Unit 1595. I am aware of this based not only on my communications with George W. Flathmann, but also in my role as a member of the Lagoon II Board of Directors at the time. A true and correct copy of the proposed amendment circulated in 2001 is attached hereto as Exhibit G.

12. For reasons not known to me, the proposed 2001 amendment was never recorded.

13. Unit 1595 paid the increased assessments allocated to it as a result of the 1998 vote until 2003, at which time another vote was held to modify ownership interests due to an improvement to Unit 1594. Unit 1595 was assessed based on an ownership interest of 16.11% after the 2003 vote.

14. Unit 1591 was also improved sometime after 2003, but no corresponding vote was held to modify ownership interests.

15. Unit 1595 has continuously paid the increased assessments based on a 16.11% ownership interest since the 2003 vote despite Lagoon II Villas Board of Directors' announcement in 2020 that it would revert to the original ownership percentages reflected in the Master Deed.

16. In June 2021, the other Co-Owners of Unit 1595 and I tendered the additional $999.40 cost for replacing the roof on the improvement in addition to the assessment amount based on a 16.11% ownership interest to Lagoon II's current management company, IMC Resort Services, Inc. A true and correct copy of the correspondence to IMC Resort Services, Inc. is attached hereto as Exhibit H.

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17. In 2019, efforts to amend the Master Deed resulted in a Consent Resolution to pass a Proposed Amendment (the "2019 Proposed Amendment"), to which I initially agreed. However, I revoked my consent after subsequently realizing that the 2019 Proposed Amendment would significantly alter the relative voting rights of the units at Lagoon II and would shift the ownership interests from a value-based calculation according to the Master Deed to a square footage-based calculation. A true and correct copy of the Consent Resolution and 2019 Proposed Amendment is attached hereto as Exhibit I.

18. I believe the passage of the 2019 Proposed Amendment would be unfair to the unimproved units at Lagoon II because it would force them to subsidize the maintenance cost of the expansions and dilute their relative voting power.

19. The Co-Owners of the other two improved units at Lagoon II were not named as defendants in Plaintiff's action against me.

20. It is my belief that I have been sued by Plaintiff to coerce my vote in favor of the 2019 Proposed Amendment.

FURTHER AFFIANT SAYETH NOT.

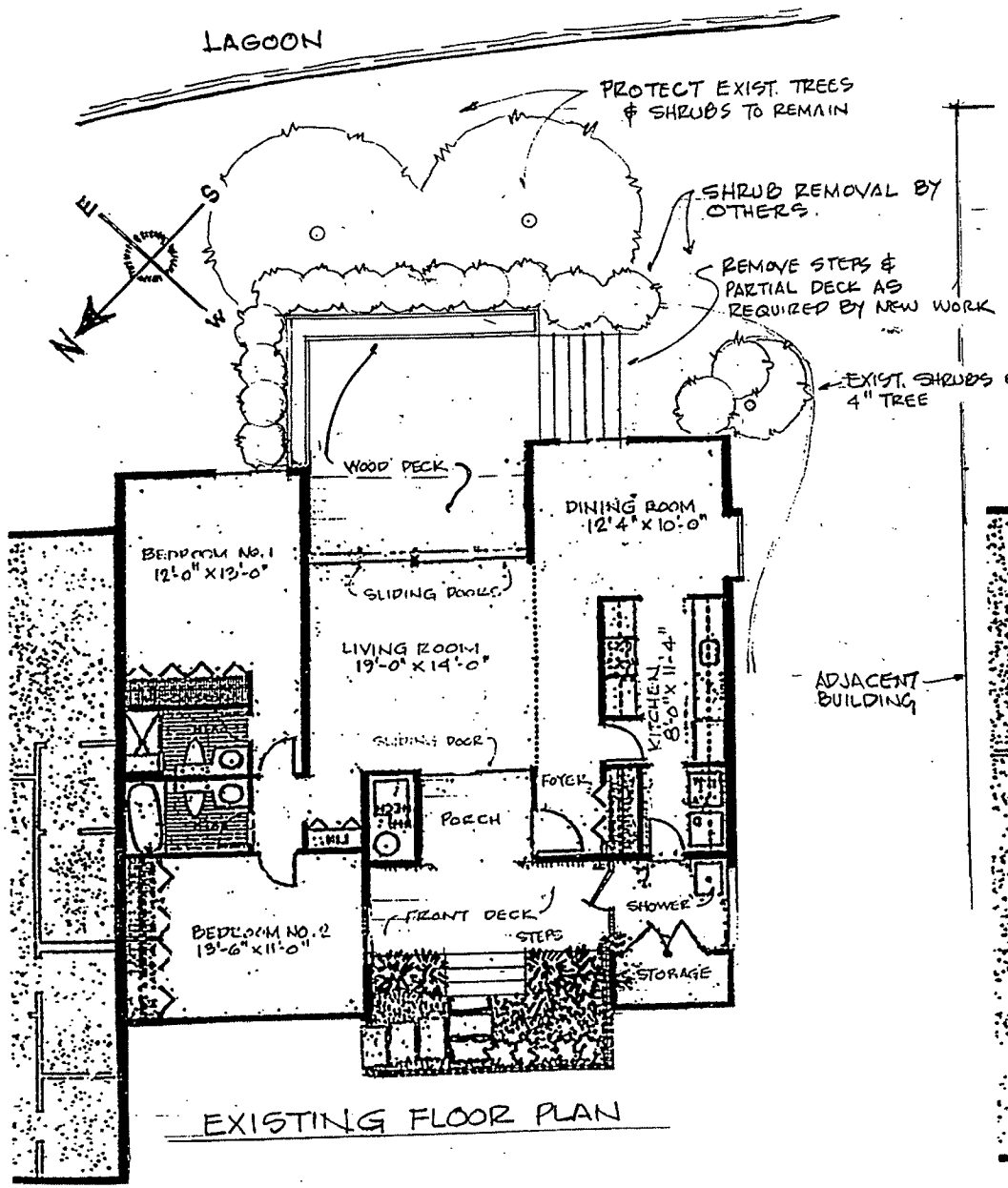
By: Kenneth V.L. Miller

Kenneth V.L. Miller

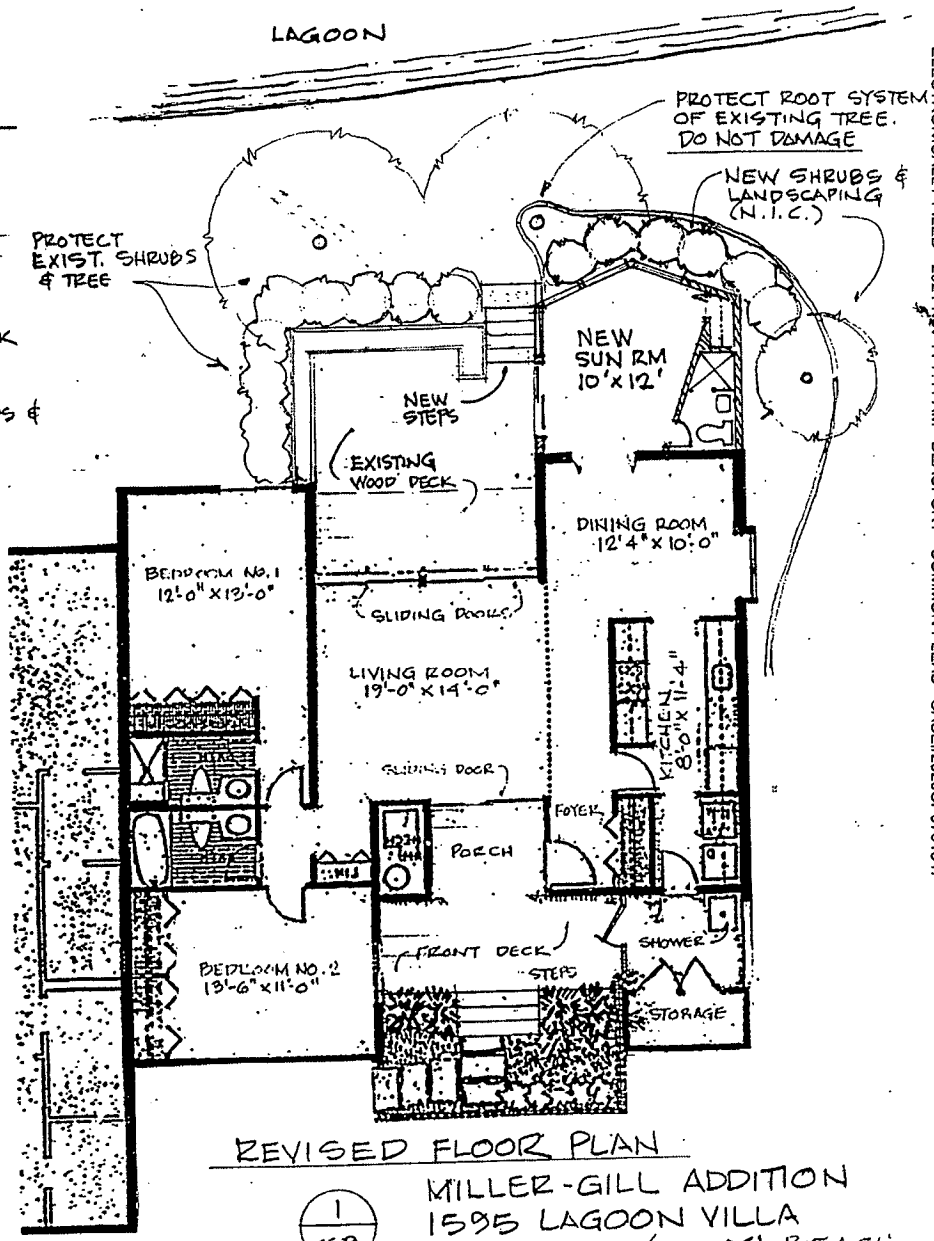
Sworn to before me this
10th day of November, 2021

Caroline French
Notary for the State of KY
My Commission Expires: 3·25·23

Caroline French
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
NOTARY ID# 619996
MY COMMISSION EXPIRES MARCH 25, 2023



EXISTING FLOOR PLAN



REVISED FLOOR PLAN

ADJACENT BUILDING

1 OF 9

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES/ SOUTH BEACH

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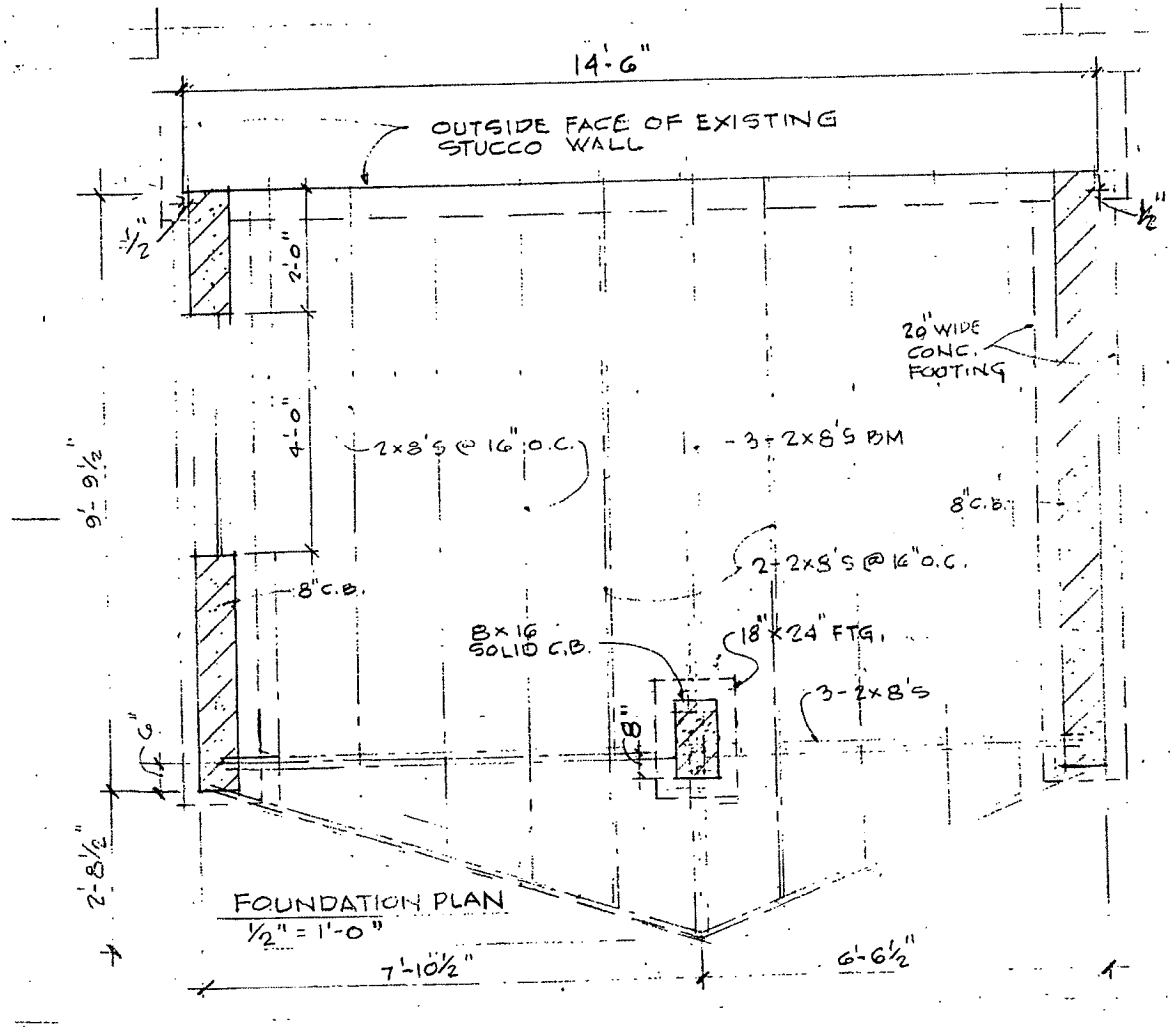

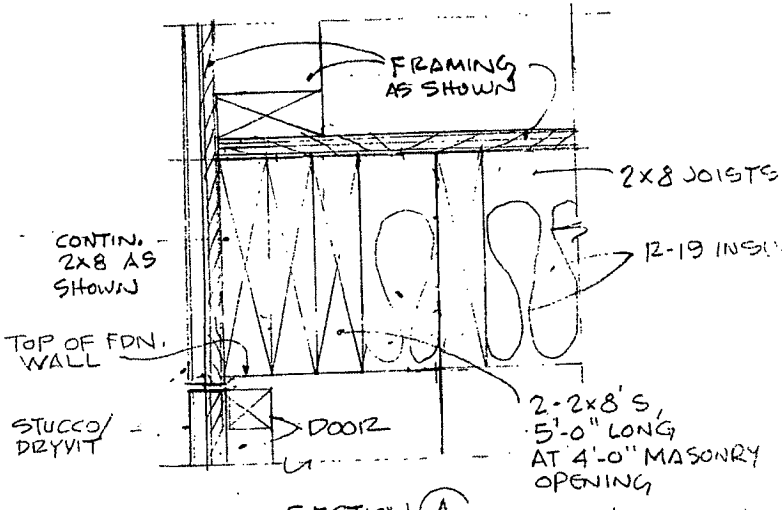

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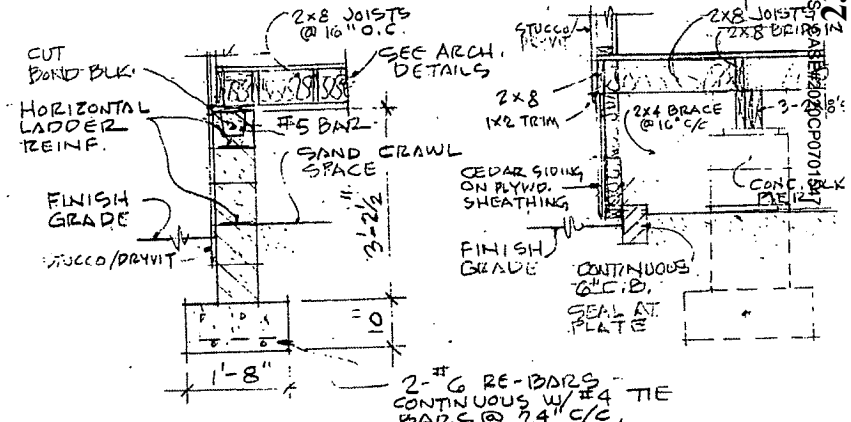

TYPICAL SECTION
FOUNDATION WALL

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

2 of 3

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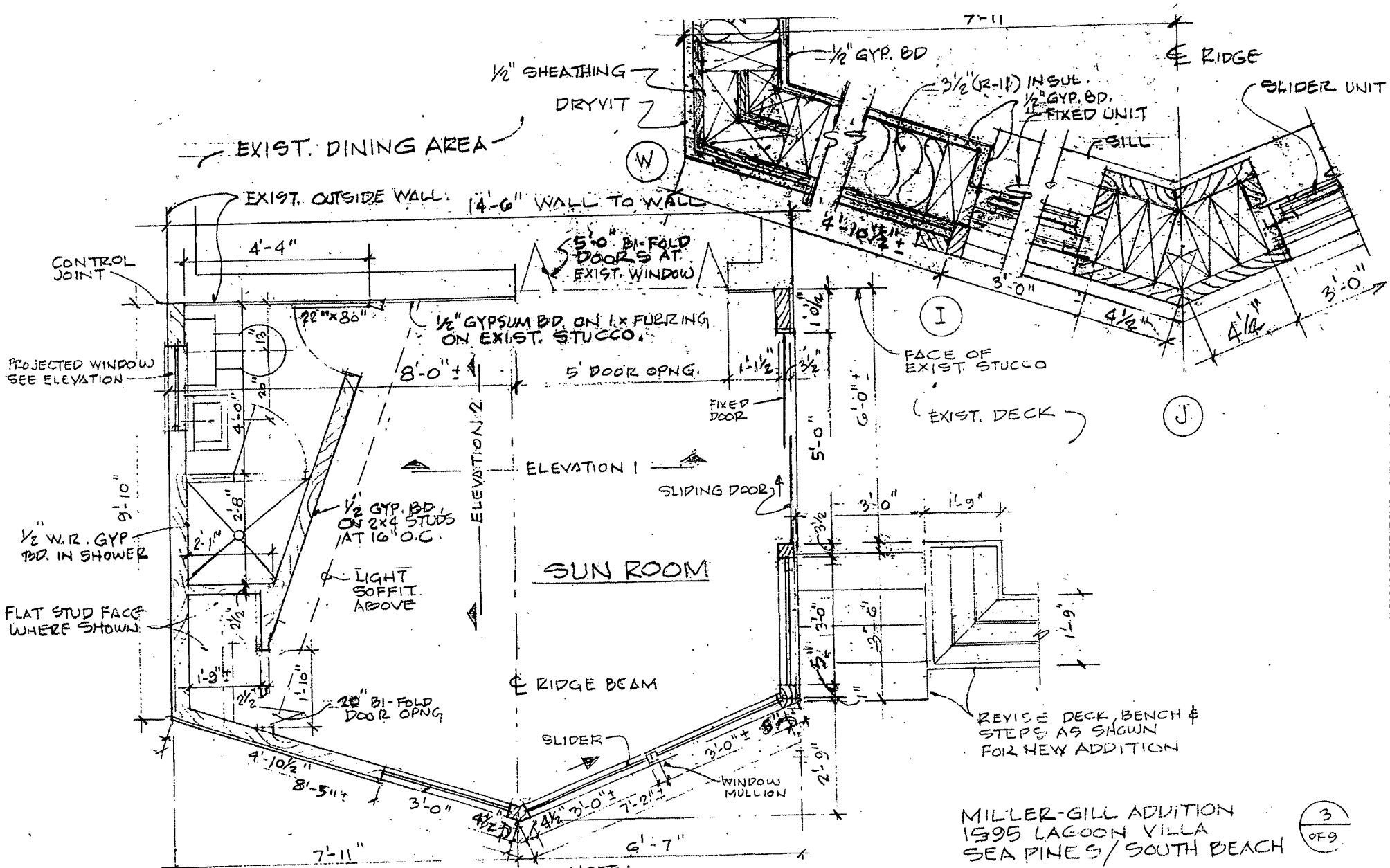

FLOOR PLAN
SCALE 1/2" = 1'-0"

NOTE:
DIMENSIONS ARE TO ROUGH FRAMING WHERE SHOWN

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

3 OF 9

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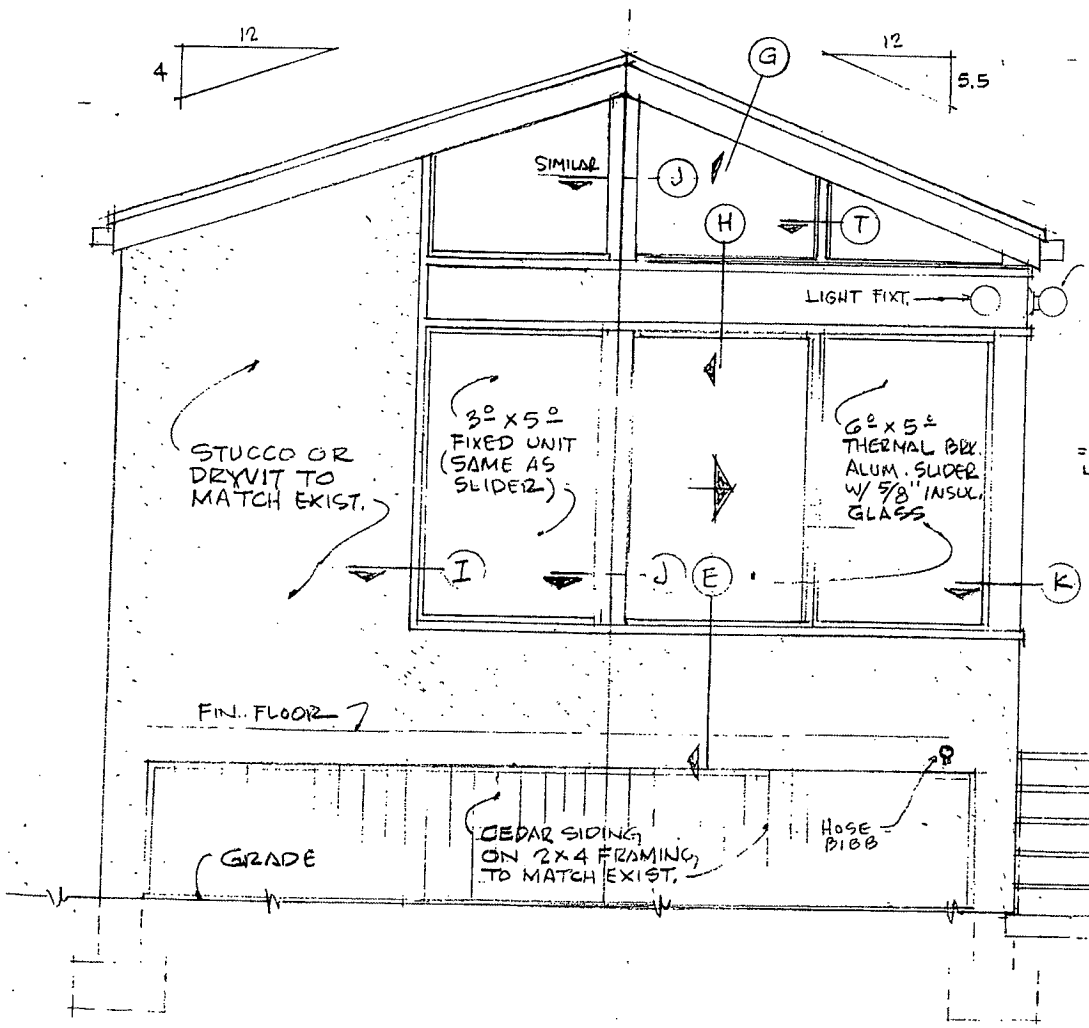
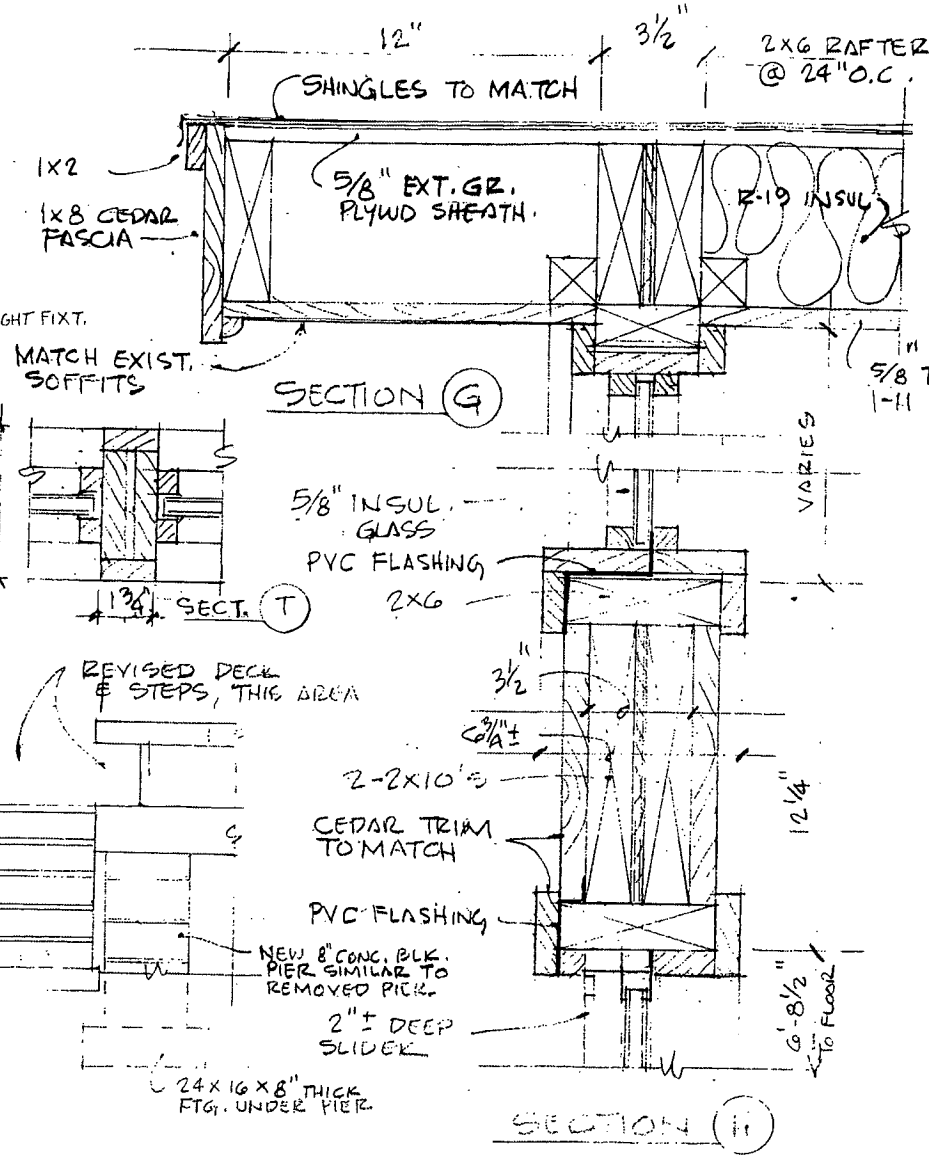


ELEVATION FROM LAGOON
1/2" = 1'-0"



MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

4 OF 9

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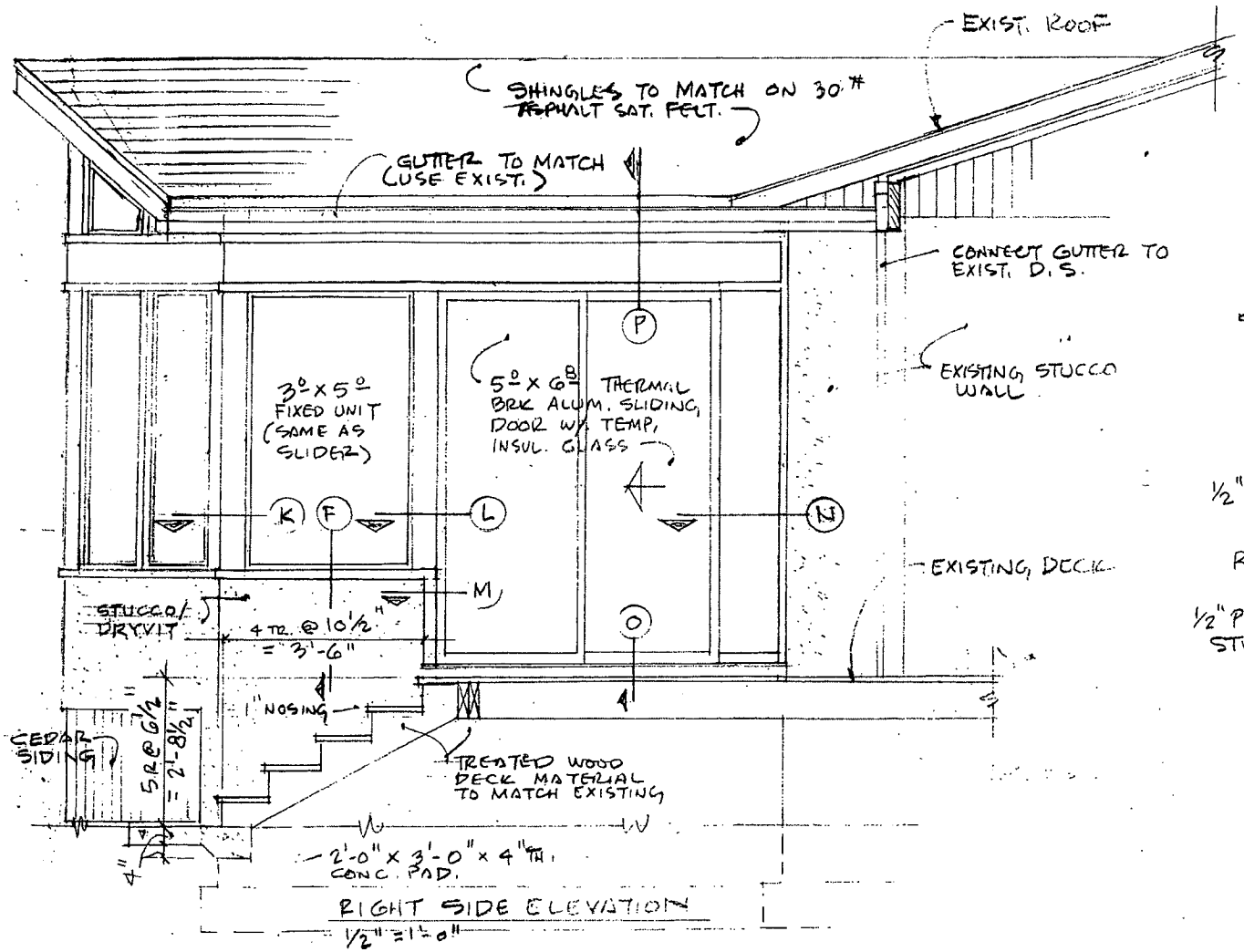
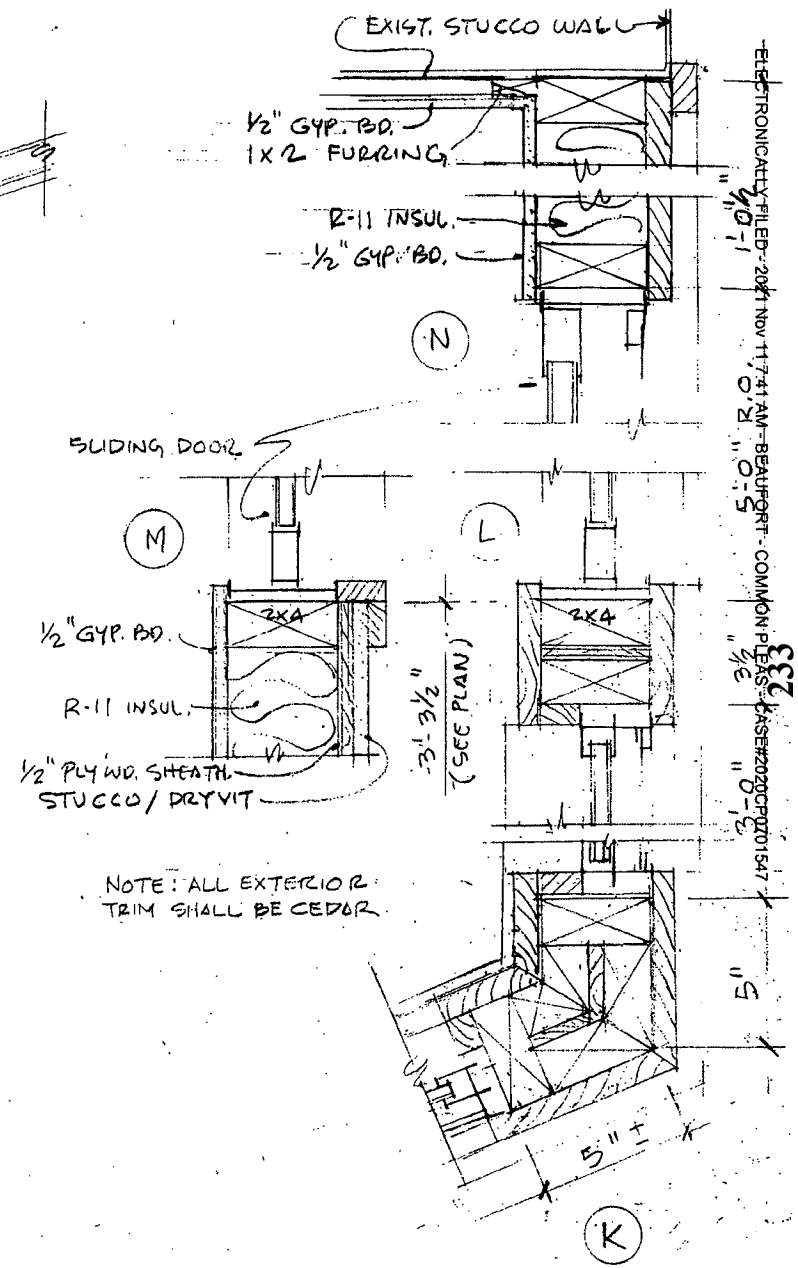


RIGHT SIDE ELEVATION
½" = 1'-0"



NOTE: ALL EXTERIOR TRIM SHALL BE CEDAR

5 OF 9

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES/ SOUTH BEACH

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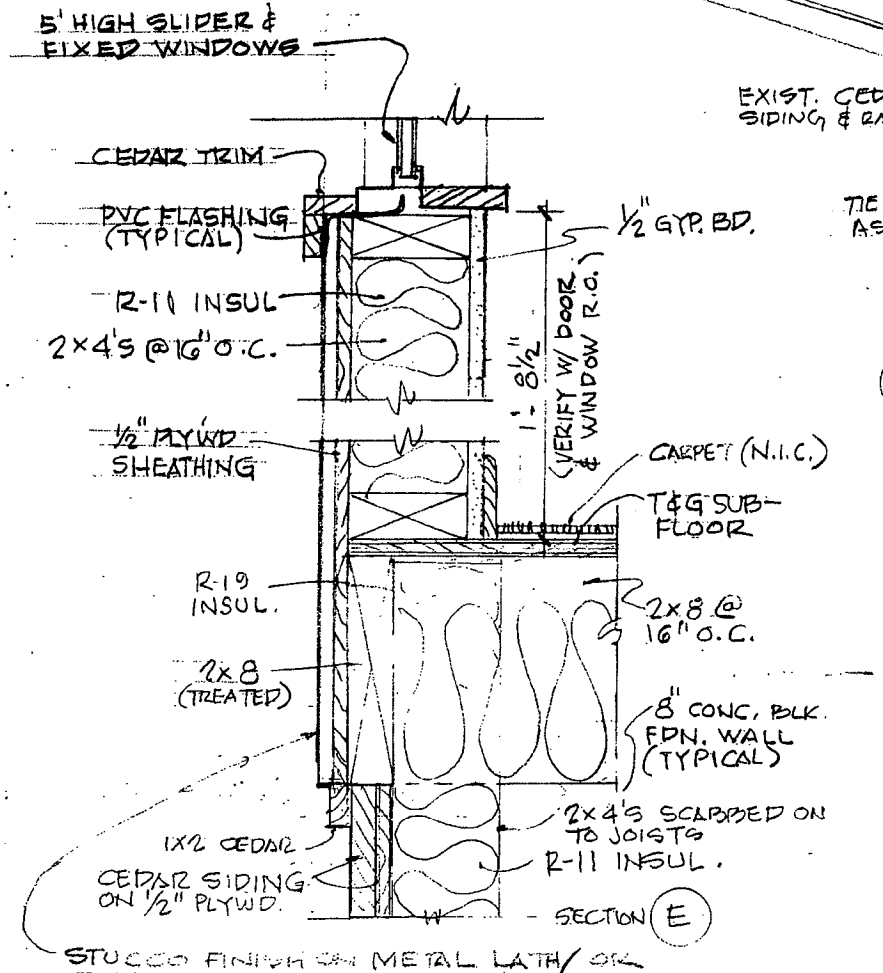

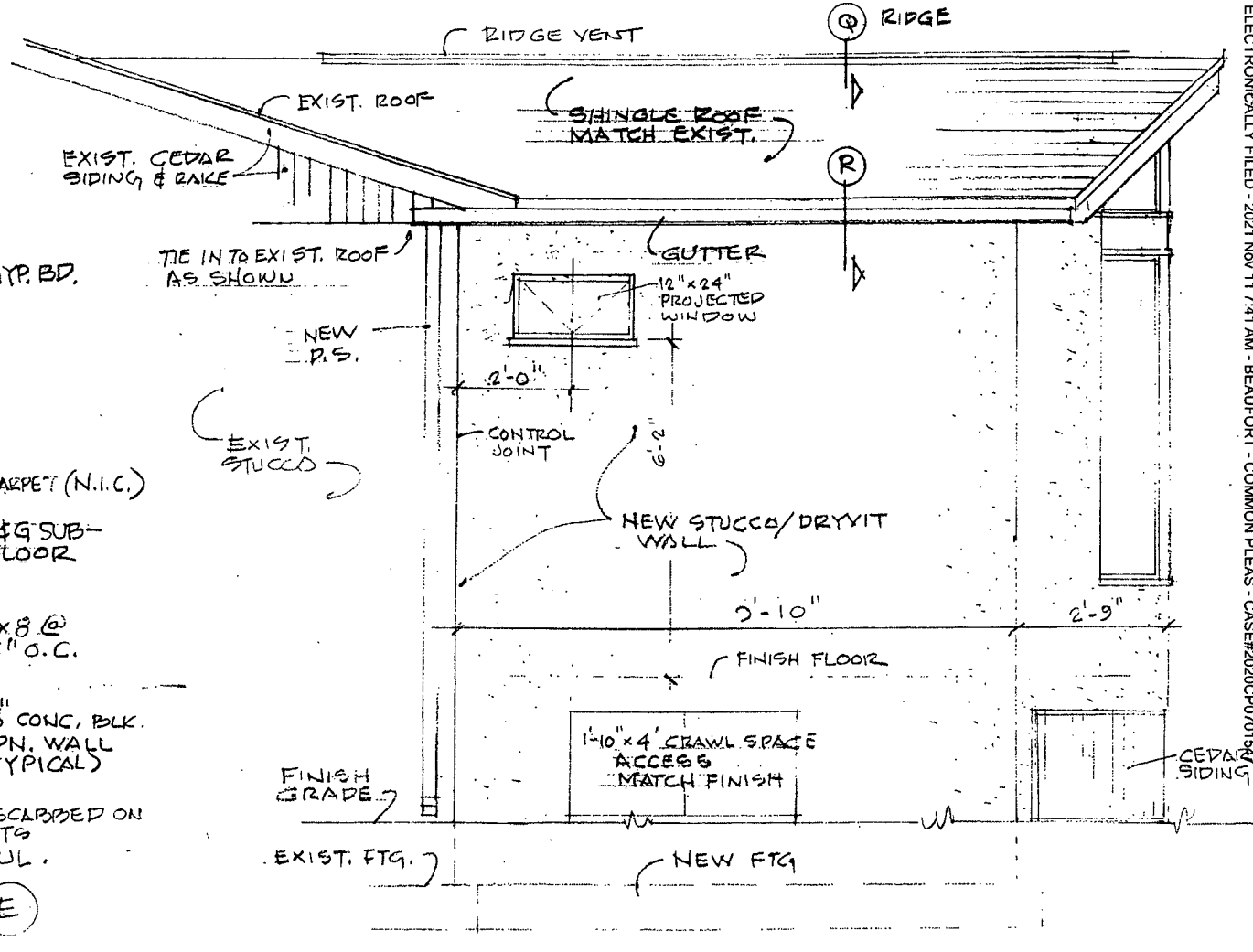

LEFT SIDE ELEVATION
½" = 1'-0"

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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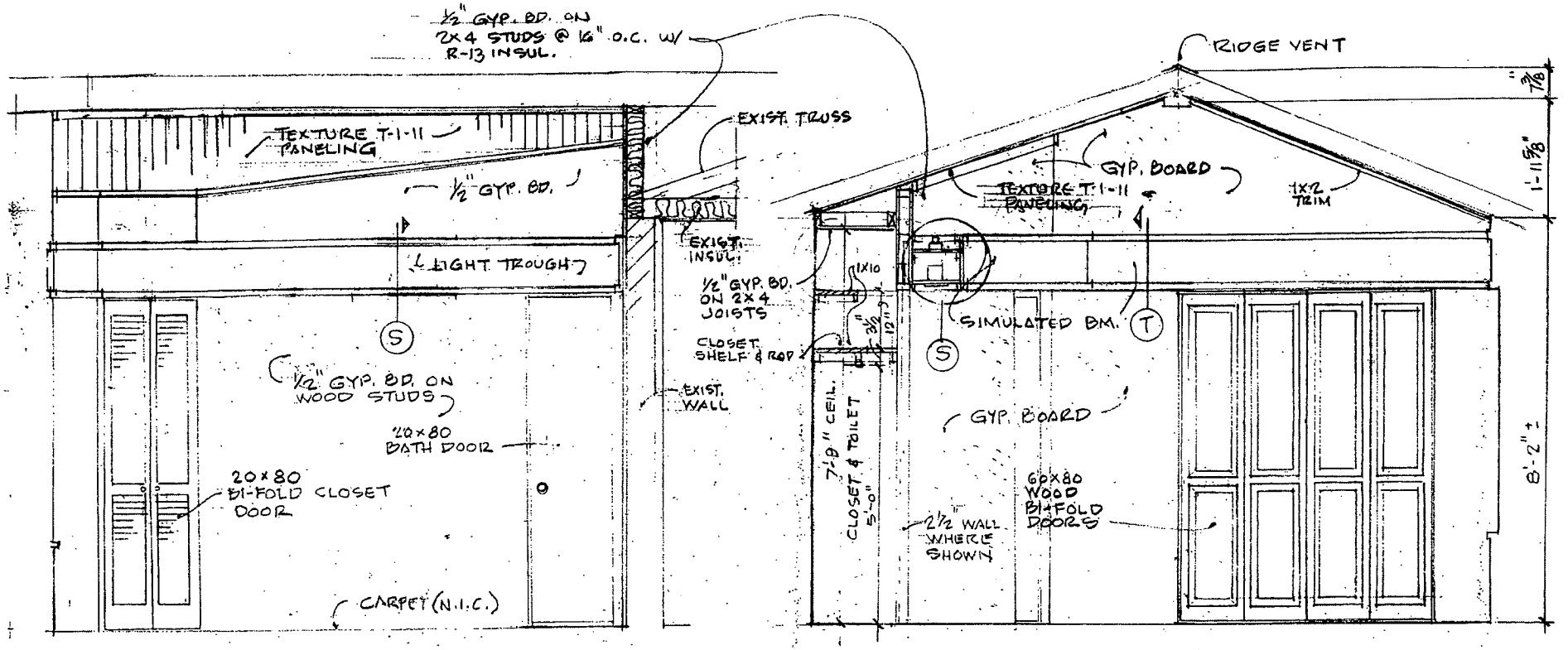
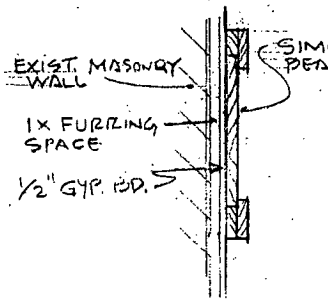


ELEVATION 2
½" = 1'-0"

ELEVATION 1
½" = 1'-0"



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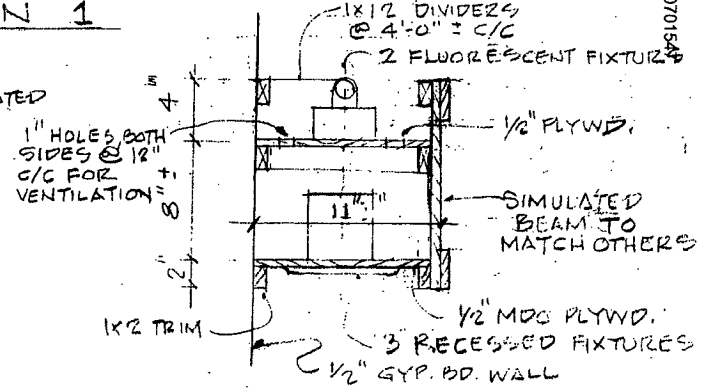

SECTION (S)

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MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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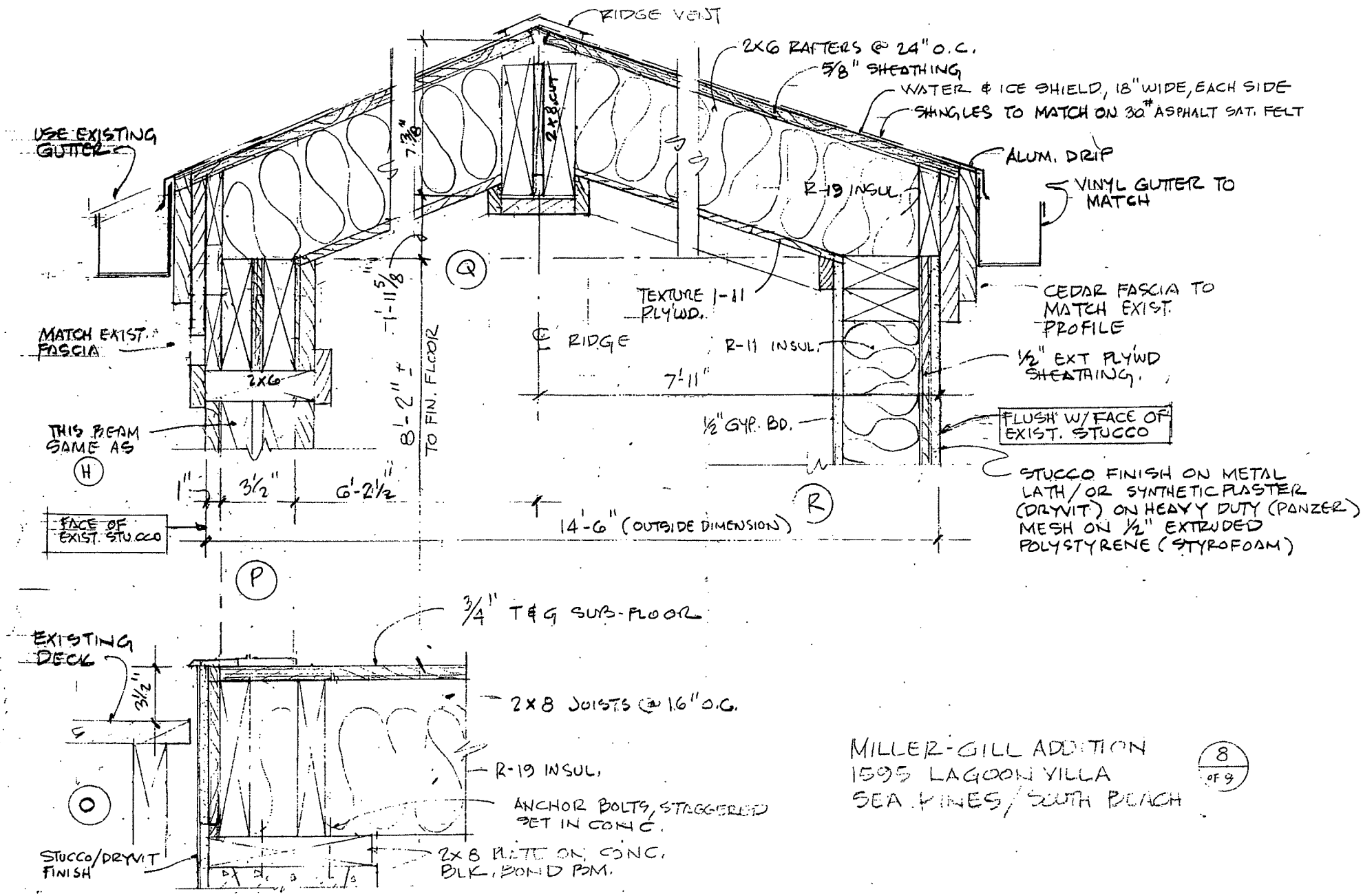

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

8 OF 9

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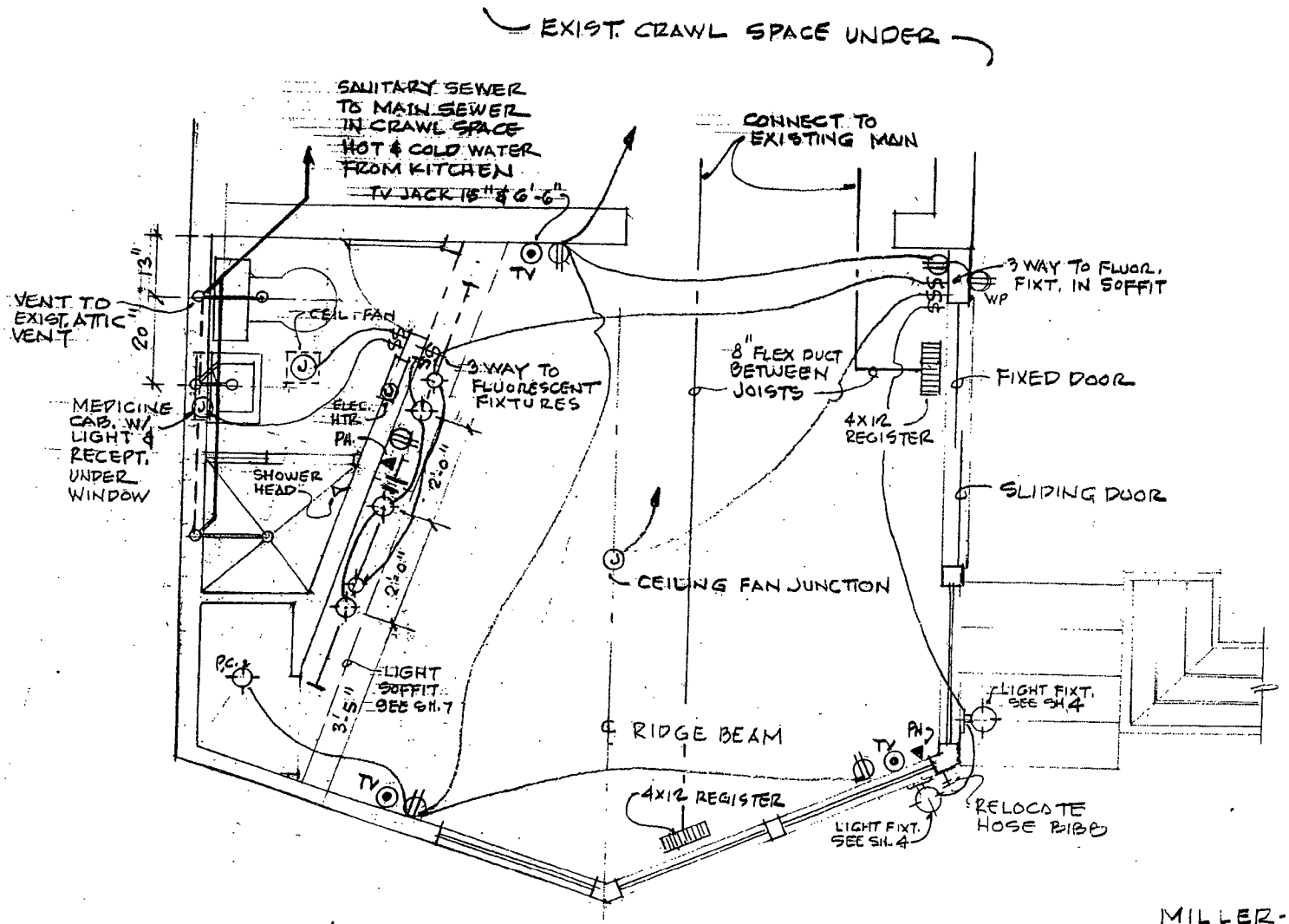

MECH./ELEC. PLAN

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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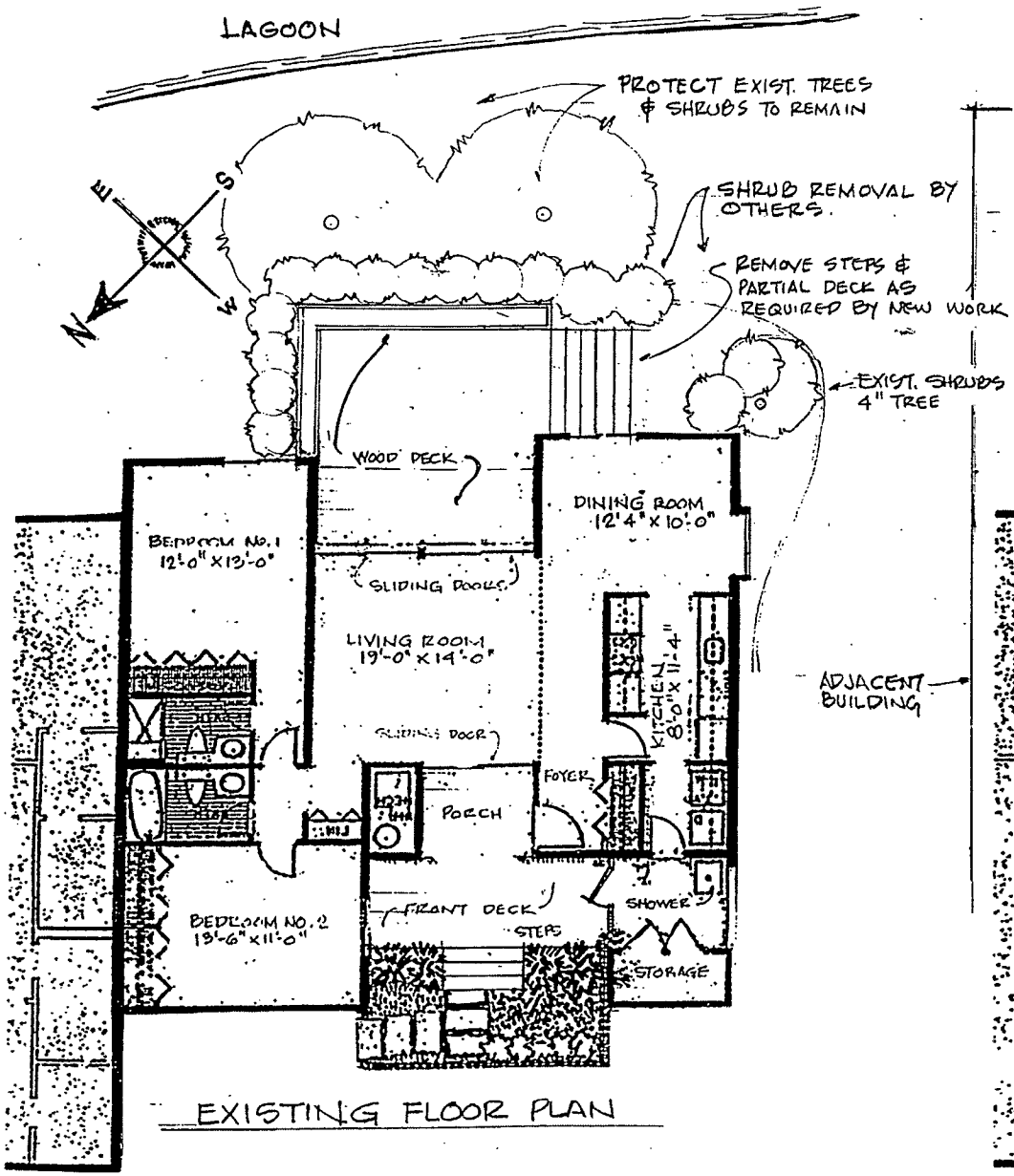
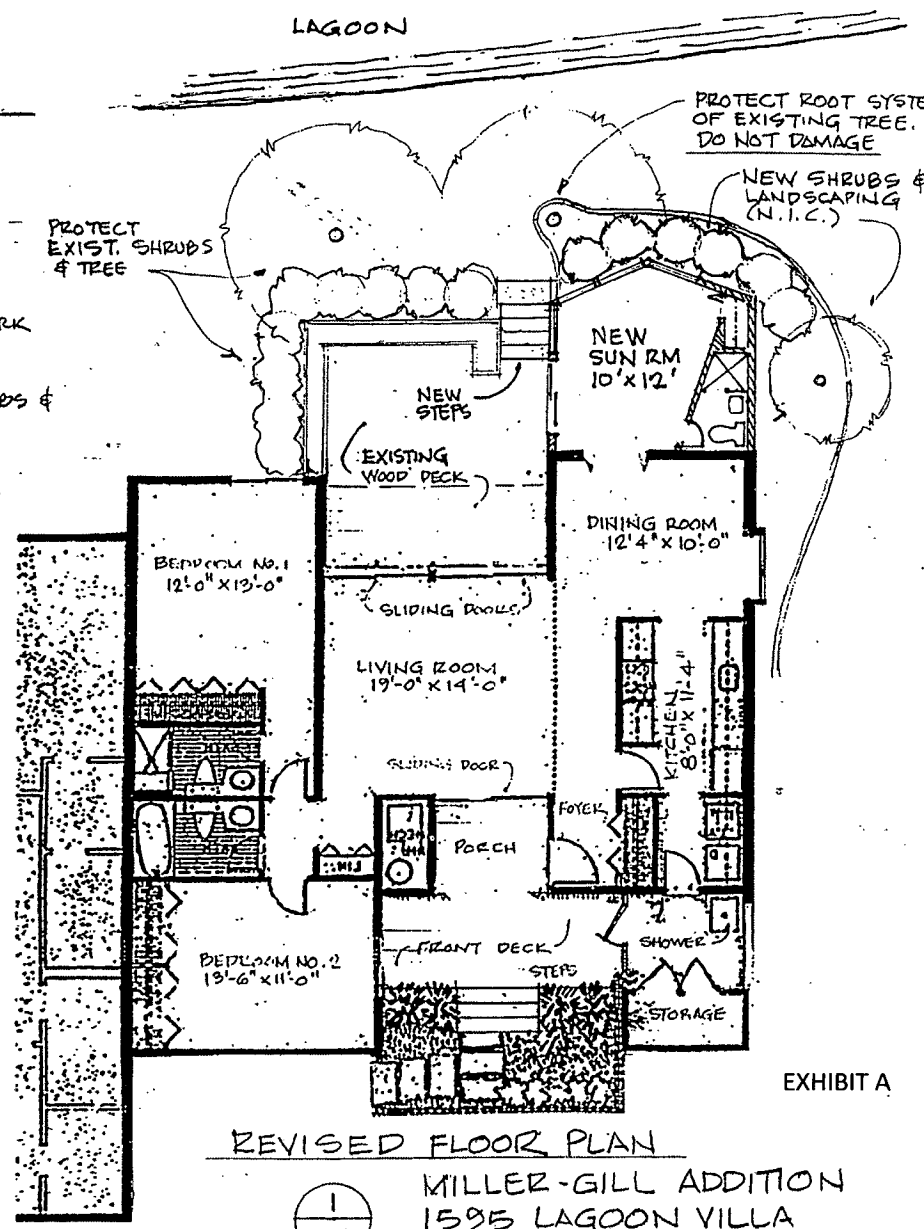


EXISTING FLOOR PLAN

ADJACENT BUILDING



REVISED FLOOR PLAN

EXHIBIT A

1 OF 9

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES/ SOUTH BEACH

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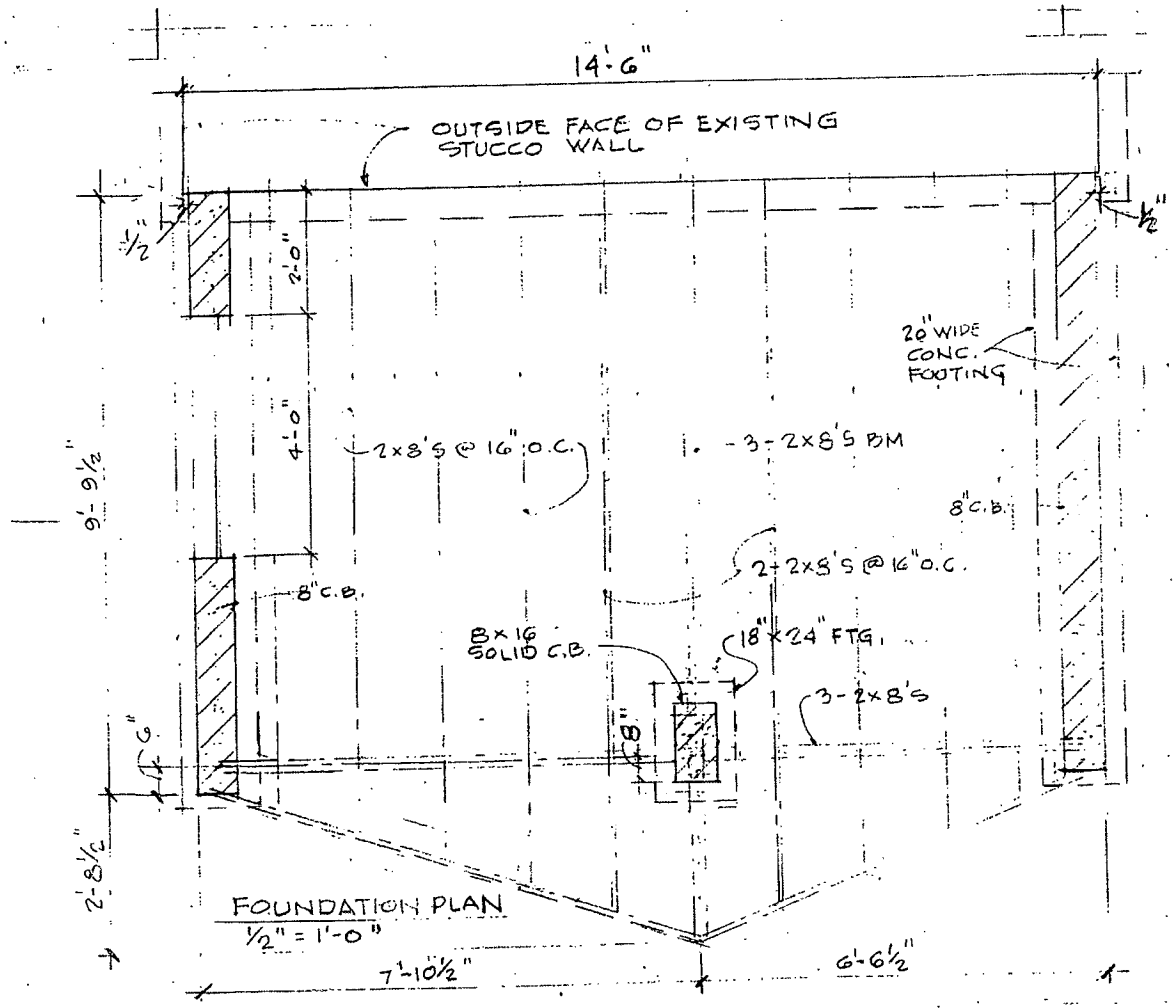
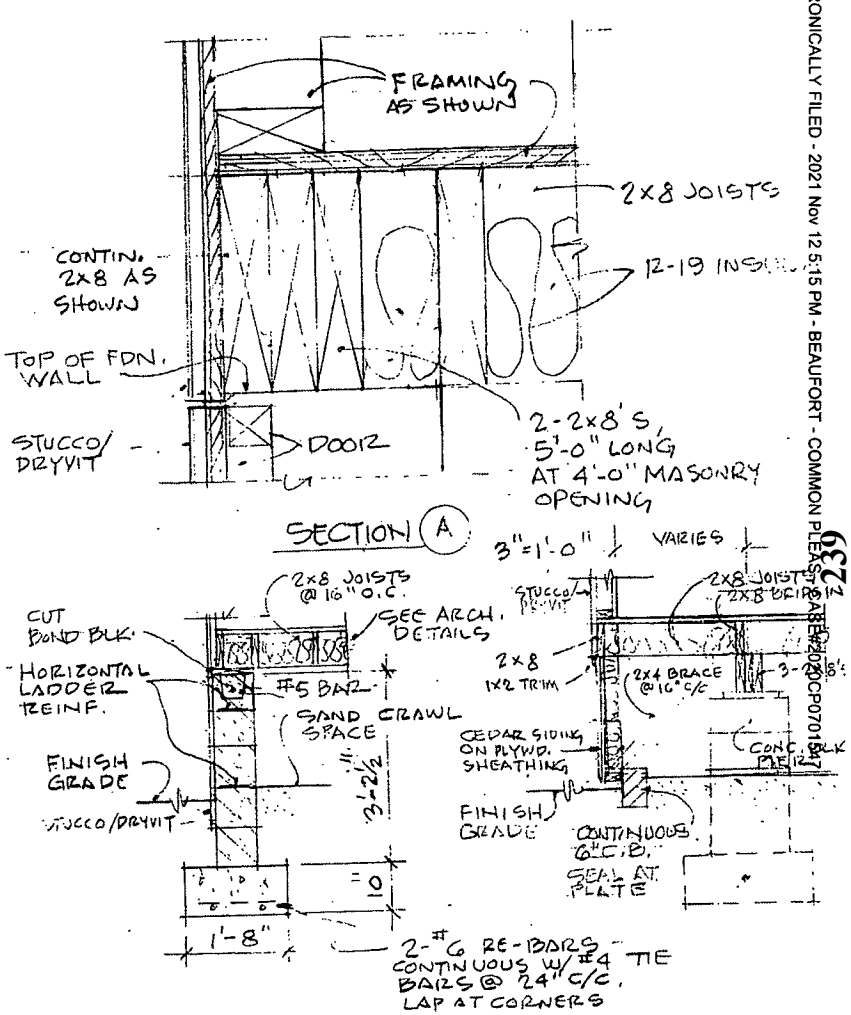


FOUNDATION PLAN
1/2" = 1'-0"



TYPICAL SECTION
FOUNDATION WALL

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

2 of 3

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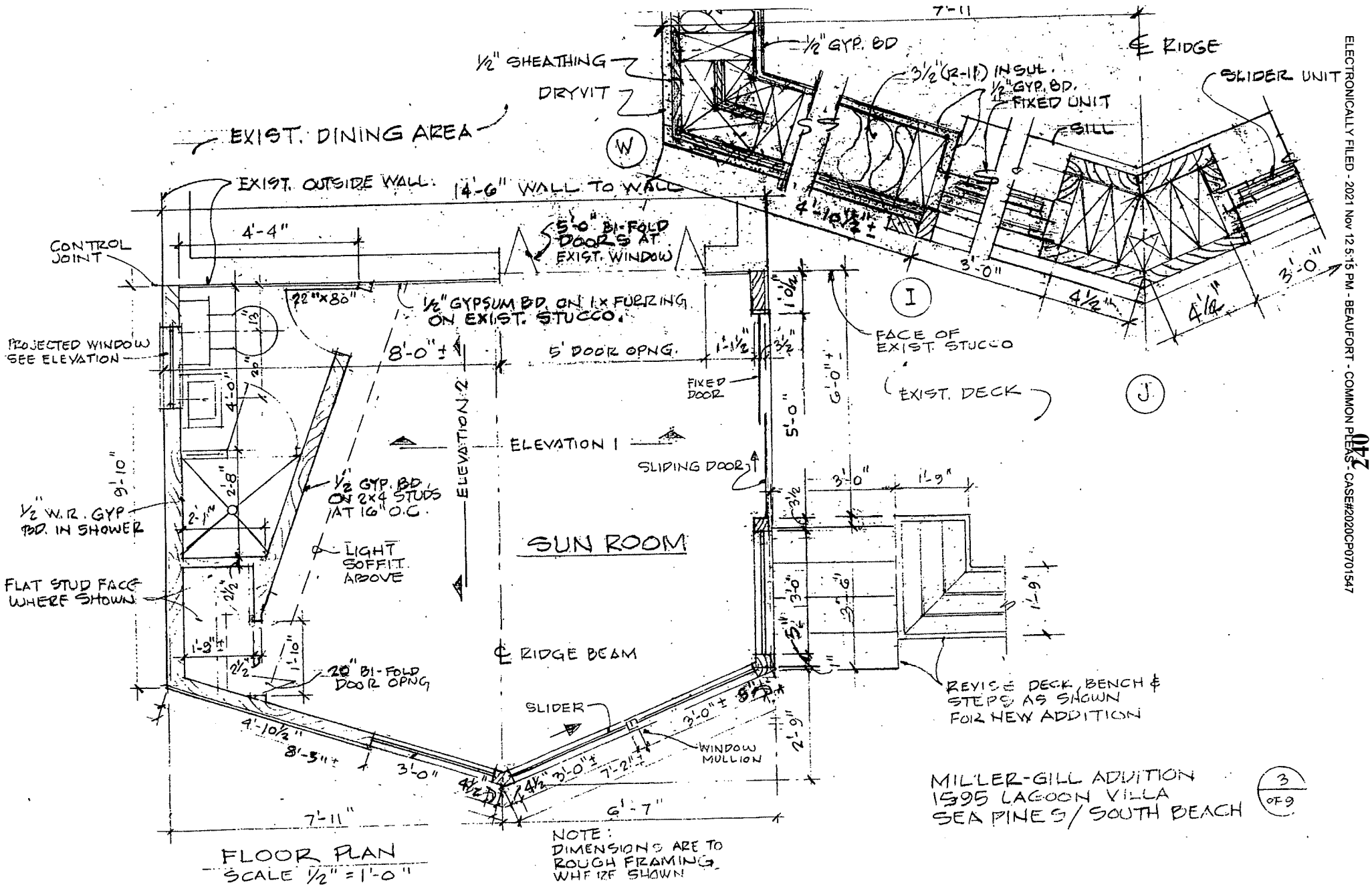

FLOOR PLAN
SCALE 1/2" = 1'-0"

MILLER-GILL ADDITION
1395 LAGOON VILLA
SEA PINES / SOUTH BEACH

3 OF 9

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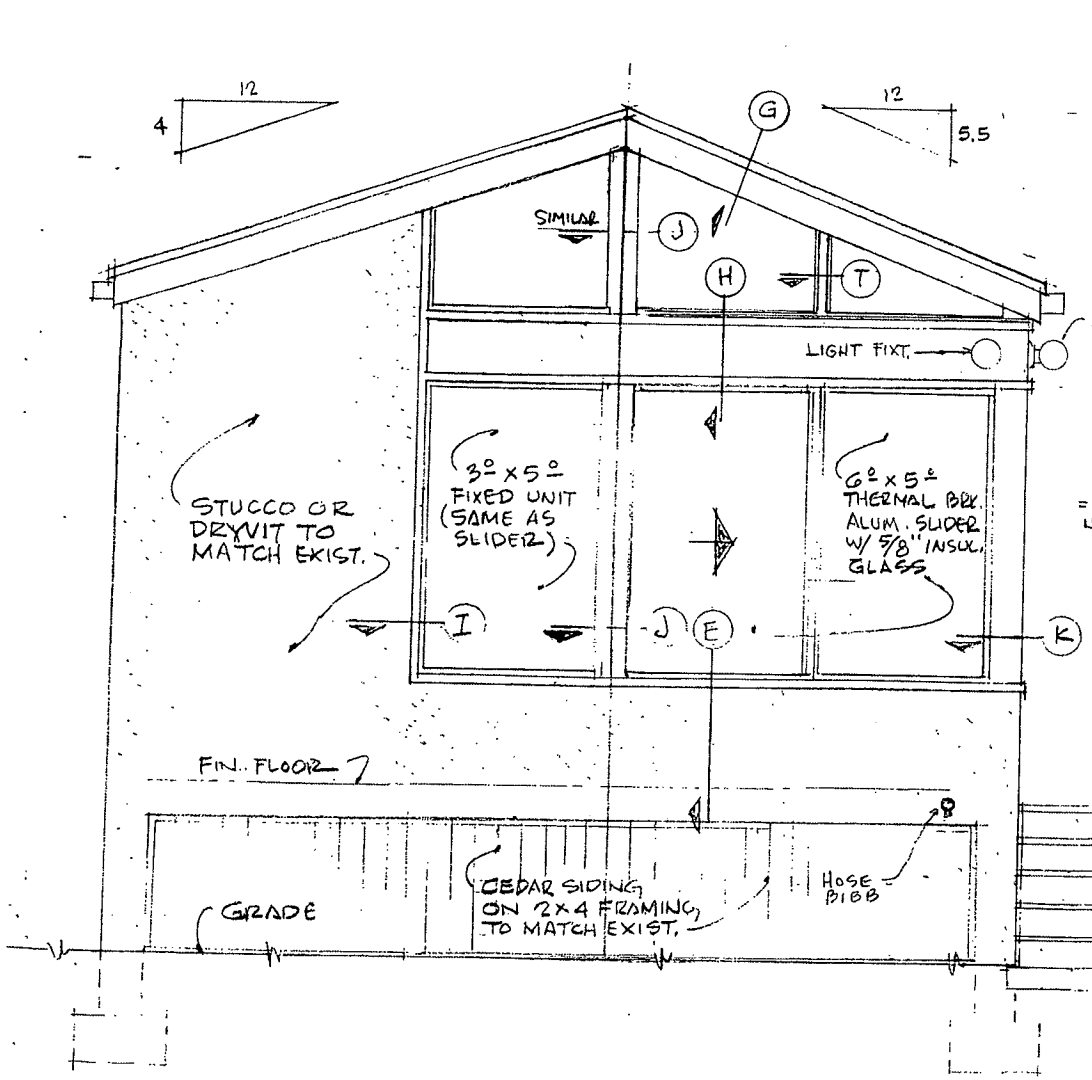
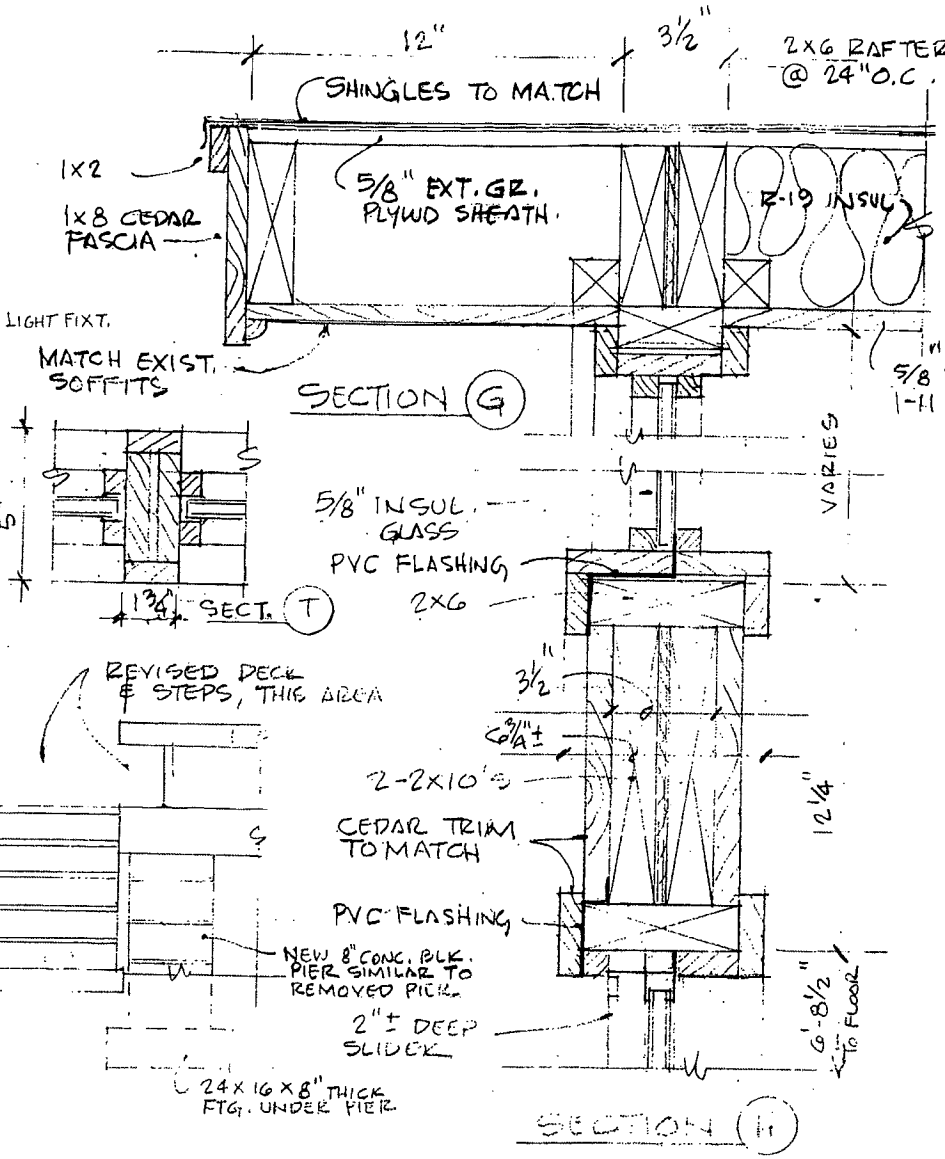


ELEVATION FROM LAGOON
1/2" = 1'-0"



MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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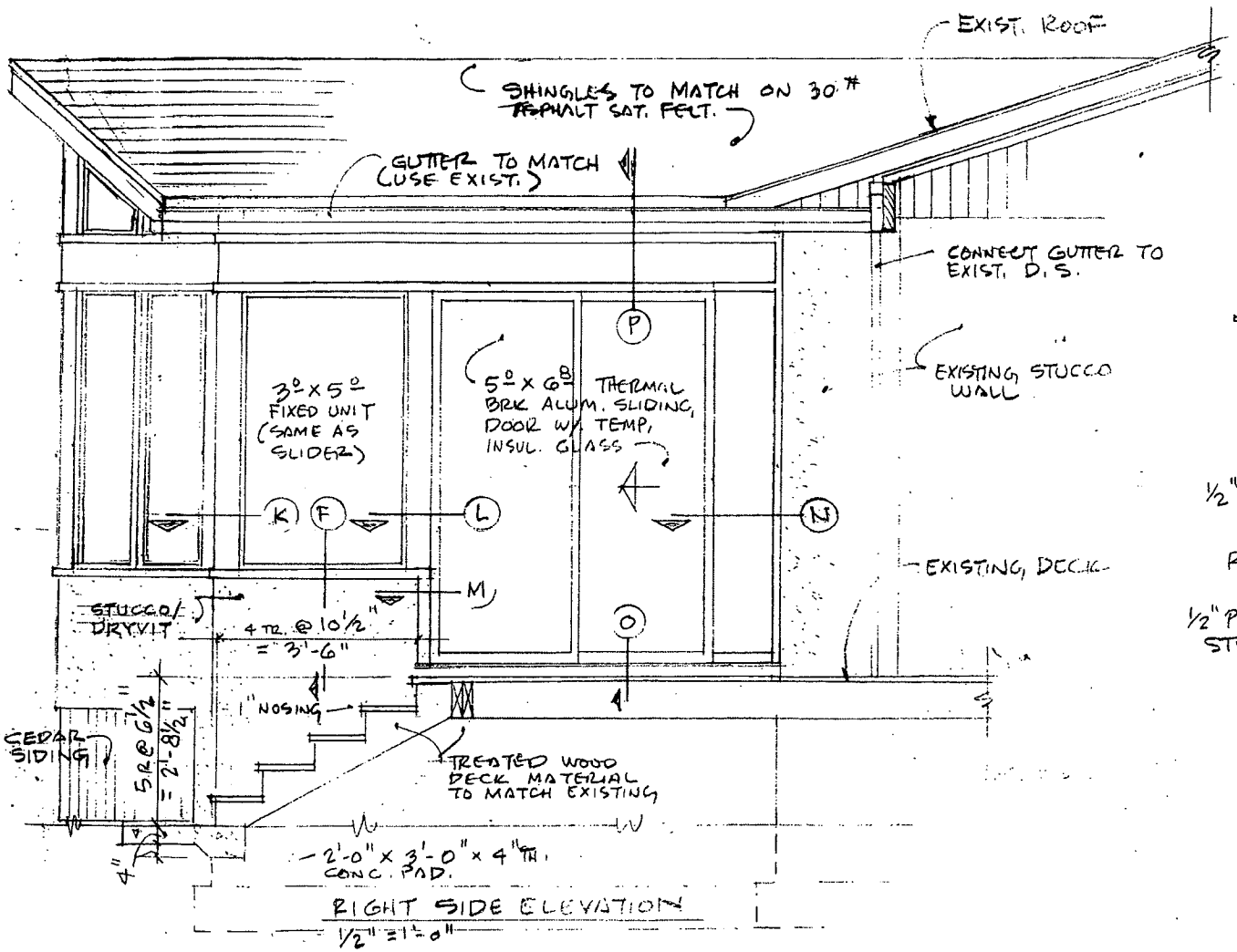
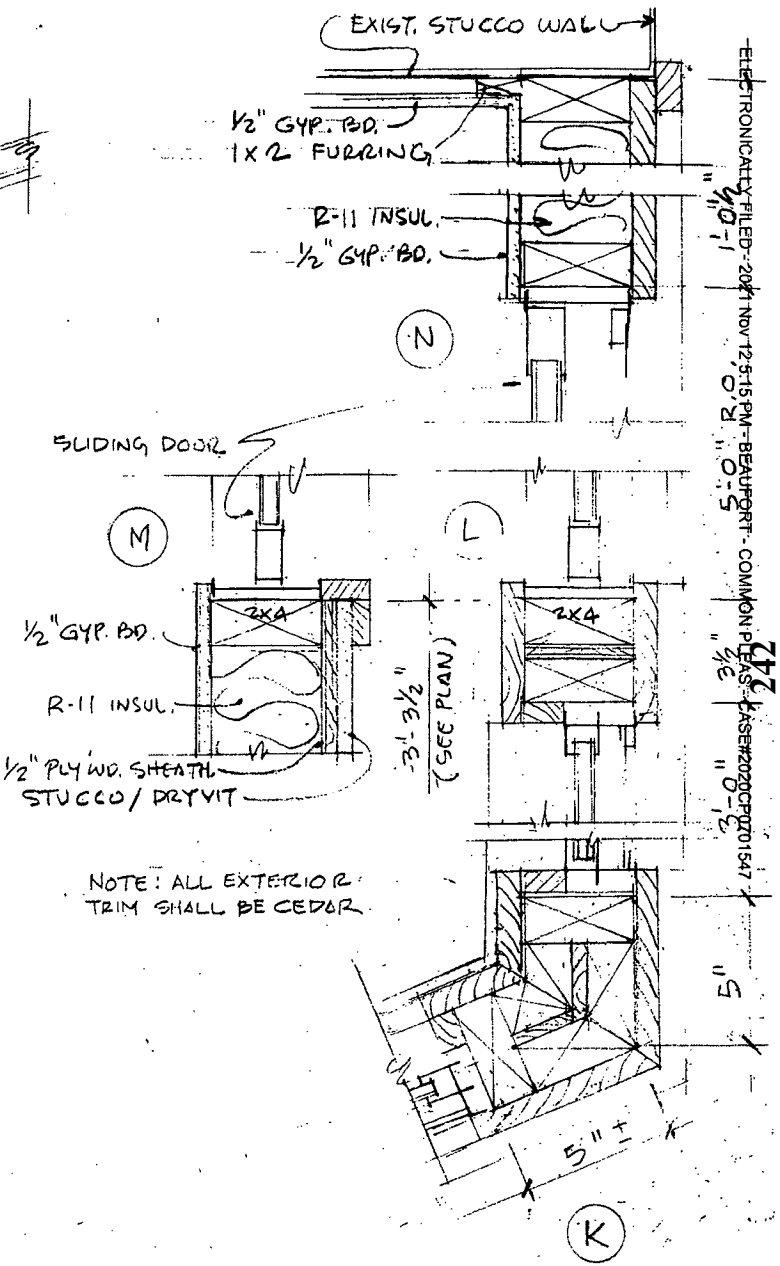


RIGHT SIDE ELEVATION
½" = 1'-0"



5 OF 9

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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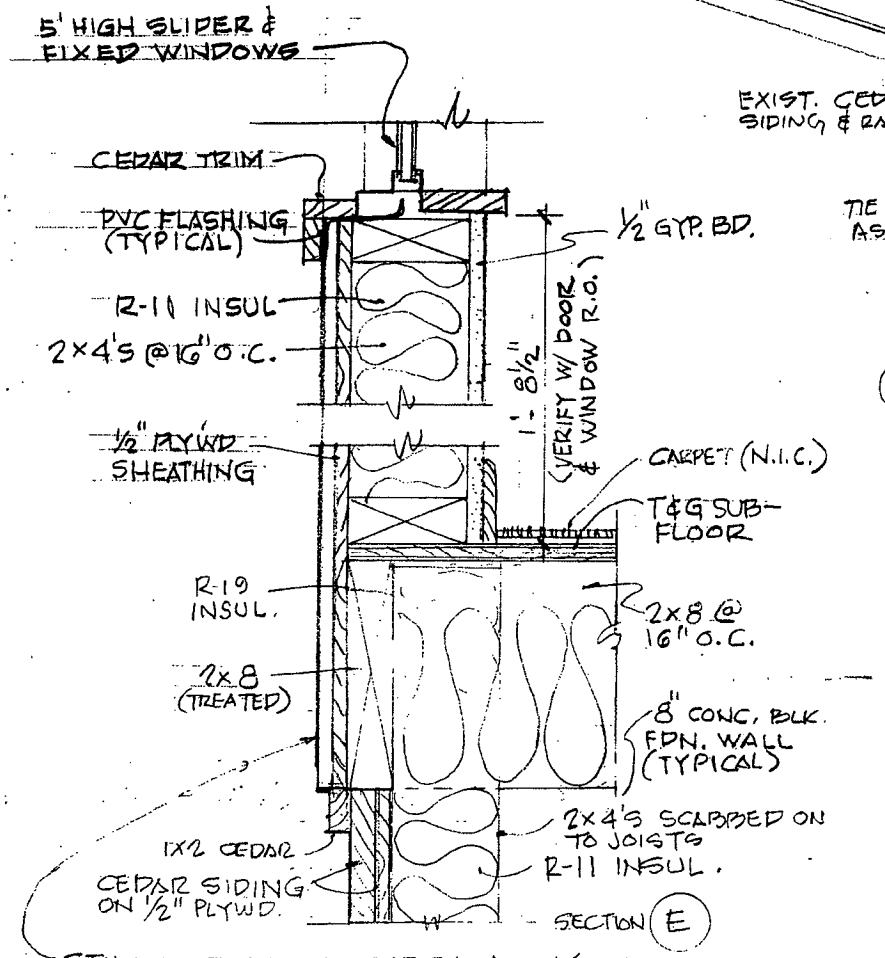

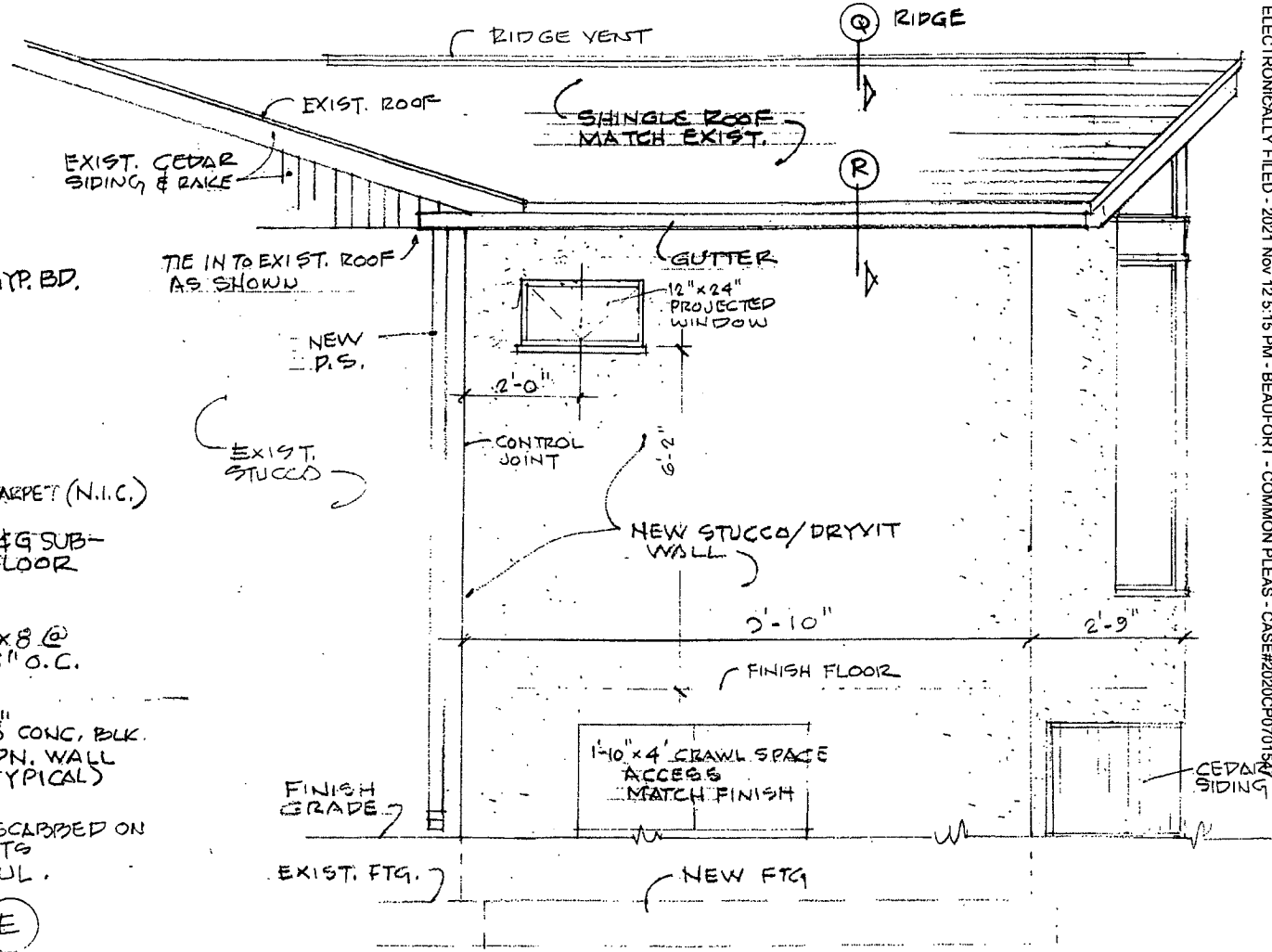

LEFT SIDE ELEVATION
½" = 1'-0"

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

6 OF 9

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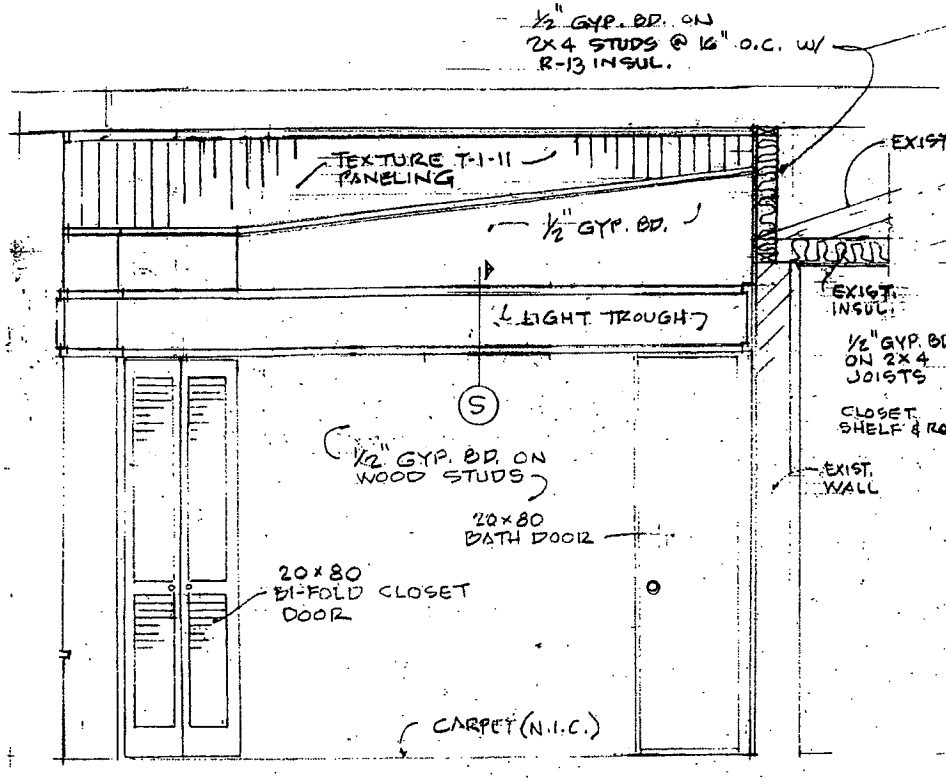

ELEVATION 2
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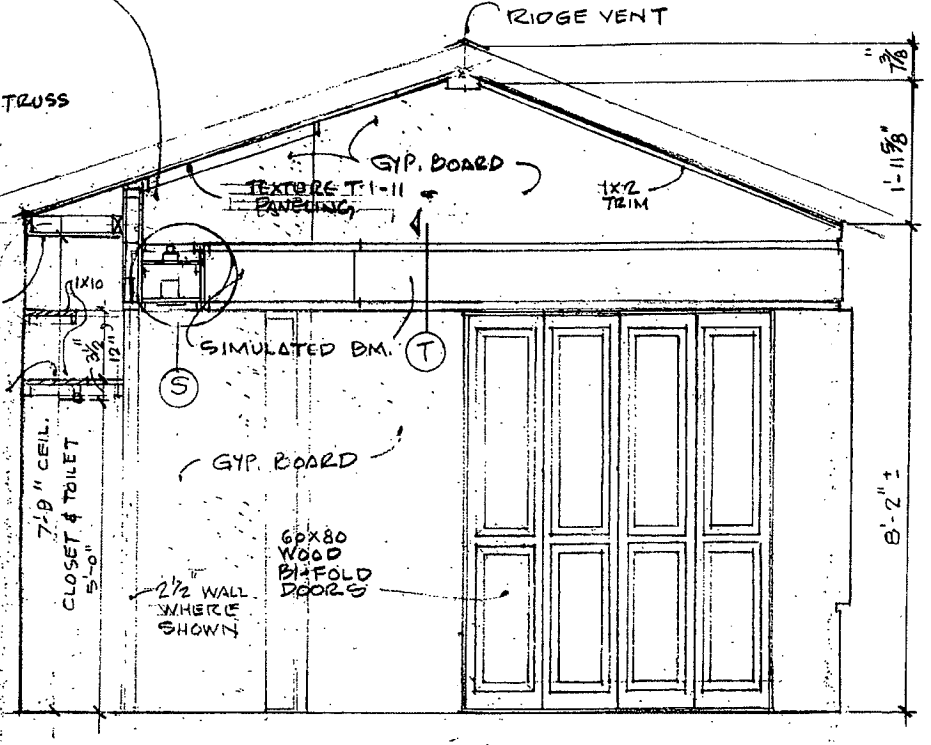

ELEVATION 1
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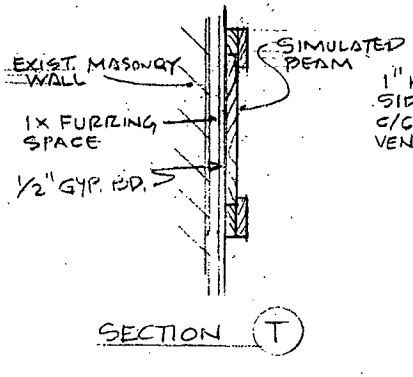
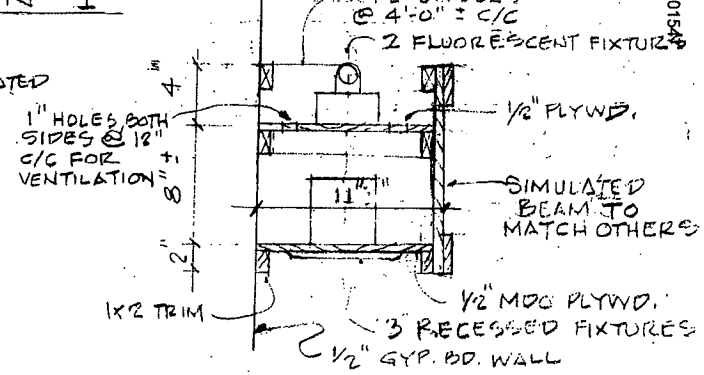


SECTION (T)



SECTION (S)

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MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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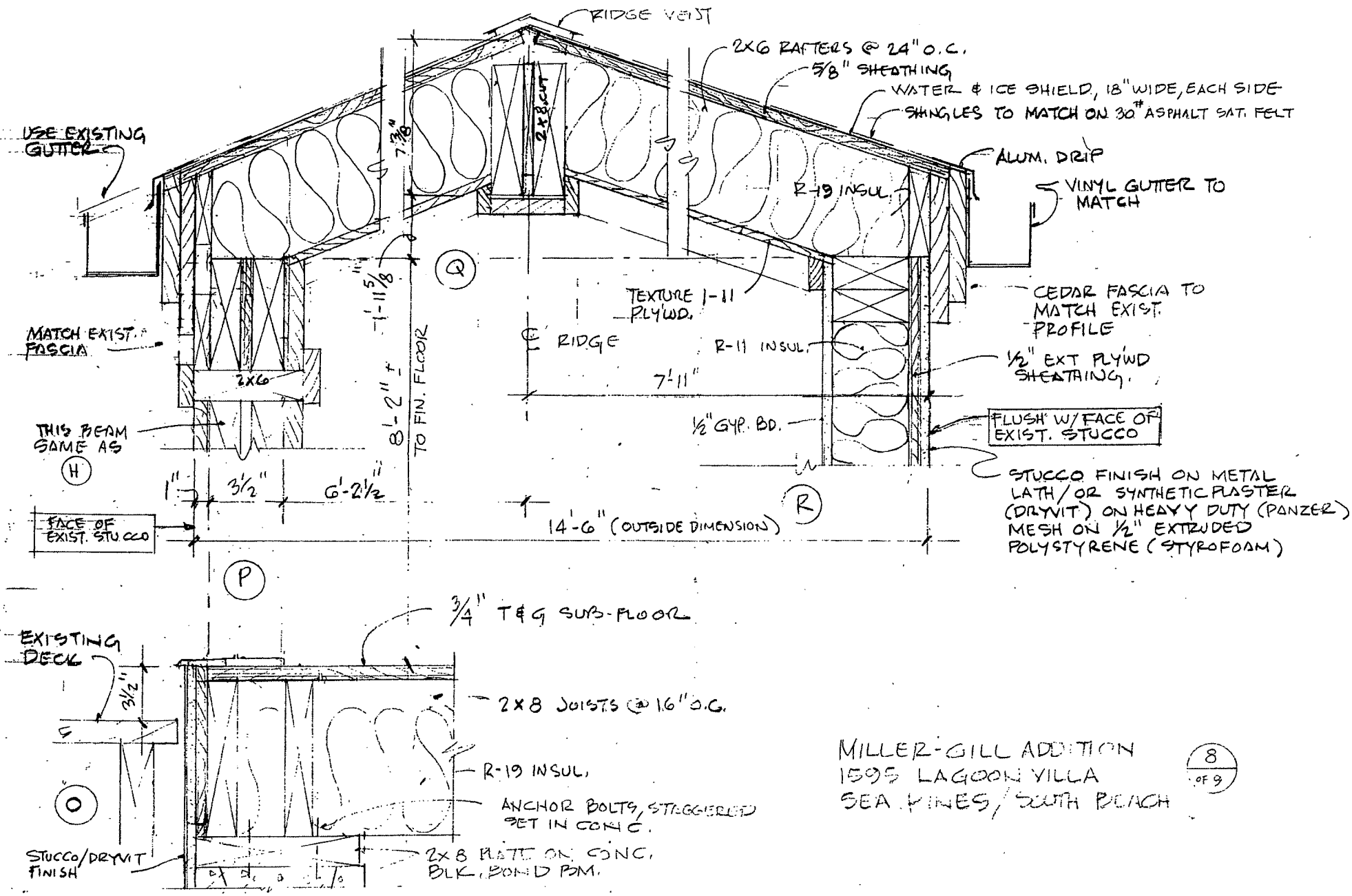

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES, SOUTH BEACH

8 OF 9

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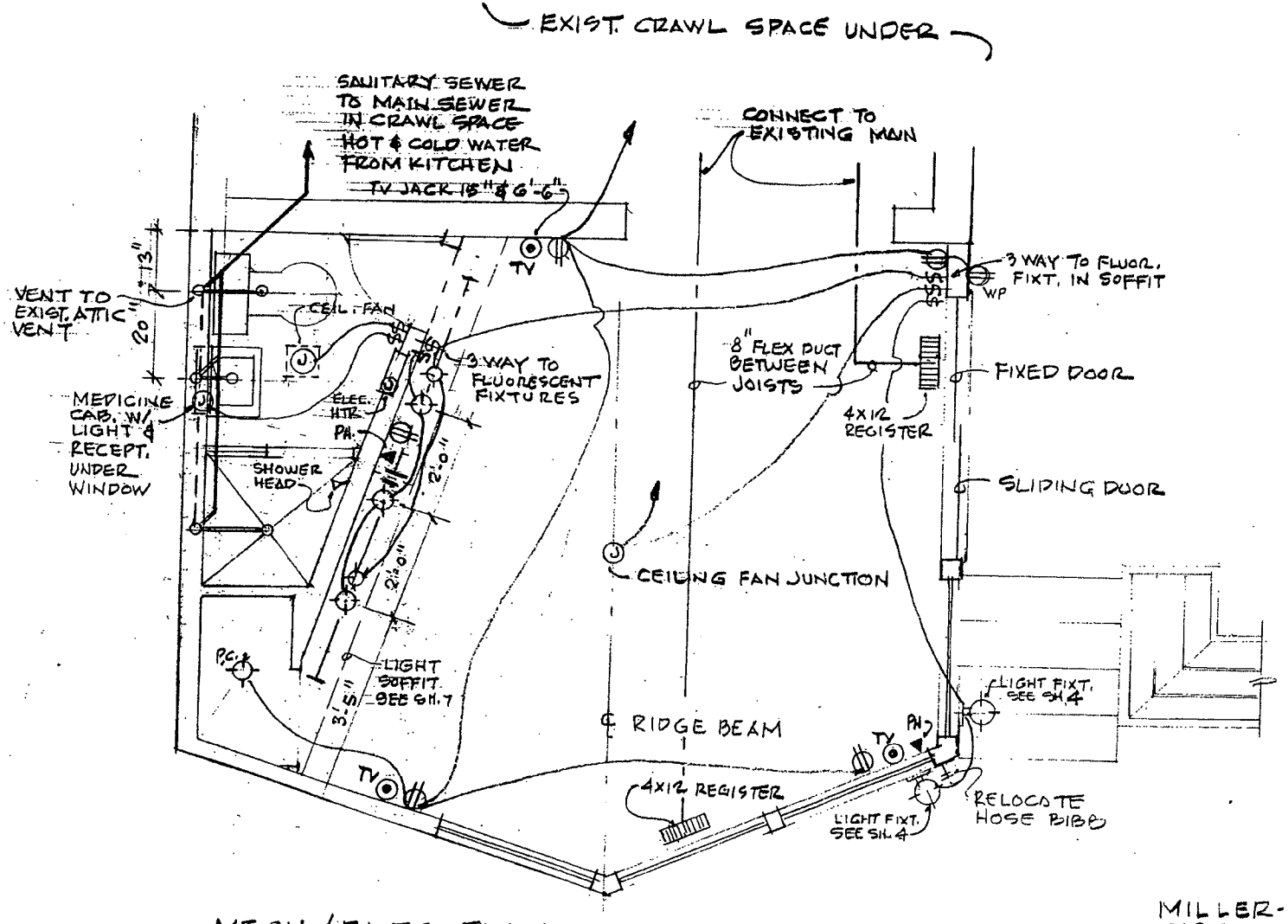

MECH./ELEC. PLAN

MILLER-GILL ADDITION
1595 LAGOON VILLA
SEA PINES / SOUTH BEACH

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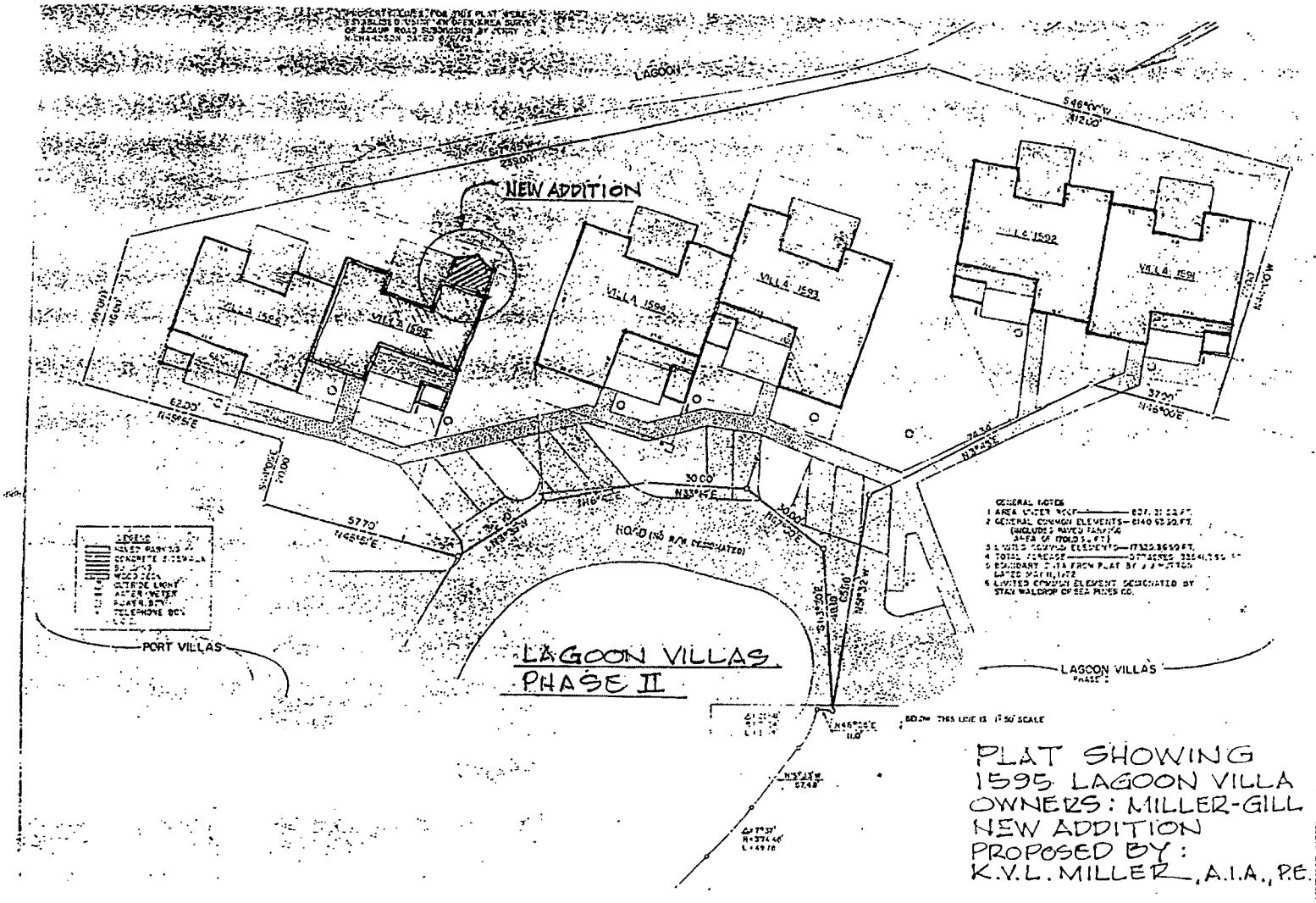

PHASE II

EXHIBIT "A"

A SKETCH OF
SEA PINES PLANTATION
HILTON HEAD ISLAND
SOUTH CAROLINA
COUNTY OF BEAUFORT

CALVERT SURVEYING
COMPANY, INC
CHARLESTON, S.C.

RECORDED IN
BOOK 41 PAGE 141
IN THE OFFICE OF
CLERK OF COURT
BEAUFORT, S.C.

SCALE 1"=20'
FILE:
DATE OCT. 2, 1973

PLAT SHOWING
1595 LAGOON VILLA
OWNERS: MILLER-GILL
NEW ADDITION
PROPOSED BY:
K.V.L. MILLER, A.I.A., P.E.

EXHIBIT B

EXHIBIT C

CSA
SEA PINES
ARCHITECTURAL REVIEW BOARD
OFFICE (803) 671-5533
FAX (803) 671-4027

Approval Date: **MAY 23 1995**
Serial Number: **LV 1595**
Legal Address: **1595 LAGOON VILLAS**

Kenneth Miller
1412 Fincastle Road
Lexington, KY 40502

The Sea Pines Architectural Review Board has this date approved your application for construction at the above referenced address.

In order for your builder to obtain the Sea Pines Building Permit for this project; you (the owner) and the selected builder must sign the enclosed documents -- in two locations each. Then, you must deliver these signed documents along with a check for the required escrow deposit(s) to our office.

The Board's approval is valid for six (6) months only. IF YOU FAIL TO OBTAIN THE BUILDING PERMIT WITHIN SIX MONTHS OF THIS LETTER, THE BOARD'S APPROVAL WILL AUTOMATICALLY LAPSE. If you desire to proceed with the construction, you will need to start the application and approval procedure all over, and pay new application fees.

We, therefore, urge you to give this matter your earliest possible attention.

Sincerely,

Suzanne Sherman

Suzanne Sherman
Assistant Administrator

Enclosure

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EXHIBIT D

MINUTES OF 1998 ANNUAL MTG.
10/30/98

Mrs. Priegel requested that HHPM contact Port I and try to secure one waste hauler to serve this area.

Mr. Miller reported that he would evaluate the addition that he has added to his villa, in relation to the percentage of ownership of each owner, to insure that he pays his proportionate share of the associations expenses. Prior to the mailing of the coupons for the new fiscal year, Mr. Miller will report this to HHPM for adjustment to his percentage of ownership.

Election of Inspectors of Election – A motion was made, seconded and approved to appoint HHPM as Inspectors of Elections.

Election of Administrators – It has previously been determined that all the members of the association will be members of the Board.

Budget – George reviewed that the bulk of the increase in the regime fee was due to the increased cost of the landscape maintenance. A review of the proposed budget indicates those areas of change in the annual expenses. A motion was made, seconded and approved to accept the budget as presented.

New Business – Mr. Miller requested that HHPM prepare an estimate of needs for the association, coupled with a life expectancy of existing areas (i.e. roofs, exterior painting, etc.)

Annual Meeting – A motion was made, seconded and approved to hold the 1999 Annual Meeting on Friday, November 8, 1999.

There being no further business, a motion was made, seconded and approved to adjourn.

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EXHIBIT E

HILTON HEAD PROPERTY MANAGEMENT, INC.

ASSOCIATION AND REGIME MANAGEMENT
38 NEW ORLEANS ROAD, SUITE B-202
POST OFFICE BOX 7942
HILTON HEAD ISLAND, SC 29938
PHONE (843) 785-3101 FAX (843) 785-6814

GEORGE: SEE SUGGESTION IN 2ND PAR. I THINK IT WILL DEMONSTRATE THE DECISION WAS NOT ARBITRARY.

MEMO

Post-it® Fax Note 7671	Date 12/3/98	# of pages ▶ 1
To GEORGE FLATHMANN	From KEN MILLER	
Co./Dept. H.H.P.M.	Co.	
Phone #	Phone #	
Fax # 803-785-6814	Fax # 606-259-1877	

TO: Lagoon II File

FROM: George W. Flathmann

DATE: December 2, 1998

SUBJECT: Percentages of Ownership

In accordance with the minutes of the 1998 Annual Meeting, I have reviewed with Mr. Miller the addition to his villa and the amount of space added by this addition.

Although the amount paid by an owner is based on the percentage of ownership established in the Master Deed, the association has agreed to allow Mr. Miller to increase his percentage of ownership to be reflected by the additional square footage that he has added as it relates to the value used to determine the percentage of ownership.

UNDER THE ADVISEMENT OF OUR COUNSEL

By determining that the difference between the values of the villas is $10,000.00, and the difference in the size of the villas is 314 sq. ft., the cost per sq. ft. would be $29.33. Assessing 1595 an increase based on the additional sq. ft. of 154 sq. ft., the new value of 1595 would be $77,516.82 (rounded to $77,500.00). This changes the total value of Lagoon II from $458,000.00 to $462,500.00 (rounded off). Using this total the following changes of percentage of ownership would be:

?

CORRECT

Original Sq. Ft. Value & % of Ownership	New Sq. Ft. Value & % of Ownership
1591 – 1086sq.ft. – 73,000.00 – 15.939%	1086sq.ft. – 73,000.00 – 15.784
1592 – 1086sq.ft. – 73,000.00 – 15.939%	1086sq.ft. – 73,000.00 – 15.784
1593 – 1400sq.ft. – 83,000.00 – 18.122%	1400sq.ft. – 83,000.00 – 17.946
1594 – 1400sq.ft. – 83,000.00 – 18.122%	1400sq.ft. – 83,000.00 – 17.946
1595 – 1086sq.ft. – 73,000.00 – 15.939%	1240sq.ft. – 77,500.00 – 16.756
1596 – 1086sq.ft. – 73,000.00 – 15.939%	1086sq.ft. – 73,000.00 – 15.784

CSA SEA PINES
ARCHITECTURAL REVIEW BOARD
OFFICE (843) 671-5533
FAX (843) 671-4027

EXHIBIT F

ELECTRONICALLY FILED - 2021 Nov 12 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

January 7, 1999

Kenneth V. L. Miller
1412 Fincastle Road
Lexington, KY 40502-1914

Re: Refund of escrow deposit – 1595 LAGOON VILLAS -

Dear Mr. Miller:

Please find enclosed our check for $1,000.00 that represents the return of your escrow deposit.

+

Our inspector has checked the property and found it to be in compliance with the working drawings approved by the SPARB at an earlier date.

We appreciate your cooperation.

Sincerely,

Ken Rabon
Administrator

KR/sos

Enclosure

EXHIBIT G

ELECTRONICALLY FILED - 2021 Nov 12 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AMENDMENT TO MASTER DEED
South Beach Lagoon Villas II
Horizontal Property Regime LVII

KNOW ALL MEN BY THESE PRESENTS, that this Amendment to Master Deed is made on the date hereinafter set forth by unanimous consent of the Co-Owners of the Dwelling Units and Common Elements of the South Beach Lagoon Villas II, Horizontal Property Regime LVII (hereinafter the "Regime").

Whereas, the real property of the Regime consists of six (6) Dwelling Units ("Villas") and the General and Limited Common Elements described in Article FIFTH, Sections I and II of the Master Deed, Horizontal Property Regime dated October 17, 1973 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 265, Page 23 (hereinafter the "Master Deed"); and

Whereas, Article ELEVENTH of the Master Deed provides the procedure by which the Master Deed' provisions concerning ownership of the Common Elements may be amended, specifically providing as follows:

> That the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in amendment to this Deed duly recorded.

Whereas, each of the six (6) present co-owners in the Regime has consented in writing to a change in the percentage of undivided interest in the Common Elements as set forth in more detail hereinbelow, with said consent being evidenced by the signatures of the co-owners of record affixed hereto.

Now, therefore, in consideration of One ($1.00) Dollar, the mutual covenants herein contained, and other good and valuable consideration, the co-owners of the Common Elements (both General and Limited) of the Regime, do hereby amend the Master Deed as follows:

1. The co-owners consent and agree to a 154 sq. ft. permanent addition to Villa 1595 that is located and situate upon the General Common Elements of the Regime. As a result, the total acreage of the General Common Elements has been reduced and the square footage of Villa 1595 has been increased.

2. The revised dimensions of the Common Elements and of Villa 1595 are as described in more detail on that certain plat of record prepared by _____, SCRLS, dated _____, 2001 and entitled _____ as recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book __, Page __.

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3. As a result of the foregoing addition to the square footage of Villa 1595, Article Fifth, Section I.C. of the Master Deed is amended to reflect that the the square footage and therefore the respective percentages of ownership of each co-owner have changed as follows:

Original Sq. Ft. Value & Percentage (%) of Ownership	New Sq. Ft. Value & Percentage (%) of Ownership
1591 – 1086 sq. ft – $73,000,00 – 15.939%	1086 sq. ft. – $73,000.00 – 15.784%
1592 – 1086 sq. ft – 73,000,00 – 15.939%	1086 sq. ft. – 73,000.00 – 15.784%
1593 – 1400 sq. ft. – 83,000.00 – 18.122%	1400 sq. ft. – 83,000.00 – 17.946%
1594 – 1400 sq. ft. – 83,000.00 – 18.122%	1400 sq. ft. – 83,000.00 – 17.946%
1595 - 1086 sq. ft – 73,000,00 – 15.939%	1240 sq. ft. – 77,500.00 – 16.756%
1596 - 1086 sq. ft – 73,000,00 – 15.939%	1086 sq. ft. – 73,000.00 – 15.784%

4. As a further result of the foregoing addition to the square footage of Villa 1595, the Owner of Villa 1595 shall and does hereby acquire the undivided fee simple ownership of the additional 154 sq. ft. that was formerly General Common Elements and, as such, said Owner, his successors and assigns, shall from the date of this Amendment forward be solely responsible for any and all of the said improvements, and the maintenance thereof, whether resulting from faulty workmanship or otherwise.in accordance with the provisions of the Master Deed,

5. All other provisions of the Master Deed shall remain in full force and effect.

IN WITNESS WHEREOF, as evidenced by the written consent of each co-owner appended hereto, the aforesaid amendments to the Master Deed shall be effective this ___ day of _____, 2001.

EXHIBIT H

ELECTRONICALLY FILED - 2021 Nov 12 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

Miller - Gill Unit 1595
c/o Kennie Gill
1419 North Glebe Road
Arlington, Virginia 22207-2119

June 29, 2021
RE: Roof Assessment, Lagoon Villas, II

South Beach Village Lagoon Villas, II, HPR LVII
c/o IMC Resort Services, Inc.
2 Corpus Christi, Suite 302
Hilton Head Island, SC 29928
ATTN: Mr. Bryan Dorshimer, Property Manager

Dear Bryan:

This is to advise the Regime of action we have taken with regard to payment of our portion of the special roof assessment while litigation to resolve the Master Deed issue is pending.

We have remitted $7,711.63 for our share of the $41,665 total cost of the roof assessment, as follows:

$6,712.23	16.11% of $41,665 (ownership % used until 11.01.2020)
$ 999.40	Monarch cost estimate to roof our 154 sq. ft. addition
$7,711.63	**TOTAL Remitted by Unit 1595 PRIOR TO ADJUSTMENTS**

Attached is the cost estimate to roof our addition, submitted by Monarch, the same company which the Council of Owners approved to roof the entire Regime complex.

The total cost of the roof assessment should be reduced by the $999.40 we are paying to roof our improvement. The new total cost of the project is $40,665.60, for a reduction of $181.11 in the assessment for a 3-bedroom unit and a reduction of $159.29 for a 2-bedroom unit. We encourage the Regime to recalculate the roof assessments based on this revised total project cost. Otherwise, all owners will be entitled to credits against payments already made. NOTE: the calculation error made in the assessment for the 2-bedroom units is not accounted for in the above estimate.

We have consistently contended that any owner who has improved a unit should be financially responsible for the cost of maintaining that improvement. The Council of Owners ratified that position in 1998 when it adjusted the ownership percentages to reflect our improvement, and again in 2003 to reflect the improvement to Unit 1594. (The ownership percentages were never adjusted following improvements to Unit 1591 or other units.) Consequently, we are remitting our percentage of the roof assessment based on the revised ownership percentage of 16.11%, as approved by the Regime in 1998 and revised in 2003 to reflect the improvement to Unit 1594 and subsequently revised by GW Services, Inc. in 2004, 2007 and 2008 and used through the end of budget year 2019-2020 by IMC Resort Services, Inc.

However, in the case of the roof assessment, the 0.171% increase in our historic ownership percentage (.16110 - .15939 = .00171) would not result in sufficient additional funds to cover the cost of re-roofing our 154 square foot improvement ($41,665 x 0.00171 = $72.25). Consequently, in addition to submitting our portion of the assessment based on our historic increased ownership percentage, we are submitting the entire estimated cost of the job for our improvement, in the amount of $999.40.

Other owners should not have to pay for the roof upkeep on our improvement. Nor should owners have to pay for the roof upkeep on other units which have been improved by the owner, regardless of whether the Master Deed has been amended or the ownership percentage has been revised.

Sincerely,

Kenneth V. L. Miller, Owner, Unit 1595

Anna M. Miller, Owner, Unit 1595

Amar and Kennie Gill Living Trust, UAD March 15, 2019, Owner, Unit 1595
Kennie Lee Miller Gill, Trustee

Attachment: Monarch estimate

Cc: (by email) IMC Resort Services, Inc., Bryan Dorshimer, Property Manager
Unit 1591, Kenneth E. Nyquist, Owner
Unit 1592, 226 Trust UAD January 4, 2013, Owner, Lucy Landry, Trustee
Unit 1593, Sizemore Properties, LLC, Owner, Kathy Sizemore Anderson, Member
Unit 1594, Maple Mont South, LLC, Owner, William Tatum, Jr., Member
Unit 1596, Todd E. Taylor, Catherine C. Taylor, Owner

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MONARCH ROOFING of Hilton Head LLC
Monarch Roofing HHI
4 Mathews Court Suite D
Hilton Head Island SC 29926
Phone: 843-683-7003

Company Representative
Don Faulk
Phone: (843) 333-1019
donfaulk@monarchroofing.biz

Roofing addition

04/27/2021

Lagoon Villas Unit 1595
226 South Sea Pines Drive
Hilton Head Island, SC 29928 (703) 300-0558

Job: Lagoon Villas Unit 1595

Repair Section

TOTAL $999.40

Note:
Re-roofing the condo addition.

To schedule your repair, please contact Carla Franglose at 843-683-7003 and/or repairs@monarchroofing.biz

Thank you for choosing Monarch Roofing. All labor hours are based on one technician, obtaining materials, and transportation.

Project over $1,000.00 require the following payment schedule. 50% at signature and 50% at the completion.

DISCLAIMER: Coverages/Exclusions. This Monarch Roofing Pledge Limited Warranty covers the area of work completed by our Monarch Roofing Technician(s). Two (2) years of labor and materials are included for the following items: Shingles, Ridge Cap Shingles, Starter Strip Shingles, Leak Barrier, Roof Deck Protection, and Ridge Vent Ventilation. During the two (2) year period, we will repair or replace defective areas due to failing materials or workmanship issues at no cost to the homeowner. Limited liability applies to the above items if issues arise based on the roof deck sheeting. In addition, any interior damage and/or cost associate with interior damage due to repair failure is the homeowner's responsibility in full. Scope: Only the original property owner is covered by this warranty or if you are first subsequent owner (if this warranty was properly transferred).

Company Authorized Signature _____ Date _____

Customer Signature _____ Date _____

Customer Signature _____ Date _____

EXHIBIT I

STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII**
	)	
COUNTY OF BEAUFORT	)	

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of _____, 2019, by South Beach Lagoon Villas II Horizontal Property regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973 Sea Pines Plantation Company, (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 a Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners of the Regime; and

WHEREAS, all co-owners of the Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners in the Regime in order to avoid hardship to the owners of the Encroaching Units have agreed to convey the common elements located beneath the improvements to the Encroaching Units to the owners thereof by this Amendment to Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the co-owners by execution of that certain Consent Resolution dated _____ 2019 have approved the revised As-Built Survey and authorized Todd E. Taylor as the duly elected President and Kennie Lee Miller Gill, as the duly elected Secretary of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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NOW THEREFORE, KNOW ALL MEN THESE PRESENTS that the co-owners of the South Beach Villas Lagoon Villas II Horizontal Property Regime LVII do hereby state and declare:

1. The above "WHEREAS" clauses are hereby incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a ⅓" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community

Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I. C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom Type "A" Villas: (Unit 1591) This Villas measures 40.50 feet wide and 43.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,280 feet.
2. Two-bedroom Type "B" Villas: (Unit 1592) This Villas measures 39.90 feet wide and 41.10 feet deep in their maximum interior dimensions and contains a net interior area of 1,138 feet.
3. Three-bedroom Type "C" Villas: (Unit 1593) This Villas measures 45.40 feet wide and 48.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,342 feet.
4. Three-bedroom Type "D" Villas: (Unit 1594) This Villas measures 45.40 feet wide and 54.30 feet deep in their maximum interior dimensions and contains a net interior area of 1,799 feet.
5. Two-bedroom Type "E" Villas: (Unit 1595) This Villas measures 41.40 feet wide and 52.40 feet deep in their maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villas: (Unit 1596) This Villas measures 40.50 feet wide and 38.60 feet deep in their maximum interior dimensions and contains a net interior area of 1,069 feet."

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5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:
I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners (the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the purchase price for which the Property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary of the Regime, swear and attest that the aforementioned modifications were approved by unanimous consent of the co-owners of the Regime as provided for in the Master Deed of the Regime.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina. In case any of the provisions state above conflict with the Horizontal Property Act, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, or other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein.

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this ___ day of _____ 2019, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina

WITNESSES:

_____

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
Todd E. Taylor
Its: President

Attest:
By: _____
Kennie Lee Miller Gill
Its: Secretary

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Todd E. Taylor, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kennie Lee Miller Gill, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

_____
Witness's Signature

Witness my official seal this ____ day of _____, 2019

_____
Notary Public for _____
My Commission Expires: _____

ELECTRONICALLY FILED - 2021 Nov 12 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

CONSENT RESOLUTION
COUNCIL OF CO-OWNERS
SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

THE UNDERSIGNED being 100% of the Dwelling Unit Owners in the South Beach Lagoon Villas II Horizontal Property Regime LVII do hereby approve and consent to the following resolution:

"BE IT RESOLVED that the Declaration of Amendment to Master Deed for South Beach Villas II Horizontal Property Regime LVII attached hereto which conveys certain common elements to owners of Dwelling Unit 1591, 1594 and 1595 and adjusts the proportionate share of ownership in the common elements be and hereby is approved;

BE IT FURTHER RESOLVED that the revised As-Built Survey referenced in the aforesaid Declaration of Amendment be and herby is approved; and

BE IT FURTHER RESOLVED that Todd E. Taylor as President and Kennie Lee Miller Gill as Secretary or their duly elected successors be and hereby are authorized to execute the Declaration of Amendment on behalf of the South Beach Lagoon Villas II Horizontal Property Regime LVII and record the Declaration of Amendment and the revised As-Built Survey in the Office of the Register of Deeds for Beaufort County, South Carolina."

[Signatures Follow on the Following Page]

IN WITNESS WHEREOF, the undersigned has this ___ day of _____ 2019, signed, sealed, and delivered the within document.

WITNESSES:

DWELLING UNIT 1591

_____
Kenneth E. Nyquist, Jr., Owner

_____
Jennifer Ann Nyquist-Bivins, Owner

DWELLING UNIT 1592

226 Trust, Owner

_____ By: _____
John C. Hadley
Its: Trustee of the 226 Trust u/a/d January 4, 2013

DWELLING UNIT 1593

Sizemore Properties, LLC, Owner

_____ By: _____
Kathy Sizemore Anderson
Its: Member

DWELLING UNIT 1594

Maple Mont South, LLC, Owner

_____ By: _____
William Tatum, Jr.
Its: Member

DWELLING UNIT 1595

Amar and Kennie Gill Living Trust, Owner

_____ By: _____
Kennie Lee Miller Gill
Its: Trustee

_____ By: _____
Amar Singh Gill
Its: Trustee

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Kenneth V.L. Miller, Owner

Anna M. Miller, Owner

DWELLING UNIT 1596

Todd E. Taylor, Owner

Catherine C. Taylor, Owner

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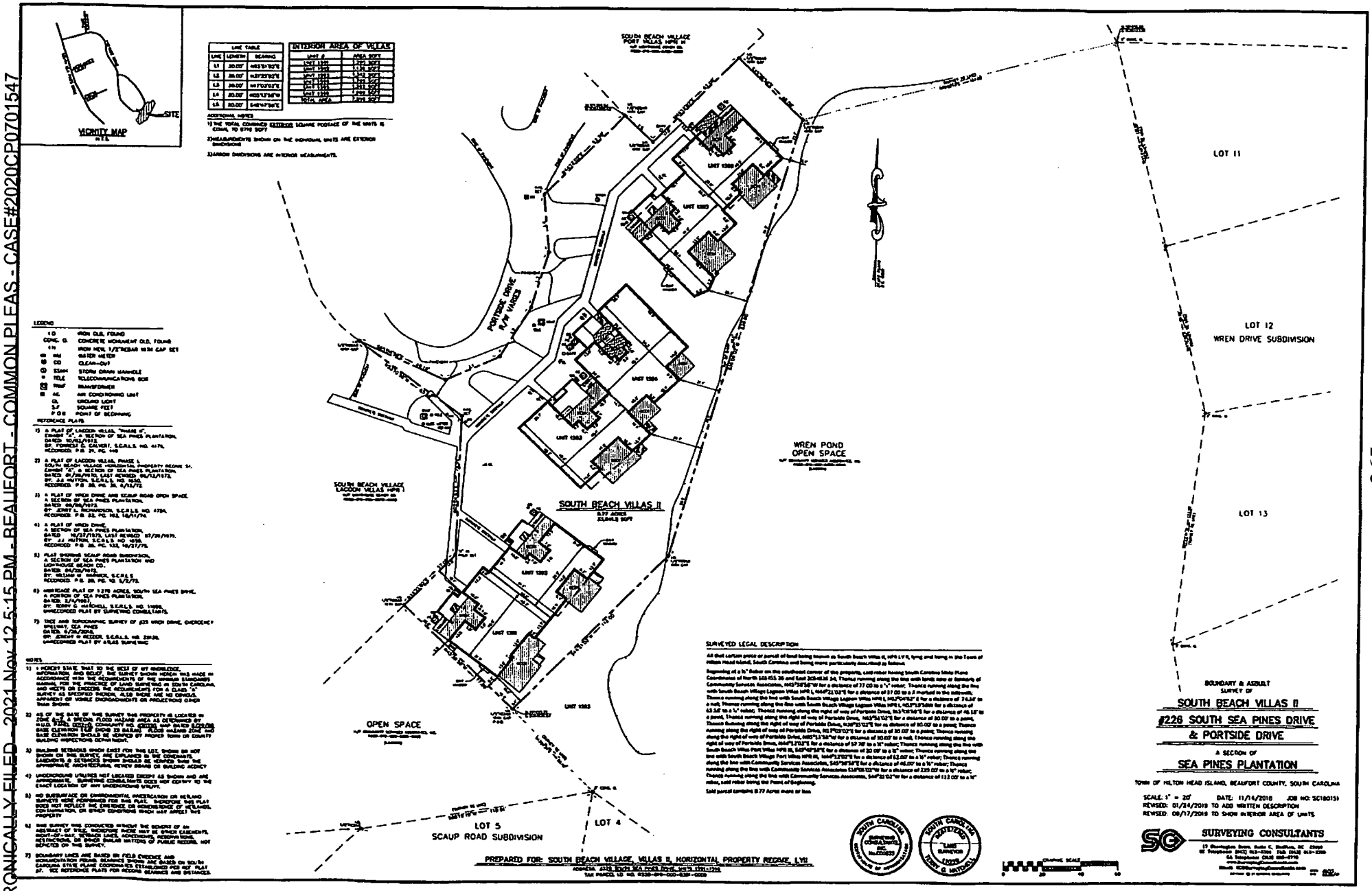

LINE TABLE		
LINE	LENGTH	BEARING
L1	20.03'	N63°51'52"E
L2	39.03'	N37°25'52"E
L3	39.03'	N17°03'07"E
L4	20.03'	N05°13'08"W
L5	80.03'	S48°41'58"E

INTERIOR AREA OF VILLAS	
UNIT #	AREA SQFT
UNIT 1355	1,291 SQFT
UNIT 1359	1,291 SQFT
UNIT 1363	1,291 SQFT
UNIT 1367	1,291 SQFT
UNIT 1371	1,291 SQFT
UNIT 1375	1,291 SQFT
TOTAL AREA	7,746 SQFT

ADDITIONAL NOTES
1) THE TOTAL COMBINED EXTERIOR SQUARE FOOTAGE OF THE UNITS IS EQUAL TO 8776 SQFT
2) MEASUREMENTS SHOWN ON THE INDIVIDUAL UNITS ARE EXTERIOR DIMENSIONS
3) ARROW DIMENSIONS ARE INTERIOR MEASUREMENTS.

LEGEND

I.O.	IRON OLD, FOUND
CONC. O.	CONCRETE MONUMENT OLD, FOUND
I.N.	IRON NEW, 1/2"REBAR WITH CAP SET
W.M.	WATER METER
C.O.	CLEAN-OUT
S.D.M.H.	STORM DRAIN MANHOLE
T.C.B.	TELECOMMUNICATIONS BOX
T.R.F.	TRANSFORMER
A.C.	AIR CONDITIONING UNIT
U.L.	UNGUND LIGHT
S.F.	SQUARE FEET
P.O.B.	POINT OF BEGINNING

REFERENCE PLATS

1) A PLAT OF LAGOON VILLAS, "PHASE II", EXHIBIT "A", A SECTION OF SEA PINES PLANTATION, DATED: 10/24/1972, BY: FORREST B. CALHOUN, S.C.R.L.S. NO. 4176, RECORDED: P.B. 21, PG. 140
2) A PLAT OF LAGOON VILLAS, PHASE I, SOUTH BEACH VILLAGE HORIZONTAL PROPERTY REGIME 51, EXHIBIT "A", A SECTION OF SEA PINES PLANTATION, DATED: 01/26/1970, LAST REVISED: 06/12/1972, BY: J.J. HUTTON, S.C.R.L.S. NO. 4536, RECORDED: P.B. 20, PG. 28, 6/13/72.
3) A PLAT OF WREN DRIVE AND SCAUP ROAD OPEN SPACE, A SECTION OF SEA PINES PLANTATION, DATED: 09/06/1972, BY: JERRY L. RICHARDSON, S.C.R.L.S. NO. 4784, RECORDED: P.B. 22, PG. 143, 10/31/72.
4) A PLAT OF WREN DRIVE, A SECTION OF SEA PINES PLANTATION, DATED: 10/27/1972, LAST REVISED: 07/20/1973, BY: J.J. HUTTON, S.C.R.L.S. NO. 4536, RECORDED: P.B. 20, PG. 132, 10/27/72.
5) PLAT SHOWING SCAUP ROAD SUBDIVISION, A SECTION OF SEA PINES PLANTATION AND LIGHTHOUSE BEACH CO., DATED: 04/20/1972, BY: WILLIAM M. BAUMGER, S.C.R.L.S. RECORDED: P.B. 20, PG. 10, 5/2/72.
6) HERITAGE PLAT OF 1.378 ACRES, SOUTH SEA PINES DRIVE, A PORTION OF SEA PINES PLANTATION, DATED: 2/1/1981, BY: SONNY E. HERSCHEL, S.C.R.L.S. NO. 11998, UNRECORDED PLAT BY SURVEYING CONSULTANTS.
7) TREE AND TOPOGRAPHIC SURVEY OF #225 WREN DRIVE, OVERDENCY SPELMAN, SEA PINES, DATED: 5/28/2018, BY: JEREMY W. HESSER, S.C.R.L.S. NO. 29139, UNRECORDED PLAT BY ATLAS SURVEYING

NOTES

1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS 'A' SURVEY AS SPECIFIED THEREIN, ALSO THERE ARE NO OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.
2) PER OF THE BASE OF FIRE SURVEY WAS PREPARED IS LOCATED IN ZONE X, AN AREA OF 0.2% ANNUAL CHANCE FLOOD HAZARD AREA AS DETERMINED BY FLOOD INSURANCE RATE MAP (FIRM) FOR COMMUNITY NO. 450250, MAP NUMBER 45013C0276F, EFFECTIVE DATE 9/29/2018. BASE FLOOD ELEVATIONS (BFE) SHOW TO BE AS BASE ELEVATIONS SHOWN ON THE FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.
3) BUILDING SETBACKS WHICH EXIST FOR THIS LOT, SHOWN OR NOT SHOWN ON THIS SURVEY, ARE EXPLAINED IN THE COVENANTS, EASEMENTS, & SETBACKS SHOWN SHOULD BE VERIFIED WITH THE APPROPRIATE ARCHITECTURAL REVIEW BOARD OR BUILDING AGENCY.
4) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN AND ARE UNKNOWN TO SURVEYING CONSULTANTS DOES NOT CERTIFY TO THE EXACT LOCATION OF ANY UNDERGROUND UTILITY.
5) NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR WETLAND SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE THIS PLAT DOES NOT REFLECT THE EXISTENCE OR NONEXISTENCE OF WETLANDS, CONTAMINATION, OR OTHER CONDITIONS WHICH MAY AFFECT THIS PROPERTY.
6) THIS SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THEREFORE THERE MAY BE OTHER EASEMENTS, RIGHT-OF-WAY, SETBACK LINES, AGREEMENTS, RESERVATIONS, RESTRICTIONS, OR OTHER SIMILAR MATTERS OF PUBLIC RECORD, NOT DEPICTED ON THIS SURVEY.
7) BOUNDARY LINES ARE BASED ON FIELD EVIDENCE AND COORDINATES SHOWN ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES ESTABLISHED FOR THIS PLAT BY GPS. SEE REFERENCE PLATS FOR RECORD BEARINGS AND DISTANCES.

SURVEYED LEGAL DESCRIPTION

All that certain piece or parcel of land being known as South Beach Villas II, HPR LVII, lying and being in the Town of Hilton Head Island, South Carolina and being more particularly described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 103,455.26 and East 203,418.34, Thence running along the line with lands now or formerly of Community Services Association, N43°58'56"W for a distance of 77.03 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'01"E for a distance of 31.00 to a ½" marked in the hallmark; Thence running along the line with South Beach Village Lagoon Villas HPR I, N43°00'43" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas HPR I, N53°51'57"E for a distance of 63.36' to a ½" rebar; Thence running along the right of way of Portside Drive, N63°51'52"E for a distance of 46.12' to a point; Thence running along the right of way of Portside Drive, N63°51'52"E for a distance of 80.03' to a point; Thence running along the right of way of Portside Drive, N63°51'52"E for a distance of 80.03' to a nail; Thence running along the right of way of Portside Drive, N48°13'58"W for a distance of 20.03' to a nail; Thence running along the right of way of Portside Drive, N44°51'02"E for a distance of 57.70' to a ½" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S47°08'58"E for a distance of 20.03' to a ½" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, N44°51'02"E for a distance of 43.03' to a ½" rebar; Thence running along the line with Community Services Association, S45°08'58"E for a distance of 45.00' to a ½" rebar; Thence running along the line with Community Services Association S14°05'02"W for a distance of 129.03' to a ½" rebar; Thence running along the line with Community Services Association, S44°21'02"W for a distance of 113.03' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 8.77 Acres more or less.

PREPARED FOR: SOUTH BEACH VILLAGE, VILLAS II, HORIZONTAL PROPERTY REGIME, LVII
ADDRESS: #28 SOUTH SEA PINES DRIVE, HILTON HEAD ISLAND, SC 29928
TAX PARCEL ID NO. R550-004-000-0287-0000

BOUNDARY & ABSOLUT SURVEY OF
SOUTH BEACH VILLAS II
#228 SOUTH SEA PINES DRIVE
& PORTSIDE DRIVE
A SECTION OF
SEA PINES PLANTATION
TOWN OF HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 20' DATE: 11/14/2018 JOB NO: SC180151
REVISED: 01/24/2019 TO ADD WRITTEN DESCRIPTION
REVISED: 08/17/2019 TO SHOW INTERIOR AREA OF UNITS

SURVEYING CONSULTANTS

GRAPHIC SCALE 0 20 40 80

265

NOVIT &
SCARMINACH, P. A.

Attorneys at Law

CHARLES A. SCARMINACH*
DANIEL A. SAXON
CATHERINE A. SCARMINACH**
ROBERT M. DEEB, Jr.

OF COUNSEL
ELIZABETH B. MAYO+
HERBERT L. NOVIT

HILTON HEAD ISLAND:
THE JADE BUILDING, SUITE 400
52 NEW ORLEANS ROAD
POST OFFICE DRAWER 14
HILTON HEAD ISLAND, SC 29938
(843) 785-5850
FAX: (843) 785-2090

ALSO MEMBER NEW YORK BAR*
ALSO MEMBER OHIO BAR+
ALSO MEMBER TENNESSEE BAR**

Charles A. Scarminach
Email: cscarminach@ns-lawfirm.com

ELECTRONICALLY FILED - 2021 Nov 12 5:15 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

October 9, 2019

VIA OVERNIGHT MAIL

Mr. Kenneth E. Nyquist, Jr.
311 East Lake Street
South Lyon, MI 48178

VIA OVERNIGHT MAIL

Ms. Jennifer Ann Nyquist-Bivins
2133 Park Ridge Drive
Bloomfield Hills, MI 48304

VIA OVERNIGHT MAIL

Mr. John C. Hadley
226 Trust
226 S. Sea Pines Dr. #1592
Hilton Head Island, SC 29928

VIA OVERNIGHT MAIL

Mrs. Kennie Lee Miller Gill
Mr. Amar Singh Gill
1419 N. Glebe Road
Arlington, VA 22207

VIA OVERNIGHT MAIL

Mr. Todd E. Taylor
Mrs. Catherine C. Taylor
3606 Terwilleger Blvd.
Tulsa, OK 74105

VIA OVERNIGHT MAIL

Ms. Kathy Sizmore Anderson
Sizemore Properties, LLC
2116 Walton Way
Augusta, GA 30904

VIA HAND DELIVERY

Mr. William Tatum, Jr.
Maple Mont South, LLC
682 South Proctor Knott Ave.
Lebanon, KY 40033

VIA OVERNIGHT MAIL

Mr. Kenneth V.L. Miller
Mrs. Anna M. Miller
1412 Fincastle Road
Lexington, KY 40502

RE: South Beach Lagoon Villas II Horizontal Property Regime LVII – Amendment to Master Deed

Dear Owner:

This firm has been retained to prepare an Amendment to the Master Deed to reflect the current dimensions of certain Dwelling Units within the Regime. Over the past many years, the owners of Dwelling Units 1591, 1594, and 1595 (the "Encroaching Units") expanded the size of their Units with the permission of the Council of Co-Owners. The expansion resulted in an

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encroachment over Common Elements of the Regime as shown on the original As-Built Survey and Master Deed for the Regime. Common Elements of the Regime are owned in proportion jointly by all Dwelling Unit owners. Thus in effect the Encroaching Unit owners do not own the property over which part their respective Dwelling Units have been extended.

In order to correct this problem two (2) alternatives are available as follows:

(1) Demand the owners of the Encroaching Units tear down any improvement located on Common Elements; or

(2) Convey the property underneath the improvement to the owners of the Encroaching Units by amendment to the Master Deed.

Because the encroachments are relatively small and do not materially impact the remaining Common Elements, the Council of Co-Owners believes the first alternative is impractical and harsh. Your President has proposed the second alternative as a much more equitable solution.

The Master Deed for the Regime requires any amendment to the Master Deed to be unanimously approved by the Dwelling Unit owners in the Regime. I am enclosing with this letter the following items:

(1) Consent Resolution;
(2) Proposed Amendment to Master Deed; and
(3) Boundary & As-Built Survey showing the correct interior area of each Dwelling Unit.

If you are in agreement with the proposed solution, please execute the Consent Resolution in the space provided above your name and return the original in the enclosed self-addressed stamped envelope. Upon receipt of Consent Resolutions, we will cause the Amendment to be executed by the President and the Secretary and thereafter the new Survey and Amendment will be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. If all Dwelling Unit owners do not agree and return these documents, the Amendment cannot occur.

If you have any questions, please contact the undersigned

Very truly yours,

NOVIT & SCARMINACH, P.A.

Charles A. Scarminach

CAS/nll
Enclosures

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ELECTRONICALLY FILED - 2021 Nov 11 7:41 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Todd E. Taylor,

PLAINTIFF,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

DEFENDANTS.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller,

THIRD-PARTY PLAINTIFFS,

vs.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII,

THIRD-PARTY DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2020-CP-07-01547

AFFIDAVIT OF ANNA M. MILLER

Anna M. Miller, being duly sworn, deposes and says:

1. I am of the age of majority and am competent to testify with respect to the following matters, of which I have personal knowledge.

2. I have been a co-owner of Unit 1595 in the South Beach Lagoon Villas, II, HPR LVII ("Lagoon II") since September 2, 1992.

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3. My husband, Defendant Kenneth V.L. Miller, prepared plans for an improvement to Unit 1595 which were approved in writing by the Sea Pines ARB. It is my understanding that all Co-Owners approved the construction of the addition to Unit 1595. After we received these approvals, construction commenced and was completed sometime in 1998.

4. The improvement itself is 154 square feet and was constructed upon the Limited Common Element immediately adjacent to Unit 1595.

5. At the request of my husband, the Co-Owners of Lagoon II held a vote at the 1998 Annual Meeting of the Council of Co-Owners to increase the percentage ownership for Unit 1595 as a result of the improvement in order to ensure that the Co-Owners did not have to pay for the continuing maintenance costs of the improvement. The vote unanimously passed and resulted in a corresponding change of ownership percentages.

6. Unit 1595 paid the increased assessments allocated to it as a result of the 1998 vote until 2003, at which time another vote was held to modify ownership interests due to an improvement to Unit 1594. Unit 1595 was assessed based on an ownership interest of 16.11% after the 2003 vote.

7. Unit 1591 was also improved sometime after 2003, but no corresponding vote was held to modify ownership interests.

8. Unit 1595 has continuously paid the increased assessments based on a 16.11% ownership interest since the 2003 vote despite Lagoon II Villas Board of Directors' announcement in 2020 that it would revert to the original ownership percentages reflected in the Master Deed.

9. In June 2021, the other Co-Owners of Unit 1595 and I tendered the additional $999.40 cost for replacing the roof on the improvement in addition to the assessment amount based on a 16.11% ownership interest to Lagoon II's current management company, IMC Resort Services, Inc.

10. In 2019, efforts to amend the Master Deed resulted in a Consent Resolution to pass a Proposed Amendment (the "2019 Proposed Amendment"), to which I initially agreed. However, I revoked my consent after subsequently realizing that the 2019 Proposed Amendment would significantly alter the

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relative voting rights of the units at Lagoon II and would shift the ownership interests from a value-based calculation according to the Master Deed to a square footage-based calculation.

11. I believe the passage of the 2019 Proposed Amendment would be unfair to the unimproved units at Lagoon II because it would force them to subsidize the maintenance cost of the expansions and dilute their relative voting power.

12. The Co-Owners of the other two improved units at Lagoon II were not named as defendants in Plaintiff's action against me.

13. It is my belief that I have been sued by Plaintiff to coerce my vote in favor of the 2019 Proposed Amendment.

FURTHER AFFIANT SAYETH NOT.

By: Anna M. Miller
Anna M. Miller

Sworn to before me this
10th day of November, 2021

Caroline French
Notary for the State of KY
My Commission Expires: 3-25-2023

Caroline French
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
NOTARY ID# 619996
MY COMMISSION EXPIRES MARCH 25, 2023

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII'S MOTION FOR ENTRY OF ORDER DECLARING MASTER DEED AMENDMENT VALID AND LAWFUL**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

COMES NOW, Third-Party Defendant *South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII* (the "Regime"), and files this Motion for Entry of an Order Declaring the Master Deed Amendment approved by a majority of the co-owners of the Regime at the Special Meeting of the Regime held March 17, 2022 to be valid and lawful, showing the Court as follows:

1. On August 26, 2021, the Regime filed a Petition for Relief Pursuant to S.C. Code § 33-31-160, seeking an Order from the Court requiring, *inter alia,* the Regime to hold a meeting

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

of the members for the purpose of approving an amendment to the Master Deed and to alter the voting percentage required to approve an amendment to the Master Deed.

2. Following a hearing, on February 3, 2022, the Court entered an Order granting the Regime's Petition (the "2-3-22 Order").

3. Pursuant to the 2-3-22 Order, the Court ordered the Regime to hold a Special Meeting within 45 days of the date of the Order for the purpose of voting on a proposed amendment to the Regime's Master Deed in accordance with the provisions therein.

4. The 2-3-22 Order provides "[s]hould a majority of co-owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order, ordering the Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County."

5. Pursuant to the 2-3-22 Order, the Court ordered that the Regime's Property Management Company would issue a notice of the Special Meeting on behalf of the Regime at least 30 days prior to the date of the Special Meeting, in accordance with additional specific provisions contained in the 2-3-22 Order.

6. On February 15, 2022, the Regime's Property Management Company issued the Notice of Special Meeting for a Meeting to be held March 17, 2022, electronically and via regular mail to all co-owners of record. The notice documents included: (1) Notice of Special Meeting dated 2-15-22; (2) the 2-3-22 Order; (3) Agenda for Special Meeting; (4) Villa Representative Voter Designation Form; and (4) Non-Party Lagoon Villas Co-Owner Consent and Waiver Designation ("Notice Documents"). *See* Affidavit of Kathleen Smith dated March 24, 2022 (hereinafter "Smith Affidavit"), filed contemporaneously herewith, at Exhibit A.

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7. On March 7, 2022, Defendants submitted a proposed amendment to the Master Deed to Regime Property Management ("Defendants' Proposed Amendment"). Also on March 7, 2022, Plaintiff Todd Taylor submitted a proposed amendment to the Master Deed to Regime Property Management ("Plaintiffs' Proposed Amendment"). Regime Property Management emailed both proposed amendments to all co-owners on March 7, 2022. *See* Smith Affidavit.

8. On March 17, 2022, the Regime held the Special Meeting in accordance with the requirements and procedures set forth in the 2-3-22 Order. The Special Meeting was presided over by a third party neutral, Hamlin O'Kelley. A true and correct copy of the transcript of the Special Meeting held March 17, 2022 is attached hereto as **Exhibit A.**

9. Pursuant to the 2-3-22 Order, the Special Meeting was conducted virtually via "Zoom," and was transcribed by a Court Reporter. Additionally, per the 2-3-22 Order, the Court Reporter provided live transcription service. *See* Exhibit A.

10. Pursuant to the 2-3-22 Order, the six (6) dwelling units of the Regime were represented as follows at the Special Meeting:

a. 1591: no attendance;

b. 1592: no attendance;

c. 1593: Attended by designated representative Kathy Anderson, on behalf of Non-Party Sizemore Properties, LLC;

d. 1594: Attended by designated representative John Elder on behalf of Non-Party Maple Mont South, LLC;

e. 1595: Attended by designated representative Magalie Creech, Esquire, on behalf of Defendants; and

f. 1596: Attended by designated representative, Plaintiff Todd Taylor. *See* Exhibit A.

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11. At the Special Meeting, Defendants presented Defendants' Proposed Amendment. However, Defendants then withdrew Defendants' Proposed Amendment from consideration before a vote could be taken. Consequently, there was no vote on Defendants' Proposed Amendment. *See* Exhibit A.

12. Accordingly and pursuant to the 2-3-22 Order, Plaintiff Todd Taylor presented Plaintiff's Proposed Amendment at the Special Meeting. Plaintiff's Proposed Amendment was submitted to the co-owners for discussion and vote. *See* Exhibit A.

13. Plaintiff's Proposed Amendment received a majority vote, as defined in the 2-3-22 Order. Specifically, the results of the vote on Plaintiff's Proposed Amendment were as follows:

1) Unit 1591 (15.939%): No vote/absent[1]

2) Unit 1592: (15.939%): No vote/absent

3) Unit 1593 (18.122%): In favor

4) Unit 1594: (18.122%): In favor

5) Unit 1595 (15.939%): Opposed

6) Unit 1596 (15.939%): In favor. *See* Exhibit A.

14. At the Special Meeting, Plaintiff's Proposed Amendment received a total vote of **52.183 %,** exceeding the majority vote requirement pursuant to the 2-3-22 Order. *See* Exhibit A.

15. Based upon the majority vote and satisfaction of the requirements set forth in the 2-3-22 Order, the President and Secretary of the Regime executed the Declaration of Amendment to Master Deed for South Beach Village Lagoon Villas II Horizontal Property Regime LVII dated March 29, 2022, a true and correct copy of which is attached hereto as **Exhibit C** (hereinafter "Master Deed Amendment").

[1] Owner Kenneth Nyquist returned a voter designation form designating himself as the designated voter for unit 1591 prior to the meeting. He did not attend the meeting, but thereafter sent an email to IMC, noting his vote was for Plaintiff's Proposed Amendment, attached hereto as **Exhibit B.**

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16. The 2-3-22 Order also required that the Regime request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in the 2-3-22 Order and Special Meeting Notice. Pursuant to the 2-3-22 Order, all responses were due 10 days prior to the Special Meeting.

17. Pursuant to the 2-3-22 Order, the Notice Documents included a Non-Party Lagoon Villas Co-Owner Consent and Waiver Designation. *See* Smith Affidavit at Exhibit A. All co-owners were notified that responses were due 10 days prior to the Special Meeting. *Id.* All co-owners were notified that failure to respond to the request for consent shall be deemed consent to the procedures stated in the 2-3-22 Order, and Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to the 2-3-22 Order. *Id.*

18. The Regime did not receive any objections from any non-party co-owners to the 2-3-22 Order and Special Meeting Notice. *See* Smith Affidavit.

19. The Regime complied with all notice requirements and procedural requirements set out in the 2-3-22 Order.

20. The Regime conducted a Special Meeting on March 17, 2022, which complied in all respects with the 2-3-22 Order.

21. A majority of co-owners, meaning those co-owners holding 51% or more of the total value of the Property, in accordance with the ownership percentages assigned in the current Master Deed, approved the Master Deed Amendment.

22. Accordingly, pursuant to the 2-3-22 Order, the Regime requests the Court issue an Order, ordering the Master Deed Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements. The Regime further requests the Court Order that the Master Deed Amendment be filed in the public records of Beaufort County.

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WHEREFORE, having filed this Motion, the Regime requests the following relief:

a. That the Court issue an Order, ordering the Master Deed Amendment to constitute a valid and lawful amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements;

b. That the Court order that the Master Deed Amendment be filed in the public records of Beaufort County; and

c. The Regime further requests such other relief as the Court may deem appropriate, under S.C. Code § 33-31-160 and otherwise.

This 31st day of March, 2022.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
lhoughton@csvl.law
Ph: 843-727-0307

By: *s/Douglas W. MacKelcan*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
LACEY L. HOUGHTON
State Bar No.: 102968
Attorneys for Third-Party Defendant

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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

TODD E. TAYLOR,

Plaintiff,

vs. CASE NO. 2020-CP-07-01547

AMAR and KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR and KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNETH V.L. MILLER; and ANNA M. MILLER,

Defendants.

AMAR and KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR and KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNETH V.L. MILLER; and ANNA M. MILLER,

Third-Party Plaintiffs,

vs.

SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII,

Third-Party Defendant.

VIDEO TELECONFERENCE MEETING

DATE: March 17, 2022
TIME: 10:15 a.m.
LOCATION: Virtual, Zoom

REPORTED BY: Roxanne Easterwood, RPR

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APPEARANCES OF COUNSEL:
Attorneys For South Beach Lagoon Villas II, Horizontal Property Regime, LVII:

Copeland Stair Valz & Lovell
By: Lacey Houghton
40 Calhoun Street, Suite 400
Charleston, SC 29401
lhoughton@csvl.law
843-727-0307

Attorneys For Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill as Trustee of the Amar and Kennie Gill Living Trust dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller:

Finkel Law Firm, LLC
By: Magalie Arcure Creech
4000 Faber Place Drive, #450
North Charleston, SC 29405
mcreech@finkellaw.com
843-577-5460

ALSO PRESENT:
Owners:
Mr. Sizemore, Kathy Anderson, John Elder, IV, Anna Miller, Todd Taylor

Representatives of IMC Resort Services, Inc./Property Management:

Bryan Dorshimer, Julie Smith, Kathleen Smith

G. Hamlin O'Kelley, III, neutral party

(INDEX AT REAR OF TRANSCRIPT)

PROCEEDINGS

* * * * * *

MR. ELDER: This is John Elder, 1594. Respectfully, I think the court order speaks for itself. The Zoom was properly noticed at 10:00 o'clock. The links have been provided. We have made reasonable attempt, via IMC, to contact all parties who have submitted proxies at this time.

In the event the mediator or the group is allowed, I would per se make a motion to proceed with this meeting as timely ordered by the Court

MR. O'KELLEY: I agree with that. And so with that, let's get started.

Welcome to this special meeting. Everyone, my name is Hamlin O'Kelley. I am a certified mediator, certified by the South Carolina Supreme Court to conduct mediations.

This is not a mediation, as you all know. I am here pursuant to a request from the Horizontal Property Regime to conduct this special meeting based on the order that Judge Dukes signed on February 3rd that's in front of me.

There are very specific rules to how

this meeting is to be conducted. So we've gone through Step 1 in that we've got a Zoom platform, and the conduct that we are required to go through is set forth in the order that Mr. Elder just referenced as well.

The meeting will go forth pursuant to the agenda that was sent to all of you on February 15th. This meeting is being transcribed by Roxanne Easterwood, who is involved with a court reporting service.

The primary purpose of the meeting is the submission and consideration of the vote of the amendments to your master deed for the South Beach Village Lagoon Villas, II HPR, LVII, which is a Roman numeral I'm not even going to attempt to pronounce.

At this time, we are required to do certain things pursuant to that court order. In fact, the order reads that, "Prior to the meeting, and on a form created by the regime, each dwelling unit shall select one representative for purposes of speaking on behalf of that dwelling unit and exercising voting rights on behalf of that dwelling unit at this meeting."

Prior to this meeting, and according

to Judge Dukes's order, documents were sent to you all on February 15th. Included in the materials was a Villa Representative Voter Designation Form.

We would like to do a roll call to determine who the participants are at the meeting and to verify who the speaker will be for each dwelling.

So for 1591, that was Mr. Nyquist. He sent in his form. He is not here. If he appears, he will be the designated voter and speaker for that unit.

1592, that's for Bruce and Lucy Hadley. They did not return their form, and there's no one here for them.

Sizemore Properties, LLC, I see Mr. and Mrs. Sizemore. If y'all just tell us -- unmute yourselves, and tell us who will be your designated representative for that unit.

MS. ANDERSON: This is Kathy Anderson, and I will represent Sizemore Properties.

MR. O'KELLEY: Understood. Thank you. Maple Mont South, LLC, designated John Elder. I assume Mr. Elder is here, and will be speaking for that unit.

MR. ELDER: That's correct. For the

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record, it's Maple Mont South, LLC. John Elder, on behalf of 1594.
MR. O'KELLEY: Then we have 1595. The owners are Amar and Kennie, as trustees of the living trust. And, Magalie, you're going to be speaking for them, correct?
(Discussion off the record.)
MR. O'KELLEY: So Magalie is going to get out and try to rejoin. She said that usually fixes the issue, so we'll wait a second for Ms. Creech.
(A recess was taken.)
MS. CREECH: So I'm not sure where it dropped off, but I'm the designated representative for the Amar and Kennie Gill living trust, as well as Mr. and Mrs. Miller, the owners of 1595.
MR. O'KELLEY: Then last, and certainly not least, we have the Taylors, owners of Unit 1596.
MR. TAYLOR: Yes. This is Todd Taylor, and I will be speaking on behalf of Unit 1596.
MR. O'KELLEY: Great. Your video is not on, but we can hear your voice, and that's sufficient.

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THE WITNESS: Thank you.
MR. O'KELLEY: Yes, sir. So if any villa has no representative, according to Judge Dukes's order, then they have forfeited their right to vote. So the Hadleys and Nyquists won't be counted here today.
So I would at this time ask the folks from IMC to give us a little background about sending out the notices on the 15th and to make sure that y'all complied with the judge's order.
MS. SMITH: Notice of today's special meeting was mailed to all homeowners of record on the 15th day of February 2022.
MR. O'KELLEY: None of those notices were returned or not delivered, correct?
MS. SMITH: No, sir.
MR. O'KELLEY: At this time, do any of the officers of the Horizontal Property Regime have any reports to make?
MR. TAYLOR: Not that I'm aware of.
MR. ELDER: Not that I'm aware of, either.
MR. O'KELLEY: Great. Pursuant to Judge Dukes's orders, both the owners of Unit 1595 and 1596 were permitted to submit their proposed

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amendments to the master deed, and if so, the amendments were to be provided at least ten days prior to this meeting.
We understand that the unit owners of 1595 and 1596 both sent proposed amendments to the ownership via email on March 7th. Can someone please confirm that for 1595 and 1596?
MS. SMITH: Yes.
MR. TAYLOR: Of 1596, that is correct.
MR. O'KELLEY: Magalie, you can confirm it for 1595, correct?
MS. CREECH: Yes, that is correct.
MR. O'KELLEY: According to the court orders, the owners of 1595 will submit their amendment first. Is there a motion by anyone to place the proposed amendment up for discussion and vote? If there's a motion and a second, we'll proceed.
MR. ELDER: John Elder, 1594. We'll make the motion to place the first proposal up for a vote.
MR. O'KELLEY: Is there a second?
MS. ANDERSON: This is 1593. We second it.
MR. O'KELLEY: So that is up for

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discussion. According to the court order, there is a ten-minute discussion time for that proposed amendment. And I'll go ahead and start a timer, because I -- you know, here we go. So whoever wants to present for them has ten minutes and may begin.
MS. CREECH: Good morning, again, everyone. As mentioned earlier, I'm the representative for Unit 1595. I'm also an attorney, and I represent the owners of Unit 1595 in the pending litigation.
So I'll preface everything that I'm saying today by saying that I'm not giving anyone legal advice. Please do not construe anything that I'm saying to be legal advice; although, we will necessarily touch upon legal issues due to the nature of this discussion.
All current co-owners of the regime agree that the master deed must be amended to reflect the improved additions made to three units: Unit 1595 in 1998, 1594 in 2003, and Unit 1591 in 2004. Twice, in 1998 and in 2003, the Council of Co-Owners approved amending the master deed and changing ownership percentages of two of the improved units to reflect the

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additional square footage added to the units, but the minutes of the reported annual meetings dating from 1998 to present contain virtually no details of the discussion, nor indicate any actual vote taken on specific language to amend the master deed. There is no indication of any discussion or even awareness of the impact that changing the ownership percentages would have on the relative voting power among the units, until today.

That is why Unit 1595 agreed to this meeting today, even though they disagree with the Court's decision to change the statutory requirements of the Horizontal Property Act and the contractual provisions of the master deed, which specifically require unanimous consent of all co-owners and mortgagees, and is also the basis of an appeal filed by the owners of Unit 1595. For the first time since 1998, this meeting provides a discussion of two alternatives for amending the master deed and an opportunity for each unit, although not each co-owner, to be heard on the equity and effectiveness of these alternatives.

The purpose an amendment to the master deed is twofold: First, to reflect the additional

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square footage of each improved dwelling unit on the as-built survey so that title to each of those improved units can be transferred and those units can be insured under the master insurance policy and rebuilt in the event of a loss; and, equally important, second, to ensure that the owners of those units do not inequitably shift the cost to other co-owners of insuring, maintaining, repairing, or replacing those improvements.

The minutes of the 1998 annual meeting clearly indicate that the regime intended to ensure that this second purpose was met by an amendment to the master deed, and the intent of any owner improving their unit solely bear the full ongoing cost of insuring and maintaining that improvement was reiterated again in 2003, when improvements to Unit 1594 were completed, but the only proposal to date which was circulated for signature ballot by then-president Mr. Taylor, in October 2019, and which will be offered again today, does not accomplish the second purpose.

Mr. Taylor's proposal ensures that part of the financial cost of insuring, maintaining, repairing, or replacing the improvements to the three units will necessarily

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be shifted to all other co-owners. Moreover, Mr. Taylor's proposal shifts relative voting power among the units and gives a disproportionate amount of power -- voting power to one unit, Unit 1594.

The proposed amendment filed by Unit 1595 was first circulated to the regime in October of 2020 in response to Mr. Taylor's lawsuit, which he filed on August of 2020. Identified as the defendants' proposed amendment in what was circulated for today's meeting, this proposal would accomplish the twin purposes of an amendment to the master deed without resulting in any shift in the voting power among units.

1595's amendment requires a filing of a revised as-built survey, which specifically delineates the measurement of the improvements to the three dwelling units, as well as specific improvements to the limited common elements associated with those improved dwelling units, such as decks or improved interior courtyards.

The revised as-built survey performed by Terry Hatchell on behalf of the regime does not contain the specific measurements of these improvements for the deck expansions, nor does it

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contain the delineation of limited common elements or general common elements.

Without the correct measurements of all of the improvements to the improved dwelling units, there is no way to determine the actual cost of insuring, maintaining, repairing, or replacing those improvements, thereby causing some, or virtually all, of those costs to be shifted to the other co-owners of the regime.

You are all already familiar with an actual example of such a shift. When the regime replaced the roof on each of the three buildings in August of 2021, Unit 1595 received a separate quote from the contractor for the cost of reroofing their improvement. That cost was estimated at $999.40. Had the provisions of Mr. Taylor's proposed amendment been in place, the 0.56 percent increase in ownership to Unit 1595 would have resulted in a $23.33 increase in order to cover that roof improvement. That would have been a shift of $976 to the other co-owners of the regime for the cost of reroofing 1595's improvement.

Another example would be the potential cost of replacing deck expansions and improvements

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to Unit 1591 and 1594. A deck is not considered part of the dwelling unit. So the, roughly, 1,280 square foot net interior of Unit 1591, and the 1,799 foot -- square foot interior of Unit 1594 would not include the deck improvements or any other improvements to the inner courtyards. Thus, the adjustments to ownership percentages based on the interior square footage of the dwelling unit alone does not account for improvements to limited common areas. Nearly all of the ongoing costs of maintaining those improvements would be shifted to the other co-owners.

Unit 1595's proposed amendment would require that the full cost of insuring, maintaining, repairing, or replacing the improvements to the improved dwelling units would be paid by those owners based on actual measurements of the improvements, including improvements to common elements as shown on a revised as-built survey filed with the amendment to the master deed.

My client's experience is that nearly -- is since nearly all building maintenance, insurance, repair, and replacement contracts are stated in terms of cost per square

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foot, their amendment provides a consistent, uniform, and easily determinable method of identifying the accurate cost to the owners of the improved units for insuring, maintaining, repairing, or replacing those improvements, and thus ensuring that those costs are not inequitably shifted to the other co-owners.

As stated in correspondence from Mr. Scarminach, the regime's attorney, amending the master deed does not require or prohibit revising ownership percentages. Doing so in the case of the three dwelling units in this regime -- of the three improved dwelling units in this regime results in the very cost shifting that the amendment process is intended to avoid.

Getting back to voting, the -- shifting the basis for determining the ownership percentages from a value-based methodology to actual square footage significantly overstates the ownership percentage of one unit, that being Unit 1594.

Under the master deed, no unit's ownership percentage varies from any other unit by roughly more than 2 percent, but under Mr. Taylor's proposal, the difference would vary

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by over 90 percent. The disparity results in significantly overstating the value of improvements to Unit 1594 and empowers that unit, and that unit alone, to form a majority with any other two units of its choosing. All five other units require at least three additional units to form a majority.

Under the master deed, if both three-bedroom units agree, then a majority is formed with any other third unit, but under Mr. Taylor's proposal, Unit 1593, the other three-bedroom unit, now requires three other units to gain a majority.

Nowhere in any of the minutes of any of the meetings of the Council of Co-Owners from 1998 until present has there been a discussion of the impact of this proposal on relative voting power and the resulting shift of power to one unit. The stated purpose of changing the ownership percentages in 1998 and again in 2003 was to ensure that any approved improvements to dwelling units did not cost shift the ongoing maintenance expense of those improvements to the other co-owners and any unintended consequence in the relative voting power resulting from changing

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ownership percentages and minimized by maintaining the relative relationship between units based on a value assigned to the number of bedrooms and not purely on the actual measured square footage, which was not even known at the time.

Unit 1595's amendment does not distort the voting power of the regime by unnecessarily changing ownership percentages, but it does ensure that all of the owners of improved dwelling units pay for ongoing costs of insuring and maintaining their improvements.

Due to the fact that, unfortunately, today we do not have all co-owners in units represented in this meeting, and, thus, a unanimous vote is not a possibility, Unit 1595 is withdrawing its proposed amendment to be voted upon today.

Thank you.

MR. O'KELLEY: Well, so that changes things greatly. So if you're withdrawing it, there's nothing to vote on at this time. So based on the judge's order, we'll now go to the 1595 proposal. And that was submitted in advance of this meeting. So I think that was going to be --

MR. TAYLOR: Hamlin, sorry. This is

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Todd Taylor. Even though this motion is withdrawn, do I not have the opportunity to speak to it?

MR. O'KELLEY: I'm sorry, yes. That's what we do -- you can speak about it if you wish. You can have ten minutes. Each person has ten minutes to speak about it, but it's sort of a moot point at this, I think. I mean, I'm happy to let you speak about it, but I was just going to go to your proposed amendment next.

MR. TAYLOR: Well, I have plenty to say about this, but in respect of everyone's time this morning, I am going to pass.

MR. O'KELLEY: So now what we're supposed to do is discuss your amendment, Mr. Taylor.

MR. TAYLOR: Surely. This is Todd Taylor. I'm the owner of Unit 1596, and I've brought the Taylor amendment option to the meeting. Really, the Taylor amendment option is nothing more than what is also known as the Chuck Scarminach solution. This issue came to light for most of the owners in 2017 or 2018.

MR. O'KELLEY: Hold on, before we get to your -- we need to have a motion and a second

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to make sure we can consider your amendment. Sorry, I got ahead of myself.

Is there a motion to consider what has just been called the 1596 proposal, or the Scarminach solution, here today?

MR. ELDER: John Elder, with 1594. I'll make a motion to allow Todd Taylor to present his proposal here today.

MR. O'KELLEY: Is there a second?

MS. ANDERSON: This is 1593. We second it.

MR. O'KELLEY: Great. Sorry, Mr. Taylor. I just forgot my role here. Go ahead, sir.

MR. TAYLOR: That's quite all right.

As I was stating, to most of the owners, this issue came to light in 2017/first part of 2018. We have an opinion letter, which was produced by the Novit & Scarminach law firm, dated April 9, 2018, which I would like to read from.

On Page 3 of the document: "The owners of the dwelling units that have been modified have a title issue, since they have, in fact, built on property they do not own. Said

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property being common elements owned jointly by all owners. The owners of the dwelling units that have -- have not been modified also have a title issue, since a portion of the common elements have been confiscated, in effect, by the enlarged units. In the event those dwelling units are sold, the purchaser would not get full benefit of the common elements as described in the current master deed."

It goes on to say: "The regime is apparently aware of the title issue created by the enlarged dwelling units, and if this opinion is provided to the board, we believe it has a duty to correct the problem. The Act is quite clear in establishing legal requirements imposed upon the board."

Due to this letter, subsequently, the Novit Scarminach firm was engaged to produce a solution that we were -- the board of the regime engaged the law firm in August of 2018 to produce a solution. For the following three or three and a half years, the board followed the direction of the law firm to the letter. We subsequently hired additional counsel -- we, the board, hired additional counsel in Charleston, and we have

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followed their recommendations and advice and guidance to the letter.

I would like to read from another opinion letter produced by Chuck Scarminach at Novit & Scarminach. It's dated July 14, 2020. The letter is in reference to a set of questions or concerns Kennie Gill had, an owner of 1595. Chuck Scarminach replied to these concerns in this opinion letter. I will be reading from Page 2. The concern or question raised on Number 2 is: "The amendment to the master deed changes the basis on which the regime ownership is based from a value basis to a square-footage basis."

In the response, I will read: "The amendment to the section fifth adjusts the net interior area of each of the six apartments comprising the regime based on the current net interior area, as indicated by the revised as-built survey. This section is a description of the apartment units themselves. An amendment to Section 6 revises the statutory value for each apartment, and this valuation was based upon the net interior area divided into the original net total statutory value of the master deed.

"We do not believe revising the

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descriptions of apartments to contain the actual net interior area as determined by the surveyor's measurements is violative of the act."

Basically, the Scarminach solution, a/k/a Taylor solution, is equitable for all owners. It is not biassed and does not create two types of ownerships, those who have added on and those who have not.

The regime -- I find it very odd that the regime -- the legacy owners for 25 years have altered the proportionate interest, the voting rights, and the values of all owners due to the 1995 formula for value, which heavily discounted the improvements made. If an owner of a two bedroom added on, essentially that improvement was valued at less than half of the original structure.

In essence, the owners who have improved their units -- excuse me. The owners who have not improved their units have been subsidizing the owners who have for 25 years. Scarminach solution equalizes. It does not -- it treats everyone equal, voting and expense-wise and proportionate interest-wise.

Thank you very much.

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MR. O'KELLEY: With time still to go, so that's great. So there is a time for anyone else to speak. Each person can have ten minutes to speak before we take a vote.

Does anybody want to comment on this amendment?

MR. ELDER: John Elder, from 1594, waives his right to comment.

MS. CREECH: 1595 has used its time to explain its amendment, but are we permitted to ask a question?

MR. O'KELLEY: You can ask a question, comment, whatever you want. I think so. And your ten minutes starts now.

MS. CREECH: Thank you. I have one question, and that is: Under the Taylor proposal, how does it treat the two unimproved units equally when they have different square footages?

MR. TAYLOR: The values are changed to equal exactly what the actual square footage is, not hypothetical or blueprints. The actual square footage changes the values of the units and treats everyone equitably.

MS. CREECH: Notwithstanding the fact -- it's correct, though, that those two units have not been improved, yet they will have different assessment rates and voting rights based on the square footage? I just wanted to clarify that that's accurate.

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MR. TAYLOR: We would need to ask Chuck Scarminach that, but that's my understanding.

MS. CREECH: Thank you.

MR. O'KELLEY: Anybody else want to discuss the proposed amendment? Ms. Anderson?

MS. ANDERSON: We waive our rights.

MR. O'KELLEY: All right. So that's everybody. So now it's time to take a vote.

IMC, are you going to calculate the vote? Are we going to do it privately? How do y'all -- it just says, "Take a vote."

I'm happy to follow everybody. We can do it that way, or IMC can follow everyone. Whatever y'all want to do for the good of the group.

MS. HOUGHTON: I think IMC is certainly available to tabulate the vote. I think maybe I would defer to you on to how to conduct the vote. My suggestion would be --

MR. O'KELLEY: Let's do it this way: Mr. Nyquist and the Hadleys are not voting today.

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So I'll go down the list.

1593, how do you vote in favor of this amendment, yea or nay?

MS. ANDERSON: Is this for the Taylor?

MR. O'KELLEY: Yes, ma'am, the Taylor amendment.

MS. ANDERSON: We're voting towards the Taylor.

MR. O'KELLEY: So that's a yea?

MS. ANDERSON: Yea.

MR. O'KELLEY: So 1593 has voted yes. Mr. Elder, how do you vote?

MR. ELDER: On behalf of 1594, we vote in favor, yes, of the Taylor opinion.

MR. O'KELLEY: 1595, Ms. Creech, I guess you're voting. How do you vote?

MS. CREECH: Nay for 1595.

MR. O'KELLEY: All right. Mr. Taylor, last, for 1596, how do you vote?

MR. TAYLOR: Yes, in favor.

MR. O'KELLEY: So if we add those percentages as they are currently constituted -- I'll get out my calculator -- 18.122 times 2 gives us 36.244 percent, and then we add 15.939, and that brings us to 52.183 percent, which, by my

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calculation, is more than 51 percent needed to adopt the amendment.

So the amendment is adopted, and we will proceed pursuant -- y'all can proceed pursuant to Judge Dukes's order as to getting that amendment recorded and proceeding accordingly.

Any questions?

MS. HOUGHTON: Thank you very much, Hamlin.

As a housekeeping matter, I was hoping to attach both of the proposed amendments, as well as the notice packet that went out on February 15th, and all of the forms that the property management office received back, as exhibits to the transcript. And I can send those to the court reporter following our adjournment.

MR. O'KELLEY: Absolutely. Those will be attached as Exhibits A, B, C or 1, 2, 3, however, Roxanne, you want to do it, so they can be part of the transcript.

(Exhibit A, 2/15/22 Certificate of Mailing, marked for identification.)

(Exhibit B, Declaration of Amendment to Master Deed For South Beach Village Lagoon Villas II Horizontal Property Regime, LVII, marked

for identification.)

(Exhibit C, Taylor Amendment Proposal, marked for identification.)

(Exhibit D, Executed Owner Forms, marked for identification.)

MS. HOUGHTON: Thank you very much.

MR. O'KELLEY: You're welcome.

Thank you all for coming today. It was a pleasure to serve. We are adjourned at this time.

(The proceedings concluded at 10:52 a.m.)

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of March 2022 at Charleston, Charleston County, South Carolina.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2025

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

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IMC RESORT SERVICES, INC
Our integrity is not negotiable

AAMC
ACCREDITED ASSOCIATION MANAGEMENT COMPANY

State of South Carolina
County of Beaufort } Certificate of Mailing

I, the undersigned, do hereby state that on the 15 day of February 2022 I mailed the attached package of information to the property owners referenced on the attached list.

Kathleen Smith
Agent for the Association
Hilton Head Island, South Carolina

2-15-2022
Date

EXHIBIT
A

LAGOON VILLAS II, HPR

Notice of Court Ordered Special Meeting of the Owners
Thursday, March 17, 2022 | 10:00 a.m.
Virtual Meeting

DATE: February 15, 2022

TO: Lagoon Villas II, HPR Property Owners

FROM: The Lagoon Villas II, HPR Board of Directors

RE: The Lagoon Villas II, HPR 2022 Court Ordered Special Meeting

Notice is hereby given to all Owners of record that a Special Meeting of Lagoon Villas II, HPR will be held **Thursday, March 17, 2022, at 10:00 a.m.**, electronically **via Zoom.**

The purpose of the meeting is for **discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same, in accordance with the conditions set forth in the Order of the Master in Equity of Beaufort County dated February 3, 2022,** entered in pending Civil Action No. 2020-CP-07-01547, *Todd E. Taylor v. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller v. South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII.*

This Notice is being sent to you pursuant to the instructions of the Court, and includes important information regarding the Special Meeting and the Court-ordered process for submission and vote on proposed amendments to the Master Deed.

The following Special Meeting materials are enclosed for your review;

- Agenda for the Meeting
- Villa Representative Voter Designation Form (Response required)
- Non-Party Consent and Waiver (Response required)
- Court Order dated February 3, 2022 (the "Order")

Under the terms of the Court Order, electronic attendance is <u>REQUIRED</u> by a Villa Representative who shall serve as the designated voter for each unit. No proxies will be accepted, and <u>FAILURE TO APPEAR ELECTRONICALLY WILL RESULT IN YOUR VOTE BEING FORFEITED.</u>

To attend the Special Meeting please follow the instructions listed below. There are two options for accessing the Zoom Meeting:

(1) Simply enter the link below:

https://proceedings.veritext.com/?token=71f6377197e00a0cfcb53e8c79523891

OR

(2) Join via Zoom.com or using the Zoom App, using the following credentials:
Meeting ID: 87008405056
Password: *MI4U5Us0i

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LAGOON VILLAS II, HPR

Notice of Court Ordered Special Meeting of the Owners
Thursday, March 17, 2022 | 10:00 a.m.
Virtual Meeting

Please find attached hereto: (1) Villa Representative Voter Designation Form; and (2) Non-Party Consent and Waiver Designation. Please complete both forms and return the forms by **March 7, 2022**, via email to Regime Property Management at Bryan@IMCHHI.com.

Pursuant to Section 5(f) of the Order, and via the Non-Party consent and Waiver form, the Regime requests a response from each co-owner as to whether the co-owner consents to the procedures stated in the Order and this Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to the Order. **All responses shall be due at least ten days prior to the date of the Special Meeting.** Further:

> The co-owners shall be notified that **failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to [the] Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days.**

Pursuant to the Order:

At the Special Meeting, if a proposed amendment to the Master Deed receives a *majority vote*, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a "majority" of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed.

Please review the enclosed Court Order for the full statement of applicable procedures prior to and at the Special Meeting, including procedures for the submission of proposed amendments to the Master Deed and for voting at the Special Meeting.

Please contact, Bryan Dorshimer, our Association Manager at 843-785-4775 ext. 108 or via e-mail at Bryan@IMCHHI.com if you have any questions or would like any additional information.

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Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa _____. I/We hereby designate _____ to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date: _____ **Villa Number:** _____

Print Owner Name: _____ **Print Co-Owner Name:** _____

Sign Owner Name: _____ **Sign Co-Owner Name:** _____

Print Owner Name: _____ **Print Co-Owner Name:** _____

Sign Owner Name: _____ **Sign Co-Owner Name:** _____

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

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WHEREAS, on February 3, 2022, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein.

WHEREAS, I have received a copy of the Special Meeting Notice dated February 15, 2022.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

_____: I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated February 15, 2022. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

Date:_____ Villa Number: _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ Villa Number: _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ Villa Number: _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ Villa Number: _____

Print
Owner Name:_____

Sign Owner Name:_____

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LAGOON VILLAS II, HPR

AGENDA

2022 Court Ordered Special Meeting of the Owners
Thursday, March 17, 2022 at 10:00 PM
Electronic Meeting via Zoom

I. Roll Call

II. Proof of Notice of Meeting or Waiver of Notice

III. Reading of Minutes of Preceding Meeting

IV. Reports of Officers

V. Master Deed Amendment Proposal(s) and Vote(s)

VI. Adjournment

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547 **ORDER GRANTING THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME, LVII'S PETITION FOR RELIEF PURSUANT TO S.C. CODE § 33-31-160**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendants	

THIS MATTER came before me on Third-Party Defendant South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII's (the "Regime") Petition for Relief pursuant to S.C. Code § 33-31-160. The Court held a hearing on November 22, 2021 at which all Parties were represented by counsel. The Court heard oral argument relating to the Regime's Petition, and the responsive arguments thereto made by Plaintiff and Defendants in this action. After considering the parties' arguments at the hearing, the pleadings, motions, written memorandums, affidavits,

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and the entire record in this case, the Court **GRANTS** the Regime's Petition for the reasons set forth herein.

Factual Background

This action concerns property within the South Beach Village Lagoon Villas II Horizontal Property Regime LVII, established pursuant to the Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed"). The Regime and Regime property are subject to and governed by and in accordance with the Master Deed, Bylaws and amendments thereto. The Regime is subject to the provisions of the Horizontal Property Act, S.C. Code Ann. § 27-31-10, et. seq. (the "Act"). The Regime is a non-profit corporation formed and existing under the laws of the State of South Carolina, and subject to the provisions of the South Carolina Non-Profit Code, S.C. Code Ann. § 33-31-101, et seq. The Plaintiff in this action is the owner of residential real property in the Regime located at 226 Sea Pines Drive, Apt. 1596, Hilton Head Island, South Carolina. Defendants are the owners of residential real property in the Regime which adjoins Plaintiff's property, located at 226 Sea Pines Drive, Apt. 1595, Hilton Head Island, South Carolina.

The Regime property is located on Hilton Head Island, in Beaufort County, South Carolina, and includes three (3) buildings, containing six (6) individual dwelling units. The six (6) dwelling units are owned by co-owners, each of whom has a particular and exclusive property right to their dwelling unit, as well as an undivided interest in the general and limited common elements of the Regime. As defined in the Master Deed, the general common elements and the limited common elements together comprise the "Common Elements" of the Regime. The general common

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elements include all Regime property, excluding the limited common elements and the dwelling units. The limited common elements are further specifically defined in the Master Deed.

Over the past many years, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were expanded such that they encroach into common elements of the Regime. Thus three (3) of the six (6) dwelling units that make up the Regime now encroach into the common elements of the Regime. The expansion to Defendant's Unit (1595) was completed in approximately 1998; the expansion to unit 1594 was completed in approximately 2003; the expansion to Unit 1591 was completed in approximately 2004. As a result of the encroachment, the description and depiction of the Regime property and the Encroaching Units as set forth in the Master Deed no longer conform to the physical layout of Regime property as it currently exists.

The Master Deed establishes the proportionate ownership percentage interests of each co-owner of a Dwelling Unit in the common elements. This percentage also governs each co-owner's proportionate share in the profits and expenses of the Regime, and proportionate representation for voting purposes. At various points and as the expansions to some of the Encroaching Units were completed, the Regime co-owners modified these proportionate percentage interests, and conducted the business of the Regime, including payment of assessments based on proportionate percentage interests which were different from those set out in the Master Deed.

Pursuant to the Master Deed, "the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in an amendment to this Deed duly recorded." *See* Master Deed at Eleventh Paragraph; *see also* S.C. Code Ann. § 27-31-60. Additionally, the

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Master Deed requires unanimous consent of "all of the co-owners and the mortgagees of all the mortgages covering Dwelling Units" of the Regime to amend any provisions thereof. *See* Master Deed at Fourteenth Paragraph.

The Regime has discussed the need to amend the Master Deed so that it properly and lawfully describes the Regime property and rights of the co-owners as far back as 2001. In 2018, the Regime commenced a concerted effort to effectuate an amendment to its Master Deed. Since that time the Regime has worked diligently to address the problem regarding the Master Deed. The Regime retained counsel for this purpose, Novit & Scarminach, P.A., and a surveying group, to prepare proposed amendment documents and a revised survey reflecting the current property. The Regime continued to discuss the need for an amendment to the Master Deed, and debate the particular content thereof, throughout 2018 and 2019. Via letter dated October 9, 2019, in an attempt to secure an amendment to the Master Deed, Regime counsel Novit & Scarminach, P.A. sent the co-owners a proposed Consent Resolution, proposed Amendment to Master Deed, and Boundary and As-Built survey ("October 9, 2019 Proposed Amendment"). All co-owners signed the October 9, 2019 Proposed Amendment prepared by Regime Counsel, except for Defendants Kennie Lee Miller Gill and Mr. Amar Singh Gill. After the filing of this lawsuit, Defendants Ken Miller and Anna Miller and the owners of Unit 1592 withdrew their consent to the October 9, 2019 Proposed Amendment. Since that time the Regime has continued to work to procure unanimous consent of all co-owners to the October 9, 2019 Proposed Amendment, as reflected in Regime Meeting Minutes, correspondence, and the Affidavits submitted by the Parties. The Regime has incurred not less than $20,017.50 in expenses, paid to Regime Counsel, Surveyors, and other charges, associated with its efforts to procure a valid amendment to the Master Deed.

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Procedural History

On July 31, 2020, after the failed attempts to pass the October 9, 2019 Proposed Amendment, Plaintiff Taylor filed the instant lawsuit against the Defendants, asserting, *inter alia,* that Defendants illegally expanded Unit 1595 into the Common Area of the Regime, and the encroaching structure must be removed. On December 3, 2020, Defendants filed an Amended Answer and Third Party Complaint against the Regime, seeking, *inter alia*, a Declaratory Judgment that the Regime approved Defendants' addition, and that a valid and enforceable encroachment agreement exists between Defendants and the Regime. On August 26, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, to vote on the October 9, 2019 Proposed Amendment, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting. Plaintiff filed no opposition to the Regime's Petition, and at the hearing held November 22, 2021, supported the Regime's Petition. On November 11, 2021, Defendants/Third Party Plaintiffs filed a Response to the Regime's Petition. Defendants/Third Party Plaintiffs joined in the request (1) for a special meeting to be held for the purpose of consideration by the Council of Co-Owners of the October 9, 2019 Proposed Amendment and any alternatives thereto, and for voting to amend the Master Deed; (2) that the Court order proper notice be provided to the co-owners of the meeting; and (3) that all co-owners be required to attend the special meeting, which may be held via video-conferencing platform or other means to allow for remote attendance in an ADA compliant format. Plaintiffs/Third Party Defendants requested that the Regime's Petition be denied insofar as it seeks to alter the unanimous voting requirement to amend the Master Deed.

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Applicable Law and Analysis

The South Carolina Non-Profit Code, S.C. Code § 33-31-160, entitled "Judicial Relief" provides in its entirety:

> (a) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the Attorney General, the court of common pleas... may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authored, in such a manner as the court finds fair and equitable under the circumstances.
>
> (b) The court, in an order issued pursuant to this section, shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.
>
> (c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.
>
> (d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.
>
> (e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section and that complies with all the provisions of such order, is a valid meeting or vote, as the case may be, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

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(emphasis added).

The Master Deed requires an amendment in order to lawfully and properly describe the Regime property, dwelling units, common elements, and the rights of the co-owners. All Parties to this Action agree and concede that the Master Deed requires an amendment, and that the Council of Co-Owners and the Board of Administration have a duty to pass an amendment to the Master Deed. I find that the Regime has shown, based on the lengthy history of attempts to amend the Master Deed, the expenses incurred, the discussions and efforts which have taken place since 2018, and the instant lawsuit, that it is impossible or impractical for the Regime to call or conduct a meeting of its members or otherwise obtain their consent in order to vote on a valid amendment to the Master Deed. I further find that the intervention of the Court is warranted to order that a special meeting of the Regime members be called for the purpose of voting on an amendment to the Master Deed under circumstances this Court finds fair and equitable as set forth herein, that notice shall be provided of the special meeting as set forth herein, that it is necessary and appropriate to modify the voting requirement for passage of an amendment to the Master Deed as set forth herein, and that the subject matter of the special meeting shall be limited as set forth herein.

IT IS THEREFORE ORDERED, pursuant to S.C. Code § 33-31-160 and the equitable powers of this Court, that the Regime's Petition for Relief pursuant to S.C. Code § 33-31-160 is hereby **GRANTED** and the Parties are directed and ordered as follows:

1. Within forty-five (45) days of the date of this Order, the Regime shall hold a Special Meeting for the purpose of voting on a proposed amendment to the Master Deed in accordance with the conditions set forth herein. The Special Meeting may be held virtually

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via the video-conferencing platform "Zoom" and shall provide closed captioning or live transcription service;

2. At the Special Meeting, if a proposed amendment to the Master Deed receives a majority vote, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a "majority" of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed;
3. Prior to the meeting and on a form created by the Regime, each dwelling unit shall select one representative for purposes of speaking on behalf of that dwelling unit and exercising voting rights on behalf of the dwelling unit at the Special Meeting;
4. All co-owners of the Regime shall be entitled to attend the Special Meeting, but the designated representative for each dwelling unit shall attend the Special Meeting ordered herein. If no representative appears on behalf of a dwelling unit at the Special Meeting, they shall forfeit their right to vote on any proposed amendment;
5. The Regime Property Management Company shall issue a Notice of the Special Meeting on behalf of the Regime at least 30 days prior to the date of the meeting, which shall be mailed and electronically mailed to each co-owner of record. The notice shall state the date and time of the Special Meeting. The Notice shall further state the purpose of the meeting is for discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same. The Notice shall enclose a copy of this Order.
6. The following procedures shall apply to the submission of proposed amendments to the Master Deed and voting:

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a. Defendants shall be permitted to present a proposed amendment to the Master Deed. If Defendants wish to submit a proposed amendment to the Master Deed for the consideration of the ownership, Defendants shall submit the proposed amendment to the Master Deed to the Regime Property Management Company via electronic mail at least 10 days prior to the date of the Special Meeting, for distribution to the co-owners via electronic mail;

b. Plaintiff shall also be permitted to submit a proposed amendment to the Master Deed, which shall be submitted to the Regime Property Management Company at least 10 days prior to the date of the Special Meeting via electronic mail, for distribution to the co-owners via electronic mail;

c. At the Special Meeting, Defendants shall be entitled to submit a proposed amendment to the Master Deed to the ownership for consideration, if such proposed amendment was provided ten days in advance of the Special Meeting to the co-owners for consideration, pursuant to the following procedures:

    i. Defendants shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.

    ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.

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iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Defendants' proposed amendment to the Master Deed.

iv. There is no requirement that any Dwelling Unit comment on any proposal.

v. Following the conclusion of comments, if any, by the representatives of each Dwelling Unit, the Regime shall vote on Defendants' proposed amendment to the Master Deed.

vi. If the proposed amendment receives a majority vote, the meeting shall conclude.

d. If Defendants' proposed amendment to the Master Deed does not receive a majority vote, Plaintiff shall be permitted to present the Regime's proposed amendment to the Master Deed, subject to the following procedures:

i. Plaintiff shall have a maximum of ten minutes to present a proposed Amendment to the Master Deed.

ii. At the conclusion of such presentation, if there is a motion to place the proposed amendment up for discussion of the co-owners and a vote, and the motion is seconded, the proposed Amendment shall be submitted to the co-owners for discussion and vote.

iii. The appointed representative for each Dwelling Unit shall be entitled to a maximum of 10 minutes to speak in support of or in opposition to Plaintiff's proposed amendment to the Master Deed.

iv. There is no requirement that any Dwelling Unit comment on any proposal.

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v. Following the conclusion of comment by the representatives of each Dwelling Unit, the Regime shall vote on Plaintiff's proposed amendment to the Master Deed.

vi. If the proposed amendment receives a majority vote, the meeting shall conclude.

e. If no proposed amendments receive a majority vote, the meeting shall conclude.

7. The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to this Order, within ten days of the date consent responses were due as set forth herein. If a non-party co-owner makes an affirmative objection, the Special Meeting contemplated herein shall be postponed until the Court has heard and ruled upon the objections of the non-consenting co-owner, subject to further Order of the Court;

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8. A true and correct copy of the Notice and attachments, which are expressly approved by the Court as complying with the Court's order, are attached hereto as **Exhibit A**.
9. A transcript of the Special Meeting shall be taken by a Court Reporter;
10. The Special Meeting shall be presided over by a third party neutral, to be designated by mutual agreement of the parties, or by the Court in the event the parties cannot agree. The third party neutral shall ensure the Special Meeting is conducted in accordance with the procedures herein;
11. Should a majority of co-owners approve an amendment to the Master Deed at the Special Meeting, the Court shall issue a subsequent Order, ordering the Amendment to constitute a lawful and valid amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

IT IS SO ORDERED:

_____
The Honorable Marvin H. Dukes, III

Beaufort, South Carolina
February, _____, 2022.

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Beaufort Common Pleas

Case Caption:	Todd E Taylor VS Amar And Kennie Gill Living Trust , defendant, et al
Case Number:	2020CP0701547
Type:	Order/Relief

So Ordered:

s/Marvin H. Dukes III #3069

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EXHIBIT A

LAGOON VILLAS II, HPR

Notice of Court Ordered Special Meeting of the Owners
Day, Month Date, 2022 | 0:00 PM
Virtual Meeting

DATE: Month Date, 2022

TO: Lagoon Villas II, HPR Property Owners

FROM: The Lagoon Villas II, HPR Board of Directors

RE: The Lagoon Villas II, HPR 2022 Court Ordered Special Meeting

Notice is hereby given to all Owners of record that a Special Meeting of Lagoon Villas II, HPR will be held **Day, Month Date, 2022,** electronically **via Zoom.**

The purpose of the meeting is for **discussion of proposals for amendment of the Master Deed and for a vote of the co-owners to approve or disapprove the same, in accordance with the conditions set forth in the Order of the Master in Equity of Beaufort County dated _____,** entered in pending Civil Action No. 2020-CP-07-01547, *Todd E. Taylor v. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller v. South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII.*

This Notice is being sent to you pursuant to the instructions of the Court, and includes important information regarding the Special Meeting and the Court-ordered process for submission and vote on proposed amendments to the Master Deed.

The following Special Meeting materials are enclosed for your review;

- Agenda for the Meeting
- Villa Representative Voter Designation Form (Response required)
- Non-Party Consent and Waiver (Response required)
- Court Order dated _____ (the "Order")

Under the terms of the Court Order, electronic attendance is REQUIRED by a Villa Representative who shall serve as the designated voter for each unit. No proxies will be accepted, and FAILURE TO APPEAR ELECTRONICALLY WILL RESULT IN YOUR VOTE BEING FORFEITED.

To attend the Special Meeting: [Insert Zoom instructions here]

Please find attached hereto: (1) Villa Representative Voter Designation Form; and (2) Non-Party Consent and Waiver Designation. Please complete both forms and return the forms by _____, via email to Regime Property Management at Bryan@IMCHHI.com.

Pursuant to Section 5(f) of the Order, and via the Non-Party consent and Waiver form, the Regime requests a response from each co-owner as to whether the co-owner consents to the

6712633v.1Going Green: Please bring this package with you to the annual meeting as extra copies of its contents will not be provided.

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procedures stated in the Order and this Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to the Order. **All responses shall be due at least ten days prior to the date of the Special Meeting.** Further:

> The co-owners shall be notified that **failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to [the] Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, the Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days.**

Pursuant to the Order:

At the Special Meeting, if a proposed amendment to the Master Deed receives a *majority vote*, the Court shall order the amendment to constitute a valid and lawful amendment by subsequent order. Pursuant to the Regime Bylaws, Section 2, a "majority" of co-owners shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the current Master Deed.

Please review the enclosed Court Order for the full statement of applicable procedures prior to and at the Special Meeting, including procedures for the submission of proposed amendments to the Master Deed and for voting at the Special Meeting.

Please contact, Bryan Dorshimer, our Association Manager at 843-785-4775 ext. 108 or via e-mail at Bryan@IMCHHI.com if you have any questions or would like any additional information.

6712633v.1Going Green: Please bring this package with you to the annual meeting as extra copies of its contents will not be provided.

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Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa _____. I/We hereby designate _____ to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Day, Month Date, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated ____ and Special Meeting Notice dated_____.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date: _____ **Villa Number:** _____

Print Owner Name: _____ **Print Co-Owner Name:** _____

Sign Owner Name: _____ **Sign Co-Owner Name:** _____

6712668v.1PLEASE RETURN THIS VOTER DESIGNATION BY Time, Day, Month Date, 2022.

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STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

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WHEREAS, on _____, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein;

WHEREAS, I have received a copy of the Special Meeting Notice dated_____.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

_____: I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated [date]. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

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Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

Date:_____ **Villa Number:** _____

Print
Owner Name:_____

Sign Owner Name:_____

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STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT**
	)	**TO MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT	)	**VILLAGE LAGOON VILLAS II**
		HORIZONTAL PROPERTY REGIME LVII

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "**Amendment**") is made effective as of this ____ day of ____, 2022, by South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "**Regime**").

WITNESSETH:

WHEREAS, on the 17th day of October 1973, Sea Pines Plantation Company (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed") which said Master Deed as amended and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, the Master Deed provides for amendment of the provisions contained therein upon the unanimous approval of all of the co-owners and the mortgagees of all the mortgages covering the Dwelling Units within said Regime by duly recorded instrument; and

WHEREAS, all of the co-owners and mortgagees of all the mortgages covering the Dwelling Units within said Regime have previously amended the Master Deed pursuant to that Declaration of Amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of the Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective owners; and

WHEREAS, the co-owners of the Regime, in order to avoid hardship to the owners of the Encroaching Units and to avoid shifting to the other co-owners the cost of insuring, maintaining, repairing or replacing the square footage expansions to the Encroaching Units, have agreed to revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and to provide that the continuing common expenses associated with the encroaching expansions be incurred by the owners of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, a majority of the Dwelling Units represented at the Special Meeting of the Council of Co-owners held on March 17, 2022 pursuant to the Order of the Court of Common Pleas, Fourteenth Judicial Circuit, Beaufort County, South Carolina, Case No.: 2020-CP-07-01547 having voted for this Declaration of Amendment, the Court of Common Pleas shall issue a subsequent Order ordering the Amendment to constitute a lawful and valid amendment to the Master Deed, with the same force and effect as if it complied with all otherwise applicable legal requirements, and the Court will order the same to be filed in the public records of Beaufort County.

EXHIBIT
b

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NOW THEREFORE, KNOW ALL MEN THESE PRESENTS that the co-owners of the South Beach Village Lagoon Villas II Horizontal Property Regime LVII do hereby state and declare:

1. The above "WHEREAS" clauses are hereby incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a 1/2" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a 1/2" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44o21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a 1/2" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38o35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a 1/3" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a 1/2" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a 1/2" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a 1/2" rebar; Thence running along the line with Community Services Associates S16°06'02"W for a distance of 239.00' to a 1/2" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a 1/2" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet constitutes common elements."

4. Section FIFTH Subparagraph I. C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom Type "A" Villas: (Unit 1591) This Villa measures 40.50 feet wide and 43.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,280 square feet of which _____ square feet comprise the encroaching expansion to the Dwelling Unit with an additional _____ square feet of deck expansion to the limited common elements.
2. Two-bedroom Type "B" Villas: (Unit 1592) This Villa measures 39.90 feet wide and 41.10 feet deep in its maximum interior dimensions and contains a net interior area of 1,138 square feet.
3. Three-bedroom Type "C" Villas: (Unit 1593) This Villa measures 45.40 feet wide and 48.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,342 square feet.
4. Three-bedroom Type "D" Villas: (Unit 1594) This Villa measures 45.40 feet wide and 54.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,799 square feet of which _____ square feet comprise the encroaching expansion to the Dwelling Unit, with an additional _____ square feet of deck expansion to the limited common elements.
5. Two-bedroom Type "E" Villas: (Unit 1595) This Villa measures 41.40 feet wide and 52.40 feet deep in its maximum interior dimensions and contains a net interior area of 1,262 square feet of which _____ square feet comprise the encroaching expansion to the Dwelling Unit.
6. Two-bedroom Type "F" Villas: (Unit 1596) This Villa measures 40.50 feet wide and 38.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,069 square feet.

5. Section FIFTEENTH is amended and restated as follows:

That no co-owner of a Dwelling Unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Dwelling Unit and each co-owner of an Encroaching Unit shall be liable for the common expenses of insuring, maintaining, and repairing or replacing the additional square feet comprising the encroaching expansion to their Dwelling Unit and any deck expansion or improvement to the limited common elements of the Dwelling Unit, as defined in Section FIFTH Subparagraph 1.C, as amended herein, including the common expense for insurance premiums for the encroaching expansion for blanket insurance coverage under Section Twenty-First, as amended herein.

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6. Section Twenty-First is amended and restated as follows:

That insurance premiums for blanket insurance coverage of the Property, including coverage of the encroaching expansions and deck expansions to the Encroaching Units, shall be a common expense to be paid by periodic assessments levied by the Regime and that such payments shall be held in a separate escrow account of the Regime and used solely for the payment of the Blanket Property Insurance premiums as such premiums become due.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina. In case any of the provisions stated above conflict with the Horizontal Property Act, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, or other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein.

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizonal Property Regine LVII, has this ___ day of March, 2022, signed, sealed, and delivered for recording the within document in Beaufort County, South Carolina.

WITNESSES:

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
President

_____
Witness as to Secretary

Attest: _____
Secretary

_____
Witness as to President

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAFORT)

PROBATE

Personally appeared before me _____, who, on oath, says that (s)he saw the within named SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME, LVII by _____, its President, sign the within document, and _____, its Secretary, attest the same, and that s/he with _____ witnessed the execution thereof.

SWORN before me this ____
day of March, 2022.

_____
(witness)

_____
Notary Public for South Carolina
My Commission Expires: _____

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Edward M. Kubec, Esq.
ekubec@coffeykubec.com

CoffeyKubec, LLP
Attorneys at Law
18 Executive Center Rd., Suite 3
Hilton Head Island, SC 29928

www.coffeykubec.com
(843)422-4488

Via E-Mail (Bryan@IMCHHI.com)

March 7, 2022

Mr. Brian Dorshimer
IMC Resort Services, Inc.
2 Corpus Christi, Suite 302
Hilton Head Island, SC 29928

Re: *Lagoon Villas II, HPR - Court Ordered Special Meeting of the Owners on March 17, 2022 ("Special Meeting") and Order Granting Third-Party Defendant South Beach Village Lagoon Villas II, HPR LVII's Petition for Relief Pursuant to SC Code Section §33-31-160 by the Court of Common Pleas, Beaufort County, South Carolina in Case #2020-CP-07-01547 dated February 3, 2022 ("Order")*

Dear Brian:

On behalf of Todd Taylor, owner of Unit 1596 in South Beach Village Lagoon Villas II Horizontal Property Regime LVII and Plaintiff in the above-referenced litigation, I hereby submit the following proposed amendments by Mr. Taylor to the Regime's Master Deed pursuant to the February 15, 2022 Notice of the Special Meeting and ¶6(a) of the Order referenced-above.

1. Amend Section FIRST of the Master Deed of the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed") to restate the legal description of the Regime property by reference to the attached Boundary and As-Built Survey of the Regime property dated September 17, 2019 prepared by Surveying Consultants, Inc., certified to by Terry G. Hatchell, RLS #11059, as follows:

"FIRST: The Grantor owns a property situated at Hilton Head Island, county of Beaufort, State of South Carolina, which is described as follows:

> All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchell RLS #11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book _____ at Page _____described as follows:

EXHIBIT
C

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Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02'E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51 '02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a½" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above described property to South Sea Pines Drive."

2. Amend Section FOURTH of the Master Deed to be restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

3. Amend Section FIFTH Subparagraph I. C. of the Master Deed to be restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

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1. Two-bedroom Type "A" Villa: (Unit 1591) This Villa measures 40.50 feet wide and 43.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,280 feet.

2. Two-bedroom Type "B" Villa: (Unit 1592) This Villa measures 39.90 feet wide and 41.10 feet deep in its maximum interior dimensions and contains a net interior area of 1,138 feet.

3. Three-bedroom Type "C" Villa: (Unit 1593) This Villa measures 45.40 feet wide and 48.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,342 feet.

4. Three-bedroom Type "D" Villa: (Unit 1594) This Villa measures 45.40 feet wide and 54.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,799 feet.

5. Two-bedroom Type "E" Villa: (Unit 1595) This Villa measures 41.40 feet wide and 52.40 feet deep in its maximum interior dimensions and contains a net interior area of 1,262 feet.

6. Two-bedroom Type "F" Villa: (Unit 1596) This Villa measures 40.50 feet wide and 38.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,069 feet."

4. Amend Section SIXTH Subparagraph I of the Master Deed to be restated as follows:

"SIXTH:

I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co- Owners (the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the purchase price for which the Property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

Mr. Taylor's proposed amendments to the Master Deed are incorporated into the attached Declaration of Amendment which is submitted for adoption and recordation in the event his proposal is accepted at the Special Meeting.

I request that you acknowledge receipt of this documentation by a confirming e-mail addressed to ekubec@coffeykubec.com.

Sincerely,

Ed Kubec

Ed Kubec

Attachments

cc: Ms. Julie Smith (IMC)(*via e-mail*)
Mr. Todd Taylor (*via e-mail*)

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STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT TO**
	)	**MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT	)	**LAGOON VILLAS II HORIZONTAL**
	)	**PROPERTY REGIME LVII**
	)	

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "Amendment") is made effective as of this ___ day of _____, 2022, by South Beach Lagoon Villas II Horizontal Property Regime LVII ('the "Regime").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973, Sea Pines Plantation Company (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed") which said Master Deed, as amended, and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, all Co-Owners of the Regime have previously amended the Master Deed pursuant to that Declaration of the amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective Owners; and

WHEREAS, in order to avoid hardship to the owners of the Encroaching Units, the Regime Council of Co-Owners has voted to convey certain common elements to the Owners of the Encroaching Units by this Amendment to the Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the Council of Co-Owners has approved the revised As-Built Survey, dated September 17, 2019, as prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchel RLS #11059 and, pursuant to the terms of an Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547, approve and authorize John A. Elder, IV, as President, and Kathy Anderson, as Secretary, of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Council of Co-Owners of the South Beach Villas Lagoon Villas II Horizontal Property Regime LVII does hereby state and declare:

1. The above "WHEREAS" clauses are incorporated herein as if fully set forth hereinbelow.

2. Section FIRST is amended to restate the legal description of the Regime property by reference to the revised As-Built Survey as follows:

"FIRST": The Grantor owns a property situated at Hilton Head Island, County of Beaufort, State of South Carolina, which is described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII, as shown on Plat thereof prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchel RLS#11059 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Book ____ at Page _____ described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.26 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58" W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR 1, N44°21'02"E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I, N02°04'02"E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N38°35'02" for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running long the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°12'02"E for a distance of 57.70' to a 1/3" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00 to a ½" rebar; thence running along the line with South Beach Village Port Villas HPR, III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates S45°38'58"E for a distance of 46.00' to a ½" rebar; Thence running along the line with Community Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 112.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less.

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ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above-described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I.C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom type "A" Villa: (Unit 1591) This Villa measures 40.50 feet wide and 43.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,280 feet.
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5. Two-bedroom Type "E" Villa: (Unit 1595) This Villa measures 41.40 feet wide and 52.40 feet deep in its maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villa: (Unit 1596) This Villa measures 40.50 feet wide and 38.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,069 feet."

5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:

I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners ('the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth

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below. Such values shall not be deemed to limit the purchase price for which the property or any Dwelling Units may be sold or exchanged. The values are as follows:

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B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
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D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned John A. Elder, IV, as President, and Kathy Anderson, as Secretary, of the Regime, swear and attest that the aforementioned modifications were approved by majority vote of the Co-Owners of the Regime, as provided for in the Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina, as modified by the Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547. In case any of the provisions stated above conflict with the Horizontal Property Act, as modified by the Court Order, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this ___ day of _____2022, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina.

WITNESSES

_____

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
John A. Elder, IV
Its: President

By: _____
Kathy Anderson
Its: Secretary

STATE OF _____

COUNTY OF _____

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named John A. Elder, IV, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this ____ day of _____, 2022.

_____
Notary Public _____
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kathy Anderson, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this ____ day of _____, 2022.

_____
Notary Public _____
My Commission Expires: _____

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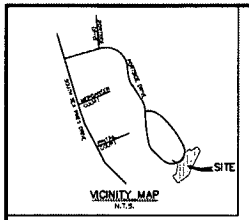


VICINITY MAP
N.T.S.

LINE TABLE		
LINE	LENGTH	BEARING
L1	30.00'	N65°51'02"E
L2	30.00'	N31°35'02"E
L3	30.00'	N17°03'02"E
L4	30.00'	N05°13'58"W
L5	20.00'	S45°47'58"E

INTERIOR AREA OF VILLAS	
UNIT #	AREA SQFT
UNIT 1591	1,290 SQFT
UNIT 1592	1,138 SQFT
UNIT 1593	1,342 SQFT
UNIT 1594	1,798 SQFT
UNIT 1595	1,262 SQFT
UNIT 1596	1,093 SQFT
TOTAL AREA	7,930 SQFT

ADDITIONAL NOTES

1) THE TOTAL COMBINED EXTERIOR SQUARE FOOTAGE OF THE UNITS IS EQUAL TO 8719 SQFT.

2) MEASUREMENTS SHOWN ON THE INDIVIDUAL UNITS ARE EXTERIOR DIMENSIONS

3) ARROW DIMENSIONS ARE INTERIOR MEASUREMENTS.

LEGEND

I.O.	IRON OLD, FOUND
CONC. O.	CONCRETE MONUMENT OLD, FOUND
I.N.	IRON NEW, 1/2"REBAR WITH CAP SET
WM	WATER METER
CO	CLEAN-OUT
SDMH	STORM DRAIN MANHOLE
TELE	TELECOMMUNICATIONS BOX
TRNF	TRANSFORMER
AC	AIR CONDITIONING UNIT
GL	GROUND LIGHT
S.F.	SQUARE FEET
P.O.B.	POINT OF BEGINNING

REFERENCE PLATS:

1) A PLAT OF LAGOON VILLAS, "PHASE II", EXHIBIT "A", A SECTION OF SEA PINES PLANTATION, DATED: 10/03/1973, BY: FORREST G. CALVERT, S.C.R.L.S. NO. 4175, RECORDED: P.B. 21, PG. 140.

2) A PLAT OF LAGOON VILLAS, PHASE I, SOUTH BEACH VILLAGE HORIZONTAL PROPERTY REGIME 51, EXHIBIT "A", A SECTION OF SEA PINES PLANTATION, DATED: 01/28/1970, LAST REVISED: 08/12/1972, BY: J.J. HUTTON, S.C.R.L.S. NO. 1650, RECORDED: P.B. 20, PG. 34, 8/15/72.

3) A PLAT OF WREN DRIVE AND SCAUP ROAD OPEN SPACE, A SECTION OF SEA PINES PLANTATION, DATED: 08/08/1973, BY: JERRY L. RICHARDSON, S.C.R.L.S. NO. 4784, RECORDED: P.B. 23, PG. 191, 10/11/74.

4) A PLAT OF WREN DRIVE, A SECTION OF SEA PINES PLANTATION, DATED: 10/27/1975, LAST REVISED: 07/29/1971, BY: J.J. HUTTON, S.C.R.L.S. NO. 1650, RECORDED: P.B. 26, PG. 133, 10/27/75.

5) PLAT SHOWING SCAUP ROAD SUBDIVISION, A SECTION OF SEA PINES PLANTATION AND LIGHTHOUSE BEACH CO., DATED: 04/28/1972, BY: WILLIAM M. WARWICK, S.C.R.L.S. RECORDED: P.B. 20, PG. 10, 5/22/72.

6) MORTGAGE PLAT OF 1.279 ACRES, SOUTH SEA PINES DRIVE, A PORTION OF SEA PINES PLANTATION, DATED: 2/4/1987, BY: TERRY G. HATCHELL, S.C.R.L.S. NO. 11059, UNRECORDED PLAT BY SURVEYING CONSULTANTS.

7) TREE AND TOPOGRAPHIC SURVEY OF #25 BIRCH DRIVE, EMERGENCY SPILLWAY, SEA PINES DATED: 8/28/2018, BY: JEREMY W. REEDER, S.C.R.L.S. NO. 28139, UNRECORDED PLAT BY ATLAS SURVEYING

NOTES

1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO ENCROACHMENTS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

2) AS OF THE DATE OF THIS SURVEY THIS PROPERTY IS LOCATED IN ZONE AE, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 0011-G, COMMUNITY NO. 450250, MAP DATED 8/28/08, BASE ELEVATION 14.0' (NGVD 29 DATUM). FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

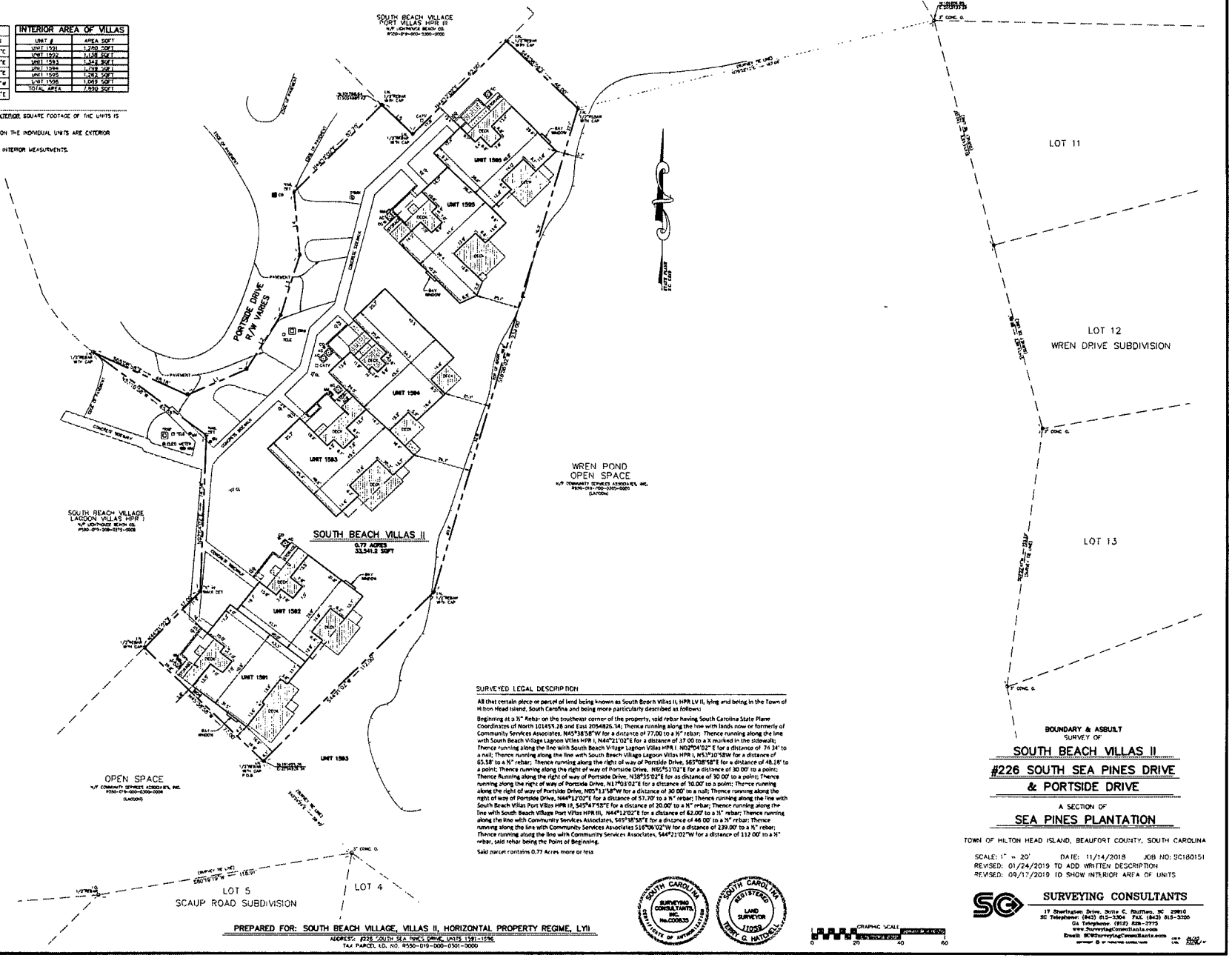
3) BUILDING SETBACKS WHICH EXIST FOR THIS LOT, SHOWN OR NOT SHOWN ON THIS SURVEY, ARE EXPLAINED IN THE COVENANTS, EASEMENTS & SETBACKS SHOWN SHOULD BE VERIFIED THRU THE APPROPRIATE ARCHITECTURAL REVIEW BOARD OR BUILDING AGENCY.

4) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN AND ARE APPROXIMATE. SURVEYING CONSULTANTS DOES NOT CERTIFY TO THE EXACT LOCATION OF ANY UNDERGROUND UTILITY.

5) NO SUBSURFACE OR ENVIRONMENTAL INVESTIGATION OR WETLAND SURVEYS WERE PERFORMED FOR THIS PLAT. THEREFORE THIS PLAT DOES NOT REFLECT THE EXISTENCE OR NONEXISTENCE OF WETLANDS, CONTAMINATION, OR OTHER CONDITIONS WHICH MAY AFFECT THIS PROPERTY.

6) THIS SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE. THEREFORE THERE MAY BE OTHER EASEMENTS, RIGHT-OF-WAY, SETBACK LINES, AGREEMENTS, RESERVATIONS, RESTRICTIONS, OR OTHER SIMILAR MATTERS OF PUBLIC RECORD, NOT DEPICTED ON THIS SURVEY.

7) BOUNDARY LINES ARE BASED ON FIELD EVIDENCE AND MONUMENTATION FOUND. BEARINGS SHOWN ARE BASED ON SOUTH CAROLINA STATE PLANE COORDINATES ESTABLISHED PER REF. PLAT #7. SEE REFERENCE PLATS FOR RECORD BEARINGS AND DISTANCES



SURVEYED LEGAL DESCRIPTION

All that certain piece or parcel of land being known as South Beach Villas II, HPR LV II, lying and being in the Town of Hilton Head Island, South Carolina and being more particularly described as follows:

Beginning at a ½" Rebar on the southeast corner of the property, said rebar having South Carolina State Plane Coordinates of North 101455.28 and East 2054826.34; Thence running along the line with lands now or formerly of Community Services Associates, N45°38'58"W for a distance of 77.00 to a ½" rebar; Thence running along the line with South Beach Village Lagoon Villas HPR I, N44°21'02"E for a distance of 37.00 to a X marked in the sidewalk; Thence running along the line with South Beach Village Lagoon Villas HPR I N02°04'02" E for a distance of 74.34' to a nail; Thence running along the line with South Beach Village Lagoon Villas HPR I, N53°10'58W for a distance of 65.58' to a ½" rebar; Thence running along the right of way of Portside Drive, S65°08'58"E for a distance of 48.18' to a point; Thence running along the right of way of Portside Drive, N65°51'02"E for a distance of 30.00' to a point; Thence Running along the right of way of Portside Drive, N38°35'02"E for as distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N17°03'02"E for a distance of 30.00' to a point; Thence running along the right of way of Portside Drive, N05°13'58"W for a distance of 30.00' to a nail; Thence running along the right of way of Portside Drive, N44°21'02"E for a distance of 51.70' to a ½" rebar; Thence running along the line with South Beach Villas Port Villas HPR III, S45°47'58"E for a distance of 20.00' to a ½" rebar; Thence running along the line with South Beach Village Port Villas HPR III, N44°12'02"E for a distance of 62.00' to a ½" rebar; Thence running along the line with Community Services Associates, S45°38'58"E for a distance of 48.00' to a ½" rebar; Thence running along the line with Community Services Associates S16°06'02"W for a distance of 239.00' to a ½" rebar; Thence running along the line with Community Services Associates, S44°21'02"W for a distance of 132.00' to a ½" rebar, said rebar being the Point of Beginning.

Said parcel contains 0.77 Acres more or less

PREPARED FOR: SOUTH BEACH VILLAGE, VILLAS II, HORIZONTAL PROPERTY REGIME, LVII
ADDRESS: #226 SOUTH SEA PINES DRIVE, UNITS 1591-1596
TAX PARCEL I.D. NO. R550-019-000-0301-0000

SOUTH CAROLINA SURVEYING CONSULTANTS, INC. COA.000835 CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 11059 TERRY G. HATCHELL

GRAPHIC SCALE
0 20 40 60

BOUNDARY & ASBUILT
SURVEY OF
SOUTH BEACH VILLAS II
#226 SOUTH SEA PINES DRIVE
& PORTSIDE DRIVE
A SECTION OF
SEA PINES PLANTATION
TOWN OF HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 20' DATE: 11/14/2018 JOB NO: SC180151
REVISED: 01/24/2019 TO ADD WRITTEN DESCRIPTION
REVISED: 09/17/2019 TO SHOW INTERIOR AREA OF UNITS

SURVEYING CONSULTANTS
17 Sherington Drive, Suite C, Bluffton, SC 29910
SC Telephone: (843) 815-3304 FAX: (843) 815-3705
GA Telephone: (912) 228-2775
www.SurveyingConsultants.com
Email: SCSurveyingConsultants.com

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Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 159. I/We hereby designate KENNETH E. NYRUST JR. (SELF) to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date: 17 MARCH 2022 **Villa Number:** 159

Print Owner Name:	KENNETH E. NYRUST JR	**Print Co-Owner Name:**	
Sign Owner Name:		**Sign Co-Owner Name:**	

Print Owner Name:		**Print Co-Owner Name:**	
Sign Owner Name:		**Sign Co-Owner Name:**	

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

EXHIBIT d

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
ELECTRONICALLY FILED - 2022 Feb 02 12:33 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547
ELECTRONICALLY FILED - 2022 Feb 03 10:09 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 1593. I/We hereby designate Kathy S. Anderson to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Day, Month Date, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated ____ and Special Meeting Notice dated_____.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date:	March 7, 2022	**Villa Number:**	1593
Print Owner Name:	Sizemore Properties	**Print Co-Owner Name:**	
Sign Owner Name:	Kathy S. Anderson	**Sign Co-Owner Name:**	

6712668v.1PLEASE RETURN THIS VOTER DESIGNATION BY Time, Day, Month Date, 2022.

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 1593. I/We hereby designate Kathy S Anderson to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date: March 7 2022 **Villa Number:** 1593

Print Owner Name:	Sizemore Properties	**Print Co-Owner Name:**	Sizemore Properties
Sign Owner Name:	Kathy S Anderson	**Sign Co-Owner Name:**	Kathy S Anderson

Print Owner Name:		**Print Co-Owner Name:**	
Sign Owner Name:		**Sign Co-Owner Name:**	

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547 **NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

WHEREAS, on February 3, 2022, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein.

WHEREAS, I have received a copy of the Special Meeting Notice dated February 15, 2022.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

KSA 3-7-2022: I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated February 15, 2022. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

Date: March 7, 2022 **Villa Number:** 1593

Print Owner Name: Sizemore Properties

Sign Owner Name: Kathy S Anderson

Date: _____ **Villa Number:** _____

Print Owner Name: _____

Sign Owner Name: _____

Date: _____ **Villa Number:** _____

Print Owner Name: _____

Sign Owner Name: _____

Date: _____ **Villa Number:** _____

Print Owner Name: _____

Sign Owner Name: _____

Date: _____ **Villa Number:** _____

Print Owner Name: _____

Sign Owner Name: _____

Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 1594. I/We hereby designate John A. Eider, IV to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date:	2/26/22	**Villa Number:**	1594
Print Owner Name:	John A. Eider, IV	**Print Co-Owner Name:**	Ann Mason Eider
Sign Owner Name:		**Sign Co-Owner Name:**	
Print Owner Name:		**Print Co-Owner Name:**	
Sign Owner Name:		**Sign Co-Owner Name:**	

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

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ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547 **NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

PLEASE RETURN THIS CONSENT FORM BY 5:00 P.M., MARCH 7, 2022

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

WHEREAS, on February 3, 2022, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein.

WHEREAS, I have received a copy of the Special Meeting Notice dated February 15, 2022.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

__✓__: I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated February 15, 2022. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

Date: 2/26/2022 Villa Number: 1594

Print
Owner Name: John A. Elder, IV

Sign Owner Name: J. A. E. IV

Date: 2/26/2022 Villa Number: 1594

Print
Owner Name: Ann Mason Elder

Sign Owner Name: Ann Mason Elder

Date: _____ Villa Number: _____

Print
Owner Name: _____

Sign Owner Name: _____

Date: _____ Villa Number: _____

Print
Owner Name: _____

Sign Owner Name: _____

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Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 1595. I/We hereby designate Magalie Creech, Esq. to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date:	03.07.2022	**Villa Number:**	1595
Print Owner Name:	Kenneth V. L. Miller	**Print Co-Owner Name:**	Anna M. Miller
Sign Owner Name:	Kenneth V. L. Miller	**Sign Co-Owner Name:**	Anna M. Miller
Print Owner Name:	Amar and Kennie Gill Living Trust, UAD 03152019, ~~Kennie Lee Gill, Trustee~~	**Print Co-Owner Name:**	
Sign Owner Name:	Kennie Lee Gill, Trustee	**Sign Co-Owner Name:**	

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-07-01547
Todd E. Taylor, Plaintiff, vs. Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Defendants.	**NON-PARTY LAGOON VILLAS CO-OWNER CONSENT AND WAIVER DESIGNATION**
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Third-Party Plaintiffs, v. South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVII, Third-Party Defendant.	

WHEREAS, on July 31, 2020, Plaintiff Todd Taylor filed this civil action, and on December 3, 2020, Defendants filed a Third Party Complaint against the South Beach Village Lagoon Villas, II, Horizontal Property Regime, LVLII ("Regime");

WHEREAS, on August 16, 2021, the Regime filed a Petition for Relief pursuant to S.C. Code § 33-31-160, seeking an Order from the court requiring, *inter alia,* the Regime to hold a meeting of the members for the purpose of approving an amendment to the Master Deed, and to alter the voting percentage required to approve an amendment to the Master Deed at the meeting;

PLEASE RETURN THIS CONSENT FORM BY 5:00 P.M., MARCH 7, 2022

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

WHEREAS, on February 3, 2022, the Master in Equity for Beaufort County entered an Order granting the Regime's Petition ("Order");

WHEREAS, I am a co-owner of a Villa located in the Regime, and I have received a copy of the Order;

Whereas, the Order states

> The Regime shall also request a response from each co-owner who is not currently a party to this action, as to whether the co-owner consents to the procedures stated in this Order and the Special Meeting Notice, and if such co-owner waives any and all interests and rights in challenging or objecting to this Order. All responses shall be due at least ten days prior to the date of the Special Meeting. The co-owners shall be notified that failure to respond to the request for such consent shall be deemed consent to the procedures stated in this Order and the Special Meeting Notice, and deemed a waiver of any and all interests and rights in challenging or objecting to this Order. If any co-Owner provides a response affirmatively objecting to the procedures stated in this Order and the Special Meeting Notice, The Regime will have an obligation to join any such co-owner as a third party defendant in this action, for the purpose of stating their objections and being heard by the Court regarding their objections to the Order, within ten days of the date consent responses were due as set forth herein.

WHEREAS, I have received a copy of the Special Meeting Notice dated February 15, 2022.

Following Review of this matter and the Court's Order and the Special Meeting Notice:

(check one)

✓ : I consent to the procedures stated in the Court's Order and the Special Meeting Notice dated February 15, 2022. I waive any and all interests and rights in challenging or objecting to the Order.

Or

_____: I do not consent to the procedures stated in the Court's Order and Special Meeting Notice. I wish to be heard by the Court regarding my objections to the Court's Order and Special Meeting Notice. I understand that by making this objection, I will be joined as a party in the pending civil action for the purpose of stating my objections and being heard by the Court regarding my objections to the Court's Order.

Date: 2-16-22 Villa Number: 1596

Print
Owner Name: Catherine C. Taylor

Sign Owner Name: Catherine C Taylor

Date: _____ Villa Number: _____

Print
Owner Name: _____

Sign Owner Name: _____

Date: _____ Villa Number: _____

Print
Owner Name: _____

Sign Owner Name: _____

Date: _____ Villa Number: _____

Print
Owner Name: _____

Sign Owner Name: _____

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Lagoon Villas, II HPR

2022 Court Ordered Special Meeting of the Owners
Villa Representative Voter Designation Form

I am a member of the **LAGOON VILLAS II** and owner of Villa 1596 I/We hereby designate Todd E Taylor to act as my Villa Representative at the **2022 Court Ordered Special Meeting of the Owners held on Thursday, March 17, 2022. I understand that the Villa Representative shall exercise voting powers on behalf of my Villa and shall speak on behalf of my Villa in accordance with the procedures as stated in the Court Order dated February 3, 2022 and Special Meeting Notice dated February 15, 2022.** This Voter Designation is valid only for the 2022 Court Ordered Special Meeting any lawful adjournment thereto.

Date: 2-16-22 **Villa Number:** 1596

Print Owner Name:	Catherine C. Taylor	**Print Co-Owner Name:**	
Sign Owner Name:	Catherine C Taylor	**Sign Co-Owner Name:**	

Print Owner Name:	Todd E. Taylor	**Print Co-Owner Name:**	
Sign Owner Name:	Todd E. Taylor	**Sign Co-Owner Name:**	

PLEASE RETURN THIS VOTER DESIGNATION BY 5:00 p.m., March 7, 2022

EXHIBIT
B

From: "Kenneth E. Nyquist Jr." <knyquistjr@yahoo.com>
Date: March 17, 2022 at 12:03:21 PM EDT
To: Bryan Dorshimer <Bryan@imcresortservices.com>
Subject: Re: Lagoon Villas II, special meeting

Bryan,

I'm sorry to have missed the meeting this morning. If a vote is required, my vote for 1591 is for the Taylor Amendment.

-Ken

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EXHIBIT C

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA	)	**DECLARATION OF AMENDMENT TO**
	)	**MASTER DEED FOR SOUTH BEACH**
COUNTY OF BEAUFORT	)	**LAGOON VILLAS II HORIZONTAL**
	)	**PROPERTY REGIME LVII**
	)	

THIS DECLARATION OF AMENDMENT TO MASTER DEED FOR SOUTH BEACH LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII (the "Amendment") is made effective as of this 29th day of March 2022, by South Beach Lagoon Villas II Horizontal Property Regime LVII ('the "Regime").

WITNESSETH:

WHEREAS, on the 2nd day of November 1973, Sea Pines Plantation Company (hereinafter referred to as "Grantor") established the South Beach Village Lagoon Villas II Horizontal Property Regime LVII (the "Regime") by Master Deed filed in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 215 at Page 1092 (the "Master Deed") which said Master Deed, as amended, and the exhibits attached thereto are incorporated herein by this reference thereto; and

WHEREAS, all Co-Owners of the Regime have previously amended the Master Deed pursuant to that Declaration of the amendment filed in Deed Book 402 at Page 1779 in the aforesaid Clerk of Courts Office on September 7, 1984; and

WHEREAS, Dwelling Unit 1591, Dwelling Unit 1594 and Dwelling Unit 1595 (the "Encroaching Units") were inadvertently expanded and encroached into common elements of the Regime by their respective Owners; and

WHEREAS, in order to avoid hardship to the owners of the Encroaching Units, the Regime Council of Co-Owners has voted to convey certain common elements to the Owners of the Encroaching Units by this Amendment to the Master Deed and revise the As-Built Survey referenced in the Master Deed to reflect the description of the Encroaching Units and certain other matters as more particularly set forth herein; and

WHEREAS, the Council of Co-Owners has approved the revised As-Built Survey, dated September 17, 2019, as prepared by Surveying Consultants, Inc. certified to by Terry G. Hatchel RLS #11059 and, pursuant to the terms of an Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547, approve and authorize John A. Elder, IV, as President, and Kathy Anderson, as Secretary, of the Regime to execute this Declaration of Amendment on behalf of the Regime.

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ALSO, a non-exclusive easement for ingress and egress on all existing roads within Sea Pines Plantation, including but not limited to roads in existence running from the eastern portion of the above-described property to South Sea Pines Drive."

3. Section FOURTH is amended and restated as follows:

"FOURTH: That Property has a total area of 0.77 acres of which 7,890 square feet constitutes Dwelling Units, and 25,651 square feet will constitute common elements."

4. Section FIFTH Subparagraph I.C. is amended and restated as follows:

"C. Villas: That the Villas as shown on the plat of record are composed of the following:

1. Two-bedroom type "A" Villa: (Unit 1591) This Villa measures 40.50 feet wide and 43.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,280 feet.
2. Two-bedroom Type "B" Villa: (Unit 1592) This Villa measures 39.90 feet wide and 41.10 feet deep in its maximum interior dimensions and contains a net interior area of 1,138 feet.
3. Three-Bedroom Type "C" Villa: (Unit 1593) This Villa measures 45.40 feet wide and 48.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,342 feet.
4. Three-bedroom Type "D" Villa: (Unit 1594) This Villa measures 45.40 feet wide and 54.30 feet deep in its maximum interior dimensions and contains a net interior area of 1,799 feet.
5. Two-bedroom Type "E" Villa: (Unit 1595) This Villa measures 41.40 feet wide and 52.40 feet deep in its maximum interior dimensions and contains a net interior area of 1,262 feet.
6. Two-bedroom Type "F" Villa: (Unit 1596) This Villa measures 40.50 feet wide and 38.60 feet deep in its maximum interior dimensions and contains a net interior area of 1,069 feet."

5. Section SIXTH Subparagraph I is amended and restated as follows:

"SIXTH:

I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting or the Council of Co-Owners ('the "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-Eight Thousand and No/100 ($458,000.00) Dollars. The value of each Dwelling Unit and its proportionate percentage interest is set forth

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below. Such values shall not be deemed to limit the purchase price for which the property or any Dwelling Units may be sold or exchanged. The values are as follows:

A. Dwelling Unit 1591: 16.223 per cent based on a value of $74,302.00
B. Dwelling Unit 1592: 14.423 per cent based on a value of $66,059.00
C. Dwelling Unit 1593: 17.009 per cent based on a value of $77,901.00
D. Dwelling Unit 1594: 22.801 per cent based on a value of $104,429.00
E. Dwelling Unit 1595: 15.995 per cent based on a value of $73,257.00
F. Dwelling Unit 1596: 13.549 per cent based on a value of $62,053.00"

6. By execution hereof, the undersigned John A. Elder, IV, as President, and Kathy Anderson, as Secretary, of the Regime, swear and attest that the aforementioned modifications were approved by majority vote of the Co-Owners of the Regime, as provided for in the Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547.

7. This document is intended to comply with the provisions of the Master Deed and Horizontal Property Act of the State of South Carolina, as modified by the Order of the Master of Equity for Beaufort County, dated February 3, 2022, entered in Court of Common Pleas Case No. 2020-CP-07-01547. In case any of the provisions stated above conflict with the Horizontal Property Act, as modified by the Court Order, the provisions of said statute shall be deemed controlling. The provisions herein shall be deemed independent and severable, and the invalidity in whole or in part of any section, subsection, sentence, clause, phrase or word, other provisions thereof shall not affect the validity or enforceability of the remaining portions hereof and in such an event all other provisions of this document shall continue in full force and effect as if such invalid provisions had never been included herein

8. All other terms, conditions and provisions of Master Deed, as amended, remain in full force and effect.

[Signatures Follow on the Next Page]

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IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this 29th day of March 2022, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina.

WITNESSES

Alyssa Gordon

Heyden B Mallory

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: J. A. E. IV
John A. Elder, IV
Its: President

By: _____
Kathy Anderson
Its: Secretary

STATE OF Kentucky

COUNTY OF Marion

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named John A. Elder, IV, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this 29TH day of March, 2022.

Erin T Bland

Notary Public _____

My Commission Expires: 5/9/2022

ERIN T. BLAND
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
ID # 599254
MY COMMISSION EXPIRES 05/09/2022

STATE OF _____

COUNTY OF _____

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kathy Anderson, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this ____ day of _____, 2022.

_____

Notary Public _____

My Commission Expires: _____

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

IN WITNESS WHEREOF, South Beach Village Lagoon Villas II Horizontal Property Regime LVII has this 22 day of March 2022, signed, sealed, and delivered for recording the within documents in Beaufort County, South Carolina.

WITNESSES

_____

_____

_____

SOUTH BEACH VILLAGE LAGOON VILLAS II HORIZONTAL PROPERTY REGIME LVII

By: _____
John A. Elder, IV
Its: President

By: Kathy S. Anderson
Kathy Anderson
Its: Secretary

STATE OF _____

COUNTY OF _____

PROBATE

Personally appears before me the below-signed witness and made oath that (s)he saw the within named John A. Elder, IV, President of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this ____ day of _____, 2022.

_____

Notary Public _____
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

PROBATE

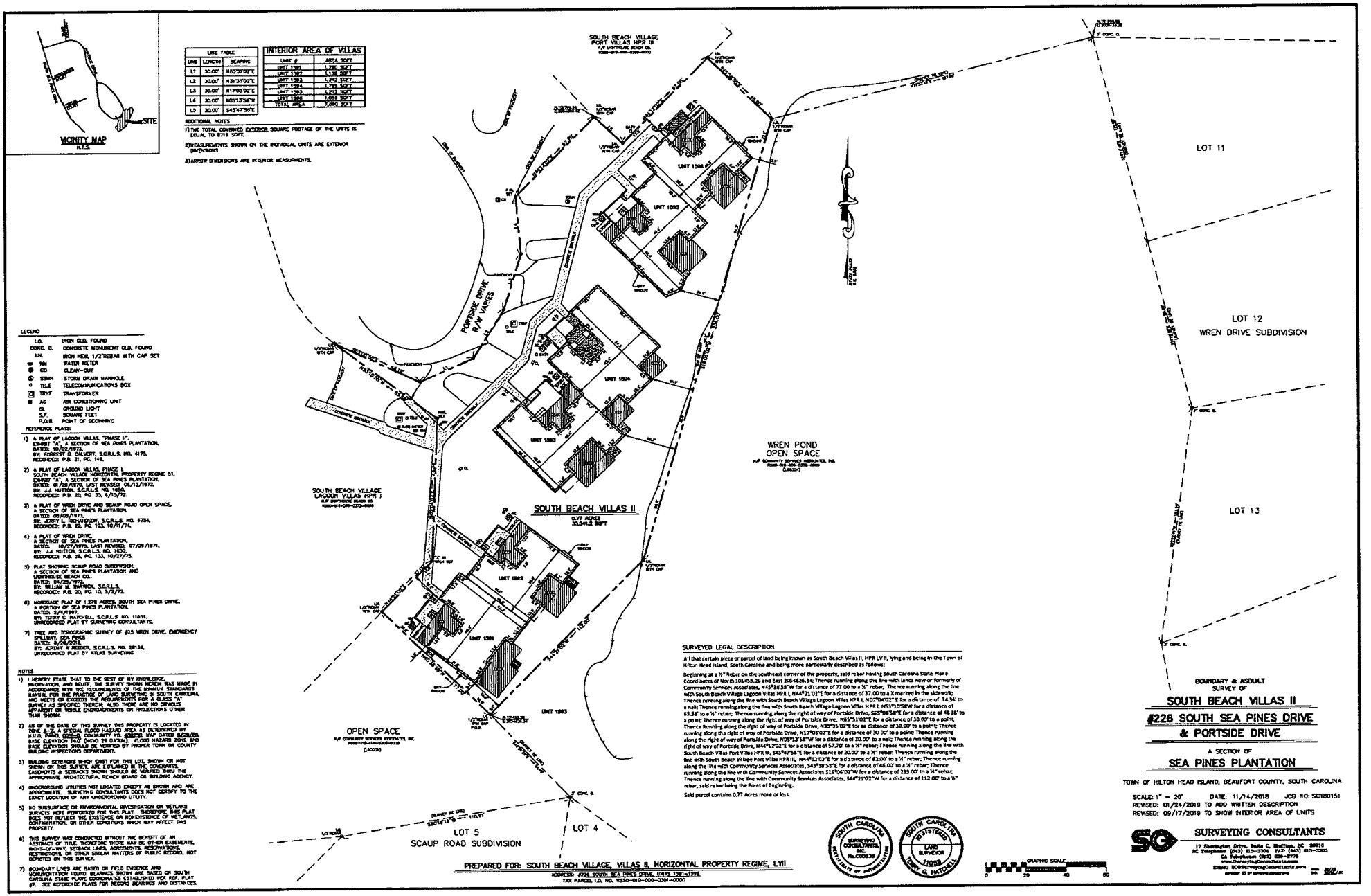
Personally appears before me the below-signed witness and made oath that (s)he saw the within named Kathy Anderson, Secretary of South Beach Village Lagoon Villas II Horizontal Property Regime LVII sign the within instrument and as his act and deed deliver the within written instrument, and that (s)he together with the other witness did witness the execution.

Witness my official seal this 22 day of March, 2022.

Columbia County, GA

Notary Public Alyson Adams Gotchell Alyson Adams Gotchell
My Commission Expires: 9/14/24

ELECTRONICALLY FILED - 2022 Mar 31 11:39 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547



ELECTRONICALLY FILED - 2022 Mar 15 10:33 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III

Appellate Case No. 2020-CP-07-01547

Todd E. Taylor, Respondent,

v.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller, Appellants,

v.

South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII, Respondent.

NOTICE OF APPEAL

The Amar and Kennie Gill Living Trust Dated March 15, 2019, Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019, Kenneth V.L. Miller, and Anna M. Miller (together, "Appellants"), appeal the Orders issued by the Honorable Marvin H. Dukes, III, entered on February 3, 2022 and March 10, 2022, and received by Appellants on February 3, 2022 and March 10, 2022, respectively. Copies of the appealed Orders are attached hereto as Exhibit A and Exhibit B.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

FINKEL LAW FIRM LLC

/S Magalie A. Creech (S.C. Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Appellants

Other Counsel of Record:

Edward M. Kubec
COFFEYKUBEC, LLP
18 Executive Park Rd., Suite 3
Hilton Head Island, South Carolina 29928
Telephone: (843) 422-4488
ekubec@coffeykubec.com
Attorneys for Todd Taylor

Douglas W. MacKelcan
Lacey L. Houghton
COPELAND, STAIR, VALZ & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Telephone: (843) 727-0307
dmackelcan@csvl.law
lhoughton@csvl.law
Attorneys for South Beach Village Lagoon Villas, II, Horizontal Property Regime LVII

ELECTRONICALLY FILED - 2022 Mar 15 10:33 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0701547

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT C/A No. 2020-CP-07-01547

TODD E. TAYLOR,

Plaintiff,

v.

AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNETH V.L. MILLER AND ANNA M. MILLER,

Defendants.

VIDEOCONFERENCE HEARING

DATE: Monday, November 22, 2021

TIME: 10:35 a.m.

BEFORE: Honorable Marvin H. Dukes, III

Certified Original

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNETH V.L. MILLER AND ANNA M. MILLER,

Third-Party Plaintiffs,

v.

SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME LVII,

Third-Party Defendant.

VIDEOCONFERENCE HEARING

DATE: Monday, November 22, 2021

TIME: 10:35 a.m.

BEFORE: Honorable Marvin H. Dukes, III

LOCATION: Remote Proceeding
Charleston, South Carolina

REPORTED BY: Ashley Manini, Notary Public

JOB NO.: 4964459

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF TODD E. TAYLOR:

MR. ED KUBEC, ESQUIRE (by videoconference)
CoffeyKubec, LLP
18 Executive Park Drive, Suite 3
Hilton Head, South Carolina 29928
ekubec@coffeykubec.com
(843) 422-4488

ON BEHALF OF DEFENDANTS/THIRD-PARTY PLAINTIFFS AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNIE LEE MILLER GILL, TRUSTEE OF THE AMAR AND KENNIE GILL LIVING TRUST DATED MARCH 15, 2019; KENNETH V.L. MILLER AND ANNA M. MILLER:

MAGALIE A. CREECH, ESQUIRE (by videoconference)
Finkel Law Firm LLC
4000 Faber Place Drive, Suite 450
North Charleston, South Carolina 29405
mcreech@finkellaw.com
(843) 577-5460

A P P E A R A N C E S (Cont'd)

ON BEHALF OF THIRD-PARTY DEFENDANT SOUTH BEACH VILLAGE LAGOON VILLAS, II, HORIZONTAL PROPERTY REGIME LVII:

LACEY HOUGHTON, ESQUIRE (by videoconference)
Copeland, Stair, Kingma & Lovell
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
lhoughton@cskl.law
(843) 727-0307

ALSO PRESENT:

Todd E. Taylor, Plaintiff (by videoconference)

E X H I B I T S

NO.	DESCRIPTION	ID/EVD
Plaintiff		
	(None marked.)	
Defendant		
	(None marked.)	

P R O C E E D I N G S

THE COURT: Good morning. We're here on 2020-CP-07-01547. This is Taylor vs. Gill, et al. and Gill vs. South Beach. This is a Motion for Summary Judgment by the Defendant.

I know that this matter was referred to me pursuant to Order of Reference filed October 6th of 2021. I know that this particular Order of Reference is different than most of the ones I see. That it appears to be a limited Order of Reference. And I don't know if that was the intent of the parties, and I don't know if it matters for today, because it clearly, in the Order of Reference, lists summary judgment motions filed by the parties, including legal and equitable claims.

But a reading of this, this isn't a typical -- sort of the entire case and everything associated with it is referred. That may very well be the intent of the parties. If it is not the intent of the parties, I'll let y'all talk about it after the fact, but clearly it covers what is filed for today.

So that being said, let me scroll back up here to the motion. Lots of exhibits here. And I am happy to hear from the Defendant.

MS. HOUGHTON: And Your Honor, excuse

me. I just wanted to -- before we get started, my name is Lacey Houghton. I'm Counsel for the Regime in this case. And I did just want to point out, the hearing is noticed for two motions today.

THE COURT: Oh, okay.

MS. HOUGHTON: Yes, Your Honor. The regime has a pending Petition for Relief, pursuant to South Carolina Code Section 33-31-160. And the Defendants have a Motion for Summary Judgment against the Plaintiffs. I think our motion was filed first in time. If the Court would like to hear from us, we'd be happy to proceed, but however the Court would like us to go.

THE COURT: Oh, no, no. I apologize. The little box that tells me what today is about isn't big enough to put all that in, so it just had the summary judgment. But no, I'm happy to hear the first filed motion, so I'm happy to hear from you from the Regime.

MS. HOUGHTON: Okay. Thank you very much, Your Honor.

So again, my name is Lacey Houghton. I represent the Regime, which has been brought into this case as a Third-Party Defendant. The original parties, the Plaintiff and the Defendants, are owners

of two units in the Regime. This is a little bit of an unusual Regime because it's very small. It's six total units, so that's the distribution of the parties that we have.

Following the Regime being brought in as a Third-Party Defendant, we filed a Petition for Relief pursuant to South Carolina Code Section 33-31-160. And essentially, Judge, we are seeking the assistance and intervention of the Court in order to enable the Regime to pass an amendment to their master deed. And this amendment is -- has been made necessary by the fact that various of the units in the Regime, which is, again, only six units, have been expanded over the years such that they encroach out into the common elements of the Regime.

So all of the parties to this case agree that an amendment is an absolute legal necessity. The parties agree that the Counsel of co-owner -- co-owners, the Regime board, has a duty to fix and address the master deed issues. But under the current rule, 100 percent of the ownership is required to approve an amendment to the master deed. And despite a great deal of effort and expense, the ownership has not been able to come to 100 percent agreement. This issue has been discussed, as

reflected in the meeting minutes of the Regime going back to 2001. So we're talking about, you know, 20 years of discussion on this point. And then the latest iteration, the latest round of discussion and debate, over the particulars of the amendment kicked off in 2017/2018 -- so going on three and a half years -- and they just can't come to 100 percent amendment.

The reason we've filed this Petition and sort of wear it is placed in the overall context of this case is that the disputes between the original parties, the Plaintiff and the Defendant, the genesis of these disputes really grows out of the Regime ownerships' inability to come to an agreement on this master deed. So once we were brought in as a Third-Party Defendant, this is the Petition that we filed. And we believe that, you know, it could largely be determinative of the issues in this case.

But just to kind of explain and set the stage of the facts a little bit further, Your Honor, this Regime was created pursuant to a master deed filed in 1973. It's on Hilton Head Island. Again, it's small. Six units. There are three buildings that consist of two units each, and there's a mix of three-bedroom and two-bedroom units. So even as

originally constructed, the units were not all the same size.

The Plaintiff is the owner of one of the units: Unit 1595. And the Defendants are the owner of unit -- sorry. Plaintiff is the owner of 1596, and the Defendants are the owner of Unit 1595. The Defendants are Mr. Ken Miller and Ms. Anna Miller. And then the third unit owner of that unit is a Trust, which is administered by the Miller's daughter, Ms. Kennie Lee Miller Gill. So those are the names you may hear.

But over the years, three of these six units have constructed these additions onto their units, which encroach out into the common elements. So this first occurred approximately in 1998. That's when the addition to the Defendants' unit was constructed. And then over the subsequent years, there were additions to Unit 1594 in 2002, and Unit 1591 in 2004. The Plaintiff's unit is not one of the units that has been expanded as three of the six have been.

It appears that these expansions were all done with the consent of the co-owners at the time -- the Regime -- you know, at the time of these expansions. But, you know, it was discussed and

anticipated and contemplated that there would be an amendment to the master deed to show the updated boundary units of these dwelling units, and to, you know, show the distribution of common elements and apartment units. But that was just never done.

So in 2017, this discussion really began in earnest about the need to amend the master deed. And that discussion was actually kicked off by Defendant Ms. Kennie Lee Miller Gill. So she's really the one who sounded the alarm on the need to amend the master deed and correct these issues. I'll go into more detail on this, but Ms. Gill essentially reached out to a local attorney, Charles Scarminach. I hope I'm pronouncing his name right. I'm not down there in Beaufort. But retained his firm for the purpose of providing advice about the master deed issues. And ultimately, that led to the Regime retaining Mr. Scarminach to advise the Regime about the master deed issues and provide solutions as to how to address the issues.

The salient points of these discussions were that, you know, Mr. Scarminach advised the Regime that the expansion of the encroaching units, regardless of whether it was done with the consent of the unit owners, was prohibited under the master deed

and under the South Carolina Horizontal Property Regime Act. And it has the effect that the physical layout of the property and these units, it no longer conforms to what's on file in the property records office as far as the master deed and the plat and plans that define and depict these -- this property.

So Mr. Scarminach ultimately advised the Regime: Look, you have two options. You can either require the demolition of these encroaching portions so that you bring the property back into compliance with what's, you know, on file in the property records office. Or you can amend your master deed and update it so that it reflects these additions and the proper distribution of common elements and apartment units.

So that's the option that the Regime wanted to pursue. The Regime didn't have any interest in requiring anybody to tear down any portion of their unit. They embarked on this expedition of procuring an amendment to the master deed. The Regime spent a great deal of money. Approximately $20,000, which is a huge expense for a relatively small Regime that, you know, has pressing other maintenance issues and needs. Certainly that's money that could be spent in a lot of different ways. But that money was spent for the

services of Mr. Scarminach and for a surveying group to provide an updated map that could be used for a proposed amendment.

So all of those efforts culminated in, essentially October 2019, a proposed amendment -- that was prepared by Mr. Scarminach as Regime Counsel -- was circulated among the ownership. And this was, you know, proposed, you know, documents ready for the Regime's signatures. All of the owners of the Regime signed theses proposed amendment documents, and those owners include two of the Defendants: Mr. Ken Miller and Ms. Anna Miller. So everyone signed except for Ms. Kennie Lee Miller Gill. And she had concerns and disputes about the way the amendment was prepared. So she did not, you know, she did not consent to the amendment. So that was October 2019.

The parties continued throughout 2019 and 2020, leading up to ultimately when this lawsuit was filed, continuing to discuss how to amend the master deed, attempting to address the ownerships' concerns, and attempting to get to 100 percent consensus, and it simply just didn't happen. It wasn't able to happen.

So at that point, on July 31, 2020, Mr. Taylor, acting on his own as an owner, filed this

action, and he filed this action against the Defendants. And essentially, Your Honor, the Defendant's complaint assert the right to have these encroach -- this encroaching portion of the Defendants' unit demolished, and he also has some claims for damages. And, you know, I, you know, I assume that Mr. Taylor was listening to what Mr. Scarminach had told the Regime, which is there are two options, which are demolition or amending the master deed. And when the master deed couldn't be amended, this is the option that that owner pursued.

But at any rate, the Regime ended up being pulled in as a Third-Party Defendant, and we have filed this Petition seeking the assistance and intervention of the Court to amend the master deed because we believe that that is the true issue facing the Regime, and that that's what needs to happen in order to protect the interests of the Regime.

The basic crux and point of our motion, Your Honor, is that the Regime is just at an intractable impasse. It's demonstrated through the meeting minutes, through the fact that this lawsuit exists, through the claims of the parties that the Regime is not going to be able to come to 100 percent amendment on a -- excuse me -- 100 percent agreement

on a proposed amendment.

The Court has the authority under Code Section 33-31-160 to intervene and assist the Regime in empowering it to be able to pass an amendment by altering voting requirements. And specifically, we are asking that the Court alter the 100 percent voting requirement to pass an amendment.

Specifically, Your Honor, we are requesting that the Court order that a special meeting be held for the purpose of voting on the previously circulated October 2019 amendment; and that the Court order that if that amendment reaches a majority approval, then that would be constitute -- then that would constitute a valid and lawful amendment. And there's some additional particulars that we would request, but that is the basic gist of what we're asking.

Your Honor, I've sort of explained the basic facts. And I wanted to explain just sort of the context of why we filed this Petition and how it fits in to the case at large. And we have filed a pretty detailed Petition and pretty detailed Affidavits by Todd Taylor, who is the Plaintiff, but he was also the president of the Regime during most of the, you know, relevant events that occurred since 2017/2018. So he

has personal knowledge of those events.

We also filed an Affidavit of John Elder [ph] in support of our Petition. And these filings really lay out in detail and trace the history of this discussion and trace the history of, you know, the Regime's efforts to amend the master deed. I didn't want to -- I don't want to repeat those filings verbatim, but I did want to highlight just some of the, you know, more salient documents, some of the more important facts.

So again, Your Honor, this issue has been discussed going back to 2001, so we're talking about a period of 20 years. The Defendants filed an Affidavit of a former property manager, Mr. Flathmann [ph], who set out that in 2001, the Regime actually hired a different attorney, a previous attorney, to prepare an amendment to the master deed, which was prepared, but it was never -- it was never effectuated by the Regime ownership for whatever reason. And that's obviously a very long time ago. I don't know exactly what occurred with that, but an amendment was never filed.

So this issue pops up in meeting minutes over the years. And I'm not going to repeat every single one of them, but I want to focus on the

time period starting from 2017 forward, which is when, again, this current round of discussion and debate kicked off. So essentially, again, this issue arose at the notice and attention of Ms. Gill. And Ms. Gill, as I said, was really sounding the alarm about the need to amend this master deed.

And if the Court would permit me, I can share my screen and just show some of the documents that were attached to these affidavits. If that would be --

THE COURT: Please go ahead.

MS. HOUGHTON: Okay. Thank you. So can you see my screen, Your Honor? Uh-oh. Looks like I lost -- you're sort of muted. I lost volume.

THE COURT: Yeah, sorry. That was me.

No, I was saying once I put my glasses on I can see it. So I'm going to mute again.

MS. HOUGHTON: Thank you, Your Honor.

So all of these documents are attached to our filings. This is -- this document is the Affidavit of Todd Taylor that we filed on November 12, 2021. So Exhibit K to Mr. Taylor's Affidavit is an e-mail that Ms. Gill, Defendant Ms. Gill, sent to the ownership. And this is really, again, what sort of kicked off the current discussion about this issue.

So Ms. Gill is stating that, you know, they've become aware of an issue that affects the master deed. "We became of this -- aware of this issue when we consulted a realtor regarding the sale of our property. We've been advised by our attorneys that the Regime is operating in violation of the master deed and South Carolina property law." And they attached a copy of a letter from Mr. Scarminach at that point.

"By way of this letter, we want to make all Regime owners aware of the defects in the master deed and the corrective action that the board needs to take immediately. These defects are curable. It's our hope that the board will consult its attorneys and address these issues before any action is proposed to amend the bylaws or approve further capital projects or special assessments."

Which goes to a point, Your Honor, which is that the Regime has really been prevented from continuing to conduct its business and its affairs and address maintenance issues because of these disputes over the content of the master deed. So it's a real problem and a real hardship.

Ms. Gill goes on to explain that the master deed for the Regime is not up to date. Three

units have been enlarged and encroaching on the common elements -- she details the history of that -- although these enlargements presumably were built with the permission of the board. The master deed has never been amended to reflect that approval. Attorneys for the Regime did draft an amendment, but that amendment was never filed. Ms. Gill also raises an issue about ownership percentages.

So as Your Honor is aware in a horizontal property regime, the master deed is required to set out ownership percentages for each of the units. And those ownership percentages are reflective of each unit's proportionate interest in the common elements of the Regime -- undivided interest in the common elements of the Regime. But for practical purposes, what it does is it sets the voting power and voting percentage of each unit relative to each other. And it also sets the way the assessments are distributed based on that percentage basis. And so of course the master deed in this case assigns a percentage interest, an ownership percentage interest, to each unit.

Well, what happened is as these additions were constructed, the Regime, you know, through some process, started operating on the basis

of different ownership percentages than those set out in the master deed on the theory that, well, this -- these units have been expanded. They need to bear a larger share of the expense. So these ownership percentages were changed and the, you know, assessments were paid based on different ownership percentages. But the master deed was never amended to codify these changes.

So as Ms. Gill states, the ownership percentages were adjusted for two of the three units: 1595, which, again, is Defendants' unit adjusted in December 1998, and 1594 adjusted in December 2003. The ownership percentage for 1591 has never been adjusted. So the Regime operated for some 20-odd years based on ownership percentages, which were different than those set out in the master deed based on this -- just the arrangement that was reached.

The reason this is important and the reason I'm explaining this, Your Honor, is that the debate over the allocation of the ownership percentages has become one of the primary sticking points and one of the primary disputes between the parties, and has prevented the Regime from being able to move forward with an amendment to the master deed. But this issue is out there.

So this is the e-mail that Ms. Gill sent to the ownership that really kicked off this discussion. So as I said, after this, the Regime retained Mr. Scarminach and obtained some advice from Mr. Scarminach about how to proceed.

And so attached to Mr. Taylor's November 12th Affidavit as Exhibit K, there is a January 9, 2019, letter from Mr. Scarminach to the Regime. And again, Todd Taylor was president of the Regime at this point. Mr. Taylor is the Plaintiff.

But in this letter, Your Honor, it essentially restates the points that I set out in my initial introduction. You know, Mr. Scarminach advised the Regime that by allowing these units to expand into the common elements, regardless of whether it was done with the consent of the Regime at the time, allowing this without an amendment to the master deed essentially resulted in confiscation of the common elements by these units, and that's simply not permissible under the master deed and under the HPR Act. And so the two options for the Regime were to require demolition of these expanded portions of these units, or to amend the master deed in order to properly define and depict the boundary units.

So, you know, based on this advice from

Mr. Scarminach, again, the Regime started down this process of attempting an amendment, hired a surveying company, spent approximately $20,000. You know, nobody wanted the result of requiring demolition of anyone's unit. The Regime wanted to pursue and procure a valid amendment to the master deed which would address all of these issues.

Mr. Taylor's states in his Affidavit that we filed that he worked with Mr. Scarminach and the surveying group and the ownership throughout 2019. And again, ultimately, well, and I will just highlight on May 9, 2019 -- you know, as I said, I don't want to go through every single iteration of the meeting minutes -- but these are meeting minutes from May 9, 2019, for the Regime attached as Exhibit G to Mr. Taylor's November 12th Affidavit, clearly reflected a discussion about the need to amend the master deed, but the association at that point in May of 2019 has been working on this process for over a year. Mr. Scarminach and surveying consultants have both been retained. We have to have 100 percent approval to amend the master deed. Mr. Taylor read two letters and an e-mail from Mr. Scarminach. And this is all to fully advise the ownership of what's going on and the need for these amendments.

And I apologize, Your Honor, for my shotty attempt at highlighting this PDF to bring attention to this portion.

But there's also, you know, a discussion about two options to allocate and define values proportionally. They're discussing a couple of different options for doing so. Ultimately, a special meeting will be called to officially vote on the proposed amendments. And Todd thanked Ms. Gill for her work on this project. Ms. Gill was involved in, to some extent, in this process of trying to help bring these amendments to fruition.

Ultimately, this culminated, again, in a prepared proposed amendment package by Mr. Scarminach that was circulated among the ownership on October 9, 2019. And so Exhibit N to the Affidavit of Mr. Taylor is a letter from Mr. Scarminach dated October 9th, and this letter was sent to all of the owners and the Regime. And, you know, Mr. Scarminach explains that he has been retained to prepare an amendment to the master deed, and it's to deal with this issue of the encroaching units. Mr. Scarminach further explains the two options, which are demolition of the encroachments or, you know, an amendment to the master deed, and explains the documents that he's

attaching. And I know you're not going to be able to read all this. I just am highlighting where these documents are for you, Your Honor.

But Mr. Scarminach explains that 100 percent approval is required and lets everyone know that if they have any questions, they can contact him. So the actual proposed amendment documents are attached to this letter. So Mr. Scarminach drafted a consent resolution. And this was drafted for all of the owners to sign to empower the board to file the actual declaration and revise as-built survey that depicts and defines the Regime property. So this is the consent resolution drafted for the signature of all of the owners.

And then this is the actual declaration of amendment. The actual amendment document. And again, this is Exhibit N to Mr. Taylor's Affidavit. So it sets out that master deed provides for amendment upon unanimous approval. Sets out the history of the fact that these units were inadvertently expanded and encroaching -- and encroached onto the common elements. The co-owners of the Regime, in order to avoid hardship to the owners of the encroaching units, have invade to convey -- have agreed to convey the common elements located beneath the improvements to

the encroaching units to the owners thereof by this amendment and revise the as-built survey referenced in the master deed. And then the actual amendments to the master deed are contained on this page, which it really is an amendment to the first paragraph which just reincorporates this new as-built survey and amends this section 4 of the master deed, that's the second page, to define that the property has a total area of .77 acres, of which 7890 square feet constitutes the dwelling units, and 25651 will constitute the common elements. Obviously, that's changed because of these expanded encroachments. And then defines the exact measurements of each unit, each of the six units here, is defined by its measurements.

And then finally, Your Honor, the proposed amendment also alters the proportionate interests of each unit as set out in the original master deed. And this was calculated based on essentially the relative square footage of the units compared to each other. So it's a value analysis, a relative value analysis, based on the square footage of each unit. So this is what was circulated, and this is what everyone agreed to, including Defendants Anna and Ken Miller. Everyone in the ownership, other than with the exception of Ms. Gill.

So, you know, the October 17, 2019, annual meeting minutes reflect that there was continued discussion about this master deed amendment, that they had to have 100 percent approval. They're still trying to effectuate that. The January 29, 2020, meeting minutes, again, discuss the master deed and the need to amend. Mr. Taylor puts in his Affidavit that he, throughout 2019 and 2020, attempted to continue to work to secure 100 percent approval. And, you know, this effectively means he continued to attempt to secure the approval of Ms. Gill. But she continued to have concerns and did not agree with the way the amendment was prepared. And primarily, it appears Ms. Gill, you know, did not agree with the allocation of these proportionate ownership percentages.

There was some indication in 2020 that Ms. Gill might sell her portion or the Trust portion of the unit back to her parents, which would have resulted in effectively 100 percent approval. But this did not come to fruition.

Ultimately, Your Honor, in July of 2020, Ms. Gill corresponded directly with Regime Counsel, Mr. Scarminach, and we attached to our, well, attached to the Affidavit of Mr. Taylor as Exhibits P

and Q are copies of these letters. This is direct correspondence between Mr. Scarminach and Ms. Gill, which is available to the Court to review.

The second letter dated July 14, 2020, is probably the most -- the more important letter because this letter responds to three specific concerns that Ms. Gill raised about the October 9, 2019, proposed amendment, and Mr. Scarminach has taken this opportunity to respond directly in an attempt to address those concerns.

In any event, as we all know, as I've stated many times this morning, Your Honor, ultimately 100 percent approval was not in the cards on this October 9, 2019, proposed amendment. And so Mr. Taylor, again, acting on his own, filed this lawsuit in July of 2020.

I do want to highlight the annual meeting minutes, which took place just after the lawsuit was filed -- so this is October 2020 -- again reflect a continued substantive discussion -- and I'm sorry for flying through, but I'm getting down to the portion that is actually relevant -- a continued substantive discussion about the amendment. So the original proposal for master deed amendments failed due to not achieving 100 percent approval from the

owners. Another owner made a motion for amendment on a certain basis, and that was rescinded. And the meeting minutes then reflect a lengthy discussion ensued among the owners. Kennie Gill expressed her comments and concerns with amending the percentage of ownership in the master deed and read a letter that she had e-mailed to all owners prior to the meeting.

And so again, these are the meetings from October 15, 2020. I believe that letter that's referenced is an e-mail from Ms. Gill to the owners dated October 15, 2020. And essentially, you know, this sets out -- it's a settlement outline, but it sets out two proposed solutions for -- alternate solutions to that proposed in the October 9, 2019, proposed amendment to amending the master deed. So these were two suggestions that were discussed by Ms. Gill and presented to the ownership for consideration.

I go through this sort of lengthy and laborious history, Your Honor, because it is our obligation, under the statute that we're traveling under -- which, again, is Code Section 33-31-160 -- to demonstrate to the Court that it is impossible or impracticable for the Regime to call a vote, to pass a vote, to amend this master deed. And so that is why I've taken up the Court's time this morning with going

through this history and pointing this out for the Court.

These meeting minutes, these discussions, the sheer length of time and the resources, monetary and otherwise, that have been devoted to this process by the Regime all demonstrate that it is impossible or impracticable to pass an amendment to the master deed.

I would note further for Your Honor that we mediated this case. In the initial stages of the case, we mediated the case early with Ms. Mary Sharp. And unfortunately, that mediation did not result in any -- it did not bear any fruit. So we are still here on this case, and we are still debating these issues.

This code section, South Carolina Code Section 33-31-160, it's a provision of the non-profit code, and it essentially functions as an escape valve Your Honor. And it's tailer-made for situations like this where you have a body that is constituted under the provisions of the non-profit code, as the Regime is, where the Regime has -- where this group has an intractable dispute that prevents the corporation from managing its affairs and continuing with its affairs. That's exactly the situation that we have here, Your

Honor.

This code section empowers the Court to intervene and assist a corporation subject to the code to require calling a meeting or another form of obtaining a vote in such a manner as the Court finds fair and equitable under the circumstances. So we believe this is an discretionary function of the Court. And the Court has really broad authority to fashion relief under this code section.

The Court has brought authority to fashion the parameters for any such meeting, to set conditions for the way in which the meeting is conducted. And the Court specifically has the authority to dispense with any requirement relating to holding votes, quorums, or the number or percentage of votes needed for approval.

We quote this statute, Your Honor, verbatim and repetition, the full text of the statute, that sets out, you know, the powers that the Court can exercise. And essentially, the statute concludes by stating that if the Court exercises its authority under this code section, and a meeting or vote is conducted in accordance with the terms of the Court's order, that meeting or vote is a valid meeting. You know, is a valid vote. So that is what we're asking

for.

There have been some somewhat contentious recent meetings, Your Honor, that really have kind of been driven, I think, by the disputes that are present in this case. But because of that, we would be asking for a pretty specific list of relief and pretty specific parameters for the conduct of the meeting and the noticing of the meeting. And I really think that that would be, you know, it would be -- in the event the Court is inclined to grant our Petition and assist and aid the Regime in this regard, I think that having very specific parameters would help everyone involved to avoid disputes and things that could arise at the meeting.

So I can go through those. We can provide those in list form. I don't know if the Court wants to hear from us on those exact particulars and parameters at this point, or if you would like to hear from us later on that.

THE COURT: No. No. Go ahead if you're --

MS. HOUGHTON: Sure. Sure, Your Honor.

So specifically, what the Regime would be asking for is for the Court to order that a special meeting be held within 30 days of the Court's order.

We would ask that it be required to be noticed in accordance with the procedures under the bylaws. But that the notice actually be prepared and sent out by the management company. There's -- the current officers of the Regime are somewhat in flux, so we would ask that the Court order that the notice be prepared and sent out by the management company. And there's specific requirements in the bylaws as far as the timing of the notice. I think it's no more than ten but no less than five days prior to the meeting. So we're not asking for much deviation from the bylaws there.

We would ask that the meeting be able to be conducted via a videoconferencing service. A number of the owners live in different locations around the country, so it may be, you know, laborious to have them all come here personally for the meeting. But we're asking that every owner be ordered to attend with no proxies so that every owner is present for this discussion.

We're asking that the only item for consideration at this meeting, as specified in the notice, would be for discussion and a vote on the October 9, 2019, previously circulated proposed amendment. We would ask that Your Honor, you know, in

terms of the conduct of the meeting, that all owners be permitted to speak in favor of or in opposition to this proposed amendment. The October 9, 2019, proposed amendment. But we would be asking for some sort of orderly process or maybe a time restriction on the length of time that each owner can speak just to provide some order for the meeting.

We would be asking that if a majority of the co-owners approves this October 9, 2019, proposed amendment, that the Court would issue, then, a subsequent order declaring it to be a valid and lawful amendment, which we could then file in the public records of Beaufort County. And in this context, Your Honor, a majority would be defined as it's defined in the bylaws, which is 51 percent of the ownership as defined by the current ownership percentages in the existing master deed. So there would be no dispute about exactly what constitutes the majority for passing of an amendment.

One thing we may also consider asking the Court, Your Honor, and, you know, maybe this is something that could be discussed, but it may be helpful to have a third-party neutral preside over the meeting to, you know, observe whatever procedural restrictions are put in place just to ensure that the

meeting goes smoothly and to be the official record taker of the meeting.

So that's the basics of what we would be asking, Your Honor. I believe, in terms of the positions of -- can I answer any questions for the Court on those points?

THE COURT: Just a couple of things.

Why no proxies? I mean, assuming there was some process by which it would be confirmed. Something in writing ahead of time. Something like that. Why no proxies?

And the second question, before I forget about it, is what's the longest anyone has ever spoken about anything in any of these meetings, if you know? I'm wondering about a maximum time period.

MS. HOUGHTON: Okay. Your Honor, on the first point about the proxies, you know, I don't know if that's something that is, you know, is something that's just -- that we have to have. The reason that it was requested this way is because one of the issues that's raised by the Defendants is that they don't believe there's been adequate discussion and debate about this proposed amendment, which I don't really know how that could be in contention based on the history. But I guess the thought was to

make sure that everyone is in the room, everyone has an opportunity to participate and voice their opposition or support to the amendment, and that it could be voted on.

You know, if Your Honor is willing to authorize the, you know, submission of proxies, I think that would probably be fine. But I guess the thought process behind requesting no proxies was so that there is one meeting and there is no doubt that everyone is participating and fully aware of what's being proposed.

And on the second point of -- I don't know the answer to the longest period that anyone has spoken on any issue. As --

THE COURT: That was an unfair question. I know you don't have all the meeting. I was just looking for, you know, is it 15 minutes? Thirty minutes? What are you asking for on a timeframe?

MS. HOUGHTON: Yeah, I think what we would be asking for specifically is that, you know, so some of these -- obviously, there's six units. The units are owned by -- some of them -- by multiple parties. So in some instances, it's a husband and a wife. In the Defendants' case specifically, there's

Mr. Miller and Ms. Miller, and then their daughter who's the Trustee of a Trust. So there's three parties involved there.

I think we would be asking that every unit needs to essentially nominate a person to speak on behalf of that unit. And that that person has the, you know, that person has the time restriction. So whatever it is, it's a per unit basis. You know, each unit has X amount of time to voice their support or opposition. I suspect that many of the unit owners wouldn't have much comment potentially, but some would.

I think a restriction of 15 minutes would be reasonable. You know, again, that's something that, you know, could be discussed, but the point is just to have an orderly process so that the meeting doesn't devolve into, you know, just a meeting that's not orderly. So that's what we would be asking for, Your Honor.

And I believe in terms of the positions of the other parties, you know, just based on the briefs that have been filed, it's my understanding that the Plaintiff does not object to our Petition. The Defendants joined in our request to a certain extent, but opposed most of the meat, I guess, of our

Petition. So the Defendants filed a Brief on February 11th, and the Defendants joined in the request that the Court order the Regime to hold a meeting for the purpose of discussing this October 9th previously circulated amendment. But they ask the Court that at this meeting, the Regime also discuss and put up for vote any other alternatives that may be suggested to the October 9, 2019, proposed amendment. And the Defendants state they don't believe the ownership has been able to adequately discuss the specifics of the proposed amendment and consider the potential impact.

Again, we reject that notion. I mean, based on the history and the documents that I've laid out for you, Your Honor. Again, and to the suggestion of offering alternate suggestions, you know, the October 9, 2019, proposed amendment has been prepared by Regime Counsel. It is a set of documents that, you know, was ready for owners' signatures and was signed by all the owners except for one owner. So proposing vague alternate solutions without prepared documents in hand, you know, at this meeting, it would just essentially be sort of, you know, for lack of a better phrase -- and I don't mean to be disrespectful -- but, you know, sort of a waste of time and just kicking the can down the road.

You know, the Regime paid $20,000 approximately to secure a ready-to-go, prepared proposed amendment. The Regime should not be in the position of having to, you know, expend additionally monies to prepare, you know, alternate suggestions that could be considered by the ownership. So, you know, I just don't think the suggestion of, well, let's also throw in whatever other vague, you know, vague solutions we think could be effective for the Regime.

Now, those other alternative ideas that anyone may have could be discussed in the context of each owner having an ability and a right to speak in opposition to or in support of the October 9, 2019, amendment. But we are asking that the only amendment that be put up for a vote is that October 9th amendment. And if it reaches 51 percent, a majority, that it be considered a valid amendment.

I believe, also, the Defendants argue that one of the points in the Defendants' Brief is that the Defendants feel they're being unfairly targeted and singled out for Defendants' exercise of their option not to approve this October 9th proposed amendment.

The point of the Regime's Petition is

not to vilify the Defendants or to unfairly target or penalize or point the finger, really, at the Defendants. The Regime didn't file this action. It was brought in as a Third-Party Defendant by the Defendants. You know, the point of the Petition is just, these are the facts. This is the intractable situation that the Regime finds itself in. It is demonstrated that the Regime is not going to come to 100 percent amendment -- 100 agreement on an amendment. And unless or until that 100 percent approval requirement is altered, nothing is going to change for this Regime, and they are not going to be able to pass an amendment.

So I'll reserve the remainder of any comments, to the extent I have any, in response to any arguments made by anyone else, unless the -- unless you, you know, the Court has any questions for me that I could respond to.

THE COURT: I just had just one more question.

I think if this case, if the Regime, had been the Plaintiff, the Defendants would have included all of the members of the Regime. All of the owners, I would think. Maybe not.

But at this point, we -- I think.

Y'all tell me if I'm wrong. We don't have all of the owners in this case. So I guess what I'm thinking is, jurisdictionally, with regard to this request, we don't really have the others on notice of this. And I'm curious what your thoughts are on, well, maybe there's something in the code that negates requirement of that.

But anyway, I'm just curious about that, so happy to hear any thoughts you might have on that.

MS. HOUGHTON: Yes, Your Honor. Understood. You're correct that all of the owners -- all of the individual co-owners are not parties to this action. The statute that we're traveling under, this 33-31-160, you know, it does state -- and I've just got a copy of it here. You know, it states that upon petition of a director, officer, delegate, member, or the attorney general, if that's appropriate, the Court can issue an order pursuant to this code section.

So, you know, that's how we've proceeded. There's no requirement in this code section that requires explicitly joining, you know, all members of a corporation that would be affected by an order under this code section.

So I don't believe it's required under this specific code section under what, you know, that we're traveling under. And that's, I think, the reason that it was, you know, the reason that we're proceeding this way.

THE COURT: Okay. Thank you. Anything else? And then we'll let you rest for a minute and work our way around the little screen here. So --

MS. HOUGHTON: Sure. Thank you, Your Honor. I'll stop sharing my screen.

THE COURT: Okay. Great. Thank you.

All right. Let's see. Mr. Kubec, I'm happy to hear from you, and then we'll work our way to Ms. Creech.

MR. KUBEC: Your Honor, our position is relatively simple. Plaintiff Mr. Todd Taylor joins the position put forth by the Regime. Ms. Houghton did a wonderful job of explaining the situation and what has transpired over at least the last four years, and that this issue has been brewing within the Regime for 20 years.

And Mr. Taylor submitted an Affidavit in support of the Petition. And we will rest on Ms. Houghton's argument and his Affidavit.

THE COURT: All right. Thank you so

much. I figured that would be short, so that's why I thought I would get you first based on the argument I just heard.

Ms. Creech, I'm happy to hear from you.

MS. CREECH: Thank you, Your Honor.

Magalie Creech for Defendants Kenneth Miller, Anna Miller, Amar and Kennie Gill Living Trust.

Thank you, Ms. Houghton, for the very detailed background, which is very helpful and relevant, I think, to the Court's consideration of these issues.

I did want to add that the Defendants Kenneth and Anna Miller subsequently withdrew, or revoked rather, their consent to the consent resolution, such that those were the three owners who did not agree to the 2019 amendment.

And again, as set forth by Ms. Houghton and was outlined in our response to the Petition, we absolutely agree that this master deed needs to be amended. That it would behoove everyone that the Court order a meeting to be held for purposes of discussing what that amendment should look like. That everybody have the ability to participate and to voice their concerns and any proposals that they may have

for amendment of the master deed.

But the real issue is with the modification of the unanimous voting requirement. And our position is that, first, that violates the expressed language of the master deed. And second, that it violates the Horizontal Property Act.

Your Honor observed, quite keenly, that the other parties to this -- the other owners to this association are not parties to this lawsuit. The only parties are the Plaintiff and the Defendant, and of course the Regime, which is the non-profit.

To the extent that the Petition seeks to alter that unanimous voting requirement without the consent of the other owners would, we believe, constitute a due process violation; and additionally, would infringe on their property rights.

When these owners purchased their units in Lagoon Villas II, they were bound by the master deed and by the Horizontal Property Act, which specifically states that any votes to amend the master deed must be unanimous. Additionally, the language of this master deed provides that any amendment must also include the consent of any mortgagees who may have mortgages against dwelling units in the Regime.

So as far as the Horizontal Property

Act is concerned, we believe that the 2019 amendment is problematic, first, in that it alters the voting requirement. It's additionally an unreasonable change to the amendment process because of the parties' original intent. The original contracting parties' intent. Again, everybody was on notice when they purchased their property in Lagoon II that the requirement to amend the master deed would be unanimous. And so the Court is essentially being asked to modify or to disregard the language of that contract, which is not the position of the Court's to do. It is to enforce a contract as it's written. And in this situation, that is determined by the Horizontal Property Act, which eliminates that possibility.

Another reason that the proposed amendment is problematic is that in one of the -- I believe it's the fifth "whereas" provision, it requires the owners to convey the real property beneath these encroachments to the owners of those dwelling units themselves. Now that is an impermissible division of common elements, which the Defendant in this case has argued that the Defendants have undertaken by encroaching on the common element.

The common element is all the dirt

beneath the structures, in addition to all of the structures themselves. And so by requiring a conveyance of the common element beneath these improvements to those owners, you are, in essence, effectuating that division of common elements, which is proscribed by the master deed and the Horizontal Property Act.

The third point that we raised in the Petition -- response to the Petition is that even if you were going to assume that this 2019 amendment is feasible, not withstanding these challenges that it presents by way of the Horizontal Property Act, it's fundamentally unfair. And what it does is it changes the ownership percentages from a value-based calculation to a square footage-based calculation.

When these parties purchased their properties, the master deed provided for two classes of properties. You have two bedrooms that have a certain valuation. I believe $73,000. And three bedrooms that have a valuation at $83,000. The proposed amendment is now creating six different classes of units based on their square footage. The master deed does not have any recognition of that being a square footage-based calculation. It's unknown whether, in fact, these units were ever

measured at the time that they were built.

And the master deed -- excuse me -- the Horizontal Property Act is devoid of any mention of specific square footage as well. Instead, it relies on -- and I will cite to the specific code section, which is 27-31-60(a)-- that an apartment owner shall have the exclusive ownership of his apartment and shall have a common right to share with other co-owners in the individual common elements of the property equivalent to the percentage representing the value of the individual apartment with relation to the value of the property as a whole. Again, value and not square footage.

This percentage shall be computed by taking, as a basis, the value of the individual apartment in relation to the value of the property as a whole expressed at the time the Regime is constituted, and shall have a permanent nature and shall not be altered without the acquiescence of all co-owners representing all of the apartments of the property.

So again, the change of calculation from two-bedroom to three-bedroom value to a strictly square footage value does not result in equity because it also changes, in addition to the altering the

amount of the assessments for each of those units, it impacts voting rights. And that is further demonstrated by application of the 2019 amendment, which results in unit 1594 -- which is the largest of the units which has been improved -- in essentially being a super unit, which can, with any other two -- with any other unit, regardless of bedroom size, two bedrooms -- two units can create -- constitute a majority. Whereas, previously, that was only possible with one of the other -- two of the other three-bedroom units.

Ms. Houghton also mentioned that one of the issues that has been a recurring issue as a result of the failure to have an amendment to the master deed is the various assessments for special undertakings that need to be made and for repairs to common elements of the Regime. And that's highlighted by the roof assessment, which was made in 2020, I believe. And when you apply the 2019 proposed amendment to that specific roof assessment, it results in absurd results. So for example, the Defendants' unit, which is an unimproved unit, would be assessed at -- I have too many notes here and not enough hands.

So the 2021 special assessment would result in the Defendants' unit, Unit 1595, in having

an additional $23.33 to cover the roof replacement of the improvement to that unit. The actual cost to replacing that roof is $999.40. That estimate was provided to the Defendant's by the roofing company that has been contracted by the Regime and is included as one of the exhibits to the Affidavit of Mr. Miller.

So in addition to being assessed an additional amount, since the ownership interests were changed, the Defendants have tendered this additional $999.40 to cover the cost of the roof improvement to their unit. Now, when you apply, again, this 2021 -- 2019 proposed amendment, that actually doesn't cover the cost of the improvement, which is one of the stated purposes. And I gather by the Defendants' commencement of this action against the Defendants is that it unfairly requires owners who have improvements to have other assessments cover the cost of those improvements.

THE COURT: -- a quick question on that? I guess I'm trying to follow along.

So it looked like, under the Regime's proposed new plan, it went from being worth -- and I understand these aren't the real numbers -- but 60-something thousand to 70-something thousand. But you've got the assessment doubling. Going from 900 to

I think you said 2300. Mathematically, I think I'm missing something. What --

MS. CREECH: So in applying the 2019 amendment, the actual cost for the assessment for improving just -- for impairing the roof just on the improvement to unit 1595 would have resulted in an additional cost of $23.33. When, in reality, re-roofing the improvement alone to unit 1595 costs $999.40.

THE COURT: Oh, I thought you said 2300. That it went from an assessment that would be owned by them. Okay. I misunderstood.

So I thought one single shingle cost $23, but I don't know. But, okay, I think I'm following your argument, so let me mute again.

MS. CREECH: And again, the unit owned by the Plaintiff in this case would have the smallest percent ownership interest. That would result in a 13.549 ownership interest. Whereas, an identical two-bedroom unit, which has not been improved, would have a value of 14.423 percent.

So again, when you actually apply the 2019 amendment, it shifts ownership percentages from a value-based, which is how everybody purchased and originally contracted by purchasing property in Lagoon

II, to a square footage-based value. Which, again, results in inequities in voting power and in assessments. And the 2019 amendment does not effectuate its stated purpose of essentially having owners bear the cost of their own improvements.

And so what the Defendants have offered as a possible alternative that we believe is more equitable would be to revert to the original ownership values and have everybody who's made an improvement be responsible for that improvement.

A second alternative would be to adopt a ownership calculation, ownership percentage calculation, similar to that employed back in 1998 when the Defendants' unit was improved. And that's set forth in the Affidavit of George Flathmann. And essentially, what that does is it takes the footage of the individual -- the square footage of the individual unit in relation to the revised square footage total based on that original value, and then divides it based on the relative value, as opposed to a strict square footage value. So that preserves historic voting values with respect to each of these dwelling units.

THE COURT: Did you have anything else? Or --

MS. CREECH: Yes, Your Honor.

THE COURT: Oh.

MS. CREECH: I'm just making sure I've covered my various points. Sorry. I'm being as quick as --

THE COURT: No. Take your time.

MS. CREECH: -- be here.

And to go back again to the main argument that revising the unanimous voting requirement under the Horizontal Property Act would result in an unenforceable and invalid amendment.

I think that's really the highlight of our argument here today in that it would be subject to future challenge. And I think that not having the other property owners' consent to essentially taking the property out of the Horizontal Property Regime, which in and of itself would require a unanimous consent, you can't have it both ways. You can't say, "You're part of a Horizontal Property Regime, yet we're going to modify this unanimous voting requirement without your participation and your involvement in it."

And to the extent that the Court is inclined to order a hearing -- excuse me -- order a meeting of the co-owners to vote on the 2019

amendment, or any other amendment, we concur that that meeting should have some ground rules laid out by the Court. I think having a third-party neutral preside over that meeting would be a good idea. And capping, perhaps, presentations of co-owners to a certain timeframe would certainly be accessible.

I did want to mention that Ms. Miller is hearing impaired. If there is a way that that can -- that meeting can be conducted in a ADA-compliant format, the Defendants would request that as well.

And again, we would echo that the need for the master deed is clear -- for the master deed to be amended is clear -- but the problem is that this 2019 amendment, the specific results of that 2019 amendment -- how it impacts voting rights, how it impacts specific assessments -- in reality, have not been discussed and deliberated by the co-owners. And that's an opportunity that we feel all of them should have in order to make a conscientious decision about the future of this Regime

THE COURT: All right. Thank you so much. I mean, as a practical matter, I can't re-write these things. Right? I mean, the only way they're going to be re-written is if the parties reach some

agreement. And this has been going on for years, it sounds like, and the parties have not reached an agreement. So I'm not sure what can happen other than let your clients have their say to the other owners about here's why this is a problem.

And you pointed out some valid things. The transfer of the real estate itself. I mean, I thought these things were a box of air you were selling, so I mean, maybe there is some tweaking that can be done.

Some of the other things you referenced, I don't know if it's for a Court to come in and say one or the other is better. The question is, let the owners talk about it and decide whether or not an amendment is appropriate. So, and maybe an amendment is inappropriate based on some of the arguments that you and your client would be able to give at this meeting. Maybe just your client, depending on the parameters.

MS. CREECH: And if I may, Your Honor, I do want to bring up one more point.

This is actually referenced in several of the Scarminach letters. I believe one of which Ms. Houghton had on the shared screen.

But the master deed can be amended

without changing the ownership percentages. That's been made clear. And that is another option, which I think owners should be made more fully aware of and have the opportunity to discuss.

But specifically, the Scarminach letter of April 9th of 2018 in paragraph four states that paragraph six of the master deed could be updated to reflect the current total value of the property and individual dwelling units and the proportionate percentage interests adjusted accordingly. However, this may not be necessary given that the value is not an accurate valuation of the property, but a nominal value assigned by the master deed for purposes of calculating percentage because percentages are based on the value of the property and not square footage. Voting should not be affected.

Yet, however, if the board believes larger units created by the aforesaid expansion should bear a larger portion of the common expenses than this will be necessary.

So again, we posit that an amendment of the master deed can include an updated plat, which still needs the improvements and identifies limited common element and general common element. But it doesn't need to impact the actual ownership interests

because, again, those were based, at the time the Regime was created, on two-bedroom and three-bedroom units, as opposed to square footages.

THE COURT: Okay. And I guess what I was trying to say earlier is these might be great arguments, but they're not arguments for me to decide. Right? I mean, aren't these arguments for, right now, the membership to vote on 100 percent? Which sounds practically like that's impossible either way. Y'all have tried this for years prior to litigation.

But I certainly think that -- and you made some valid points that aught to be made at the meeting -- but I just can't imagine a scenario -- I don't see how this ever ends if we don't move away from 100 percent. And then the question becomes, how do you make sure that Ms. Gill has her say? And it sounds like there have already been e-mails and there's already been presentations and that kind of thing. So none of this is going to come as a surprise to the other owners.

But I guess I'm trying to figure out how the agenda, I mean, what you would be concerned about is how the agenda is scheduled. Is that right? You would want there to be adequate time for your plan and the other plan to be debated. Is that essentially

what you're saying?

I understand you would like to leave it at 100 percent. But assuming that appears impossible -- and at this point, it just doesn't look like it's going to work -- how would you see the agenda going if we scheduled a meeting?

MS. CREECH: Well, I would first add that I think what is clearly impossible to have a unanimous consent on is the 2019 amendment. That's clear. That is the only one that has been submitted to a vote. And so I think that if the other owners had an opportunity to hear the other arguments and to present potentially their own proposals, and then have a vote on whatever proposals are on the table, that that would be more fundamentally fair -- again, provided that it's with unanimous consent -- than essentially forcing the passage of the 2019 amendment by going to a majority requirement as opposed to a unanimous consent.

I think that if each owner had sufficient -- as long as the Court provides sufficient notice and clarifies how the parties may participate, how long they can speak, then as long as everyone has an opportunity to meaningfully debate these proposals and to submit their own suggestions, and then have a

vote on any number of them, provided that it's unanimous, that that would be fair. As opposed to forcing the passage of this 2019 amendment, which has a number of deficiencies in apart from being unfair in how it treats ownership values. The fact that it is in violation of the Horizontal Property Act and disregards, essentially, the ownership of air space, as opposed to the ownership of dirt that you normally have when you're not subject to a Horizontal Property Regime, is another reason why this 2019 amendment is just not feasible.

THE COURT: So assume for the moment -- this is an assumption. But assume for the moment I said, yeah, we definitely have to have a meeting. It definitely has to be less than 100 percent, because that would be a waste of everyone's time clearly. And for want of a better term, the -- which unit is it? The Gills? The 1595 group has a presentation, that they would first submit in writing to everyone -- at least a week ahead of time so everyone could read it because it's fairly complicated -- but they would be allowed, since the other one was the subject of discussion already, to offer that proposal, and they would offer, they would move, to have it accepted. And if there was no second, it would die. If there

was a second, there would be -- it would just Robert's Rules -- there would be discussion on it, and there would be a vote on it conceivably. Yes or no.

If the vote is yes, that would end the meeting. That would be the modification. If it either gets no second or the vote is no, then we would move on to the -- you were calling it the 2019 proposal, but whatever that proposal is called. And that would need a motion and a second discussion. And the usual way to do it.

Would that be fair to the Gill side? To the 1595 side?

MS. CREECH: I believe that would be fair. And I do like the possibility of perhaps requiring owners a certain number of days in advance of the hearing to submit something in writing that outlines, that articulates, what they're proposing and any objections to other proposals so that it's more distinct. Everybody can read it in advance and ask questions about it.

I think whatever means that the Court deems best to streamline this process, we would be in agreement with. But I think that having something in writing a certain number of days prior to the meeting would be helpful.

THE COURT: Well, there would certainly be no limitation on anyone speaking with anyone else or sending any documents that were, you know, not threatening or anything like that. But, I mean, I would think it would be important for everyone to receive the agenda and the two proposals.

And that gets me back to the due process issue. Which I'm still not completely convinced we don't need everyone there, but I think that can be solved if, at the beginning of this meeting, every owner or their representative puts on the record that, in fact, they waive notice, they waive being parties in this action, some sort of clear waiver that they were not parties to this action but they consent completely with the result in this particular procedure. So I don't know. Some sort of good lawyering. Something that could be put on the record that would resolve that, because I saw the 33-31-160 statute, but I'm still not convinced that people aren't entitled to some sort of due process notice. I get what's happening here. This is a tiny little Regime. Everybody knows what's going on. But just in case that becomes -- I'd rather that not become an issue, and I think it won't become an issue if everyone is noticed.

Let me ask y'all this: If we go ahead with this meeting, does the result of that meeting affect the original case such that we would put off the summary judgment motions that we have today? Does that narrow the issues at all --

MR. KUBEC: Your Honor, I think that's a great suggestion from a practical perspective. I think a resolution at a special meeting would go a long way to helping narrow or end the dispute issues. And perhaps the parties could work something out prior to having a summary judgment hearing.

THE COURT: Any thoughts on that?

MS. CREECH: I would be happy to discuss that. But, I mean, just from a procedural standpoint, assuming that there is an amendment of the master deed, I view that as potentially mooting the declaratory relief that the Defendants have asserted against the Regime.

But with respect to the Plaintiff's claims, his individual claims against the Defendants, I don't know that it really impacts those unless it's, you know, resolved by some settlement or other consent.

THE COURT: Well, but that's becoming --

MS. CREECH: -- claims would still be in effect. At play, in essence.

THE COURT: I guess what I was thinking is, depending on what happens, that might put the parties in better settlement position. But I don't know.

I mean, Mr. Kubec, is that kind of what you were getting at?

MR. KUBEC: Yes, Your Honor. It was going to be kind of the olive branch you just threw out there that, you know, it would put everybody in a different -- so exactly. It's something that's considered for settlement purposes.

THE COURT: And if that doesn't work, I mean, if the whole thing falls apart, we'll just hear this in January or something. Or maybe even in December. But I would think if I say, let's have the meeting, I mean, realistically, maybe the meeting could be, well, if it's -- how do we do hearing impaired compliance? Is there a way to do that on Zoom or WebEx? Never really thought about it before. I probably should have, but we haven't had any requests for that. Anybody know how that works?

MS. HOUGHTON: Your Honor, I guess we would need some additional clarification about what

would be required. I think there are -- I looked into it, just in anticipation of the hearing, and it looks like there's some services, some add-ins, that you can do on Zoom that provide for essentially a real-time transcription of the, you know, of everyone that's speaking. So I assume that would probably be acceptable. I don't know exactly how to do it or exactly how to put that in place. But that's my understanding of something that might be an acceptable accommodation.

THE COURT: Okay. Let me ask, are there any more comments on the Regime's motion?

MS. HOUGHTON: Your Honor, if you would --

THE COURT: Go ahead.

MS. HOUGHTON: Thank you so much, Your Honor.

So just to respond to some of the comments from Ms. Creech, and just to kind of understand what would happen, assuming the Court is thinking it's going to order a meeting.

So, you know, first, I guess there's not an intent to quell or suppress, you know, discussion about this amendment. It's important. But the idea that this has not occurred up to this point

is just sort of fiction. So all of the owners are well aware of the issues.

And I showed Your Honor earlier the e-mail from Ms. Gill that set out their two alternate proposals back a year ago in October of 2020. So these alternate proposals that are being suggested by the Defendants have been, you know, published to the ownership previously a year ago.

So this is not some instance of, you know, these brand new suggestions that have never been brought to light would now be brought to light at this meeting. You know, everyone has had the opportunity, over a very long period of time, to participate in this process to their desired level. Many have. And, you know, we did not attach to our Petition the, you know, hundreds of pages of e-mail correspondence on this point because it just didn't seem necessary to illustrate the important facts to the Court.

But, and the reason that I'm explaining this is, you know, I do -- I think that there should be at the meeting an opportunity, as we requested, for each unit to speak in favor of or opposition to the previously prepared proposal, which could include, you know, comments by anyone: "I've got a better idea of how to do it." "This is how I think it should be

done." "This is why you should not vote in favor of the October 9th previous proposal."

But we are requesting that the only proposal that be put up for a vote is that October 9th proposal to the extent that it constitutes a sort of prepared packaged proposal. And my concern is that by allowing other proposals to be put up for a vote that are just sort of vague ideas and suggestions, that is going to, you know, what happens if the Regime were to vote in favor of one of those suggestions? Well, now we have to go through the process of preparing amendment language. Well, what if the ultimate amendment language can't be agreed upon? Which is essentially what happened with the October 9th proposed amendment. So, you know, that was a process of two, three years to get prepared language in place, ready for consideration by the owners that was ultimately not, you know, agreed upon by just one of the owners.

And as Ms. Creech noted, Mr. and Ms. Miller did withdraw their consent after this lawsuit was initiated. So I understand the concerns of the Court in terms of the fairness. And again, the intent is not to quell the discussion, but we are asking that the only item that be put up for a vote would be that

October 9th proposal.

And, you know, I think maybe part of the Court's concerns about, you know, preparing the notice, you know, what we would be requesting is that the Court approve the notice that would go out to all of the owners. It would be a part of the Court's order. You know, we could prepare it and submit it for the Court's consideration, and the Court could review that and, you know, determine that it was an acceptable notice. And it could set out these parameters for, you know, providing material ahead of the meeting and the conduct of the meeting. And so hopefully with that, it could be, you know, an orderly meeting. And I assume, you know, that may be able to satisfy the Court's concern.

So we'll proceed in whatever manner the Court directs, and we're grateful for the Court's willingness to assist the Regime with this issue, but we are requesting that the only item that be put up for a vote -- not discussion but vote -- is that prepared proposal.

THE COURT: All right. Anything else on this matter?

And I appreciate your concerns and the idea about trying to streamline it. But again, if --

I don't have a problem with having the agenda allow whatever the proposal is by the 1595 crowd to go first. And again, if there's no second, if there is no support for what they want, that's the end of it. And then you move on to the next one. Maybe there is support. I mean, I don't know. I don't know. But it gives them a situation where, as Ms. Creech said, at least they feel like they were treated fairly. At least they had an opportunity to be heard. And of course, they'll allow -- they'll be able to be heard in opposition, assuming the next one goes forward.

So I like the idea of a third-party neutral as the idea that will be -- who mediated it? Mary Sharp? Are y'all trying to do, like, Mary Sharp? Or who are you trying to get in there to do the -- I guess it can be WebEx so everybody can be everywhere.

MS. HOUGHTON: Yeah, I think we could probably confer among the parties and come up with somebody to suggest to the Court. I'm sure we could come to an agreement on that. It's not something we previously discussed.

THE COURT: Okay.

MS. CREECH: And -- I just thought of another consideration. Would the Court permit Counsel for the Regime and for any of the parties to

participate in this? Because I think one of the -- in so far as some of the debate is concerned about the legalities of the 2019 amendment, who would be speaking to those? I guess would be our question. Would those be addressed by Mr. Scarminach? Or by other Counsel? Or no Counsel present? Again, this is just more for --

THE COURT: I don't have a problem with Counsel present. The question is, does the owner get to speak in addition to the Counsel? Or can the Counsel, basically, you get one representative here, because it sounds like some of these units are run by multiple owners.

MS. CREECH: Yes.

THE COURT: I mean, in theory, you get all the multiple owners plus the Counsel. And maybe everybody's got a lawyer. You're there for days. You know what I mean?

So I mean, these aren't terribly complicated things. You know, which ownership percentage are you going to use? And is it based on square feet? Is it based on this original amount of money? I mean, the -- I don't know if every owner needs to speak in addition to everyone's Counsel, because, again, y'all are going to send things out

ahead of time in writing that hopefully everyone will review.

So let me ask: How about if each unit gets one speaker? And that speaker certainly can be the representative, the Counsel, property manager. Whoever they want. Any thoughts on that?

I understand originally there was some dispute amongst owners on the 1595 group, but that they are all in concert now. Right?

MS. CREECH: Yes.

THE COURT: So, I mean, can y'all think of any reason not to just say we'll have one person? And that person can change on the first one and the second one. I mean, just with regard to any issue on speaker.

MS. CREECH: I think that that would really just depend on whether the Court is inclined to alter the unanimous voting requirement, because the bylaws require unanimous consent of all co-owners. For an amendment for the master deed, it wouldn't be one vote per unit. It would be each owner. Each co-owner.

THE COURT: -- point.

MS. CREECH: -- multiple co-owners that maybe have a differing vote, then I think that would

potentially be a problem.

THE COURT: So basically, I mean, I think I am inclined to change that, because otherwise, we're right back to the 100 percent that is never going to be reached. Right? So your -- is that if we get to that point where it's 51 percent, or it's whatever percent -- I guess what I was trying to do is streamline this meeting. But if this thing starts at nine o'clock in the morning or something, you know, then I guess it can take a while. It's important. It's been going on for years and years and years.

Any thoughts on who should speak for how long? Anything? I hate to limit people who have legitimate things to say. I don't want to get into a situation where somebody feels like they need to filibuster the thing away. But any thoughts on time? Speakers? Limitations?

MS. CREECH: I would maybe say ten minutes per owner. And then, of course, if you have multiple owners of a unit that elect to have one representative to speak for all of them, that that would be just how they proceed, and that would be outlined in the submissions prior to the meeting.

THE COURT: That sounds fairly reasonable.

And then again, I think we need a court reporter. I think we need a neutral. We need to make accommodations for Ms. Miller and anyone else that has any sort of impairment that would be a problem for them.

I think at the outset of the meeting, we need to have anyone who, in theory, needed notice to state for the record that they accept this and the parameters of the meeting. Or again, something that makes it clear to a subsequent court that their due process was protected in this process, and they consent to this process.

Obviously, the 1595 group and 1596, Mr. Taylor, of course, are part of the action. But I understand, though, that Mr. Taylor's ownership is in part. Did somebody say that? Maybe not. Does Mr. Taylor own 100 percent of the unit?

MS. CREECH: No.

THE COURT: Okay. Well, maybe we need to have whoever else has ownership to consent to that as well. I just want to make sure all the I's are dotted, et cetera.

So realistically, putting together this order, going back and forth, getting it the way we want to get it done, sending out notice, allowing

enough time for whatever documents needed to be sent to the parties -- and thank goodness this isn't a 500 unit thing, so it won't cost a whole lot to send these out to people -- we're probably talking about a January meeting. Do you think? I don't know if --

MS. CREECH: I would think so just with the holidays and travel arrangements for those that needed to travel --

THE COURT: Because I'm guessing I would let the Regime take a stab at drafting this order along the parameters that we've spoken about. And, of course, run it by everybody else. And if there are issues, we can get back on the telephone and see if we can hammer those out. But probably looking toward a January meeting.

And then the question is, I think you said y'all would want to talk on who the third-party neutral is. I don't care. It sounds like Mary Sharp already knows the issues, but it certainly doesn't have to be Mary Sharp. She may have a totally booked schedule all the way till the spring, so no reason to wait for that.

And then I think if this -- I don't know how it'll end up. But depending on how it ends up, I think maybe we'll reconvene and deal with the

summary judgment motions on Mr. Taylor's damages issues. Is that what we would have left? Assuming -- and this is, of course, an assumption. There's no telling what'll happen in the meeting. But assuming that the 2019 amendment that Mr. Taylor favors passed -- actually, I guess it wouldn't matter. We would still have to resolve some of those issues, and we can still change the character of whatever Mr. Taylor's claims are.

So any objection to simply taking up that summary judgment motion after the conclusion of the meeting? Any reason not to do it that way?

MS. CREECH: I don't believe so, Your Honor. Initially, I would just have expected that we would hear both motions today because I didn't know that there would be a potential discussion, depending on the outcome of that meeting. But since Mr. Kubec indicated that that may be the case, I'm happy to have everyone reserve their right just to that motion, and just continue it until after this hearing is held. This meeting is held.

THE COURT: Okay. And, of course, there's nothing to prevent and I would encourage the parties to continue to discuss any way to resolve this. I mean, Ms. Creech, you pointed out some good

points, I thought, with regard to the 2019 proposal. There may be great responses to them. I don't know. I know this isn't the time necessarily to discuss that. But maybe Counsel can talk about that and maybe y'all can come closer to a -- to maybe even one thing that could be offered to the owners. But we'll see.

So what I'm going to do, then, is see if Regime Counsel can draft an order, run it by everybody. And if we need further discussion on it, just let Heather [ph] know, and we'll get on the phone and we'll try to sort it out.

Any questions? comments? thoughts?

MS. HOUGHTON: Yes, Your Honor. Just because I am tasked with putting this to paper, which is certainly appropriate, but I just want to make sure I understood a couple of points.

So in terms of what the Court would envision is that anyone that has been a party to this action would need to consent at the beginning of this future meeting to this process and to the parameters for the meeting as has been expressed by the Court in a forthcoming order. You want that put on --

THE COURT: I mean, the fact is, I suppose they could do it in writing. I mean, it would be nice to have some sort of affidavit format or

something. But I mean, I just want to make sure that at some point after this, some owner doesn't come in and say, "Well, we didn't know the Judge was going to do something as important as this meeting on -- whatever today is -- the 22nd, and we might have wanted to be heard on that."

So, and I understand your position is that the code section does not require notice to the owners. But it just seems like it should, if it doesn't. And so I just want to make sure everybody -- nobody has the ability to come back and claim a surprise or claim a breach of due process or claim anything. So I would like them to accept and adopt this meeting format as though they had been at this hearing and consented to the relief granted. And I'm sure y'all can come up with something much more clever than that.

But, I mean, something that just confirms that they are waiving any objections, whether it be about due process or otherwise, to this hearing and its outcome. It doesn't have to be too scary looking, but just something that makes it clear that they're good with what happened, and they don't choose to challenge it.

MS. HOUGHTON: And just for

clarification, Your Honor, that waiver would essentially be to the notice requirements and the format of the meeting itself. Would that also go to if the voting process is amended to a majority, that they would be consenting to that as well?

THE COURT: No, no. They're not consenting to the outcome necessarily. They're consenting to the fact that they were not parties, and conceivably had a due process right, although debatable, that they consent and adopt -- let's see. Let me think about that for a second.

Because I don't know if they, well, the fact is, I don't know if it's going to make any difference what it says based on y'all have pretty much told me the posture of the case and who's on which side and all of that. So I'm not sure how we write it or if it even matters.

But I just want to make sure everyone consents to a notice. Well, they didn't get notice. Let's see.

And I don't think it makes a whole lot of sense to amend these pleadings at this point and go through the whole thing where everybody files a consent or answer. That just seems -- this thing has probably already gotten very expenses. And with a

six-unit place, I guess what I'm trying to do is keep their cost down.

But I don't know if it even matters if they -- if we put if they consent to the ruling. I guess that actually would solve a lot of problems. Any thoughts on that?

MS. HOUGHTON: I guess what I'm envisioning, maybe, that would, you know, in putting pen to paper, would be that, you know, the Court would issue an order, you know, following this hearing, and it would provide, again, for the parameters of the meeting, exactly what the Court is ordering in terms of the conduct of the meeting, and that that could be, you know, essentially what, you know, well, and also what would be envisioned is, you know, going ahead and preparing the notice and having that approved as part of the Court's order. This is the notice for the forthcoming meeting.

So I think maybe having the -- to satisfy the Court's concern, maybe having the non-party owners' consent to that notice, and that they've received that notice, and that they waive, you know, objection to that notice. And maybe that satisfies the concerns.

THE COURT: Here's what I'm thinking

about: If they had a due process right -- which I understand amongst this group is debatable, but I think they probably did -- but if they had a due process right, that due process right would include the ability to appeal and everything else. But if they consent to the order, game over. Right?

And so if they sign something via the order of such and such, consent to the same and waive any interest that we may have in becoming parties or challenging this order. I mean, something more eloquent than that.

But, I mean, something that just checks the boxes where: What could I have done? I don't want to do it. And that would include the right to appear, the right to defend, and the right to appeal. So I don't even know if it needs to say all that. But something that makes it clear to a subsequent Court if there's a challenge.

But, no, everybody, even those that weren't here, have subsequently adopted this and waived any interest they have in challenging it. So I'm sure y'all could -- I'm springing this on you, so I don't expect anybody to have great language, and I certainly don't.

But, you know, just something that --

just imagine down the road somewhere there's a challenge. What would solve that challenge? What would check that box? So it might not even matter. It might end up in Appeals Court, and they might say, "Well, these people aren't entitled anyway." But why not solve it ahead of time just in case.

MS. HOUGHTON: Okay. I understand that that's the Court's ruling. That the Court wants us to prepare that in the proposed order. And I'll try to prepare some language that is acceptable to everyone and to the Court.

But the other question I had was just on the specifics. So I understand that the Court has ruled, or would intend to rule, that multiple proposals could be put forth for a vote at this future meeting.

THE COURT: I guess what I envision is the agenda that y'all could do a much better job of drafting.

But I understand the 2019 proposal has already been offered once and failed to reach 100 percent, so it died. So it seems like it would be only fair in this agenda to allow the 1595 proposal -- am I getting that right? -- yeah, the 1595 proposal to come before the 2019 proposal -- I'm mixing numbers

up -- but the other one for discussion and see if there is a motion. And if there is -- and let the neutral run the meeting. If there's a motion to discuss it or a motion to -- I guess we could discuss it. And then I'm trying to remember Robert's Rules.

And then once it's discussed, if there's a motion to approve it -- and there would be, of course, with the 1595 group -- then it would need a second. And if there's no second, it dies. If there's a second, great. It goes to a vote. And then y'all decide it either succeeds or fails. If it gets no second or it fails, then you move on to the next agenda, which would be the 2019 proposal, which would entail discussion and all of that. Again, it would need a first; it would need a second. And then it would need, I guess, conceivably, a 51-percent passage.

So I'm sure I've left something out, but something like that. Something just -- just plagiarize off of county council agenda or something if I'm forgetting a pledge or something that we need in there. But, you know, I'm sure y'all can work together on that. Again, there was some legitimate points that might need to be discussed ahead of time.

Have I created more questions than

answers? Anything else?

MS. CREECH: To the extent that I haven't already, I just wanted to make clear our objection to the unanimous voting requirement. I don't know that that's something that can be waived by the other parties. And to the extent that it may be, I just want to ensure that the Defendants have not, by simply agreeing to conduct this meeting subject to these parameters, waive their right to challenge any vote that has -- unanimous consent.

THE COURT: No, no. I'm sure your clients, I don't think it waived anything. Are you talking about the others that weren't parties? Or are you talking about your clients?

MS. CREECH: Specifically the Defendants. But it brings the question to me whether or not that unanimous voting requirement is waivable or not. So to the extent that there's going to be some waiver by the non-party owners, I think that insofar as the posture of the meeting, how it's held, waiving the notice requirement, I don't see an issue with that. But insofar as it purports to waive the unanimous voting requirement, I think that's problematic.

THE COURT: I think we're still doing

the notice. Right? But they are consenting to the order. The others. Not your clients. I understand. And I understand that you have -- if they were all here, let us assume for the moment that they would say, "Yes, let's go ahead and waive this thing." Your position is not really a whole lot different than if one wanted to waive it and I ordered it. Right? I mean, the whole question is, can it be done? Can the Court do what I'm doing? Which is always the question in my mind when I do something. But, you know, we'll wait and find out. But so I don't know the answer to that, but obviously, your challenges would be preserved.

And anything else from anyone?

I think what we're going to do, then, is we'll proceed ahead with this proposed order that y'all will talk about and get to me, and hopefully we can come up with a format. In theory, at some point, maybe January hopefully, there will be this meeting. Whatever happens happens. There will be a record of it.

And perhaps, depending on how it comes out, that will put Mr. Taylor in a better position to negotiate some sort of a resolution to the balance of the case. If it doesn't, or if parts remain, then

we'll go ahead and y'all will get with Heather, and we'll schedule something to figure out the balance of the case. Does that work?

MS. CREECH: Yes, Your Honor. Thank you.

THE COURT: Okay. And I'd be interested to know how the vote comes out too. But I'm sure we'll talk again as we try to work through the order.

And I think that was all I had. Let's see: third-party neutral, court reporter. Okay. All right. Well good.

Well that will end this motion. And we'll take the other one up, the summary judgment motion, sometime in the future, if necessary.

Anything else for today's record?

MS. HOUGHTON: No. Thank you very much, Your Honor.

THE COURT: All right. Y'all have a happy Thanksgiving.

MULTIPLE SPEAKERS: Thank you, Your Honor.

THE COURT: Thank you. Bye-bye.

(Whereupon, at 12:12 p.m., the proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, ASHLEY MANINI, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

ASHLEY MANINI

Notary Public in and for the

State of South Carolina

CERTIFICATE OF TRANSCRIBER

I, MELANIE GAINES, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Melanie Gaines

MELANIE GAINES

STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

TODD E. TAYLOR,
Plaintiff,
v.
AMAR AND KENNIE GILL LIVING TRUST Dated March 15, 2019; KENNIE LEE MILLER GILL, Trustee of the AMAR AND KENNIE GILL LIVING TRUST Dated MARCH 15, 2019; KENNETH V.L. MILLER; and ANNA M. MILLER,
Defendants.

AMAR AND KENNIE GILL LIVING TRUST Dated March 15, 2019; KENNIE LEE MILLER GILL, Trustee of the AMAR AND KENNIE GILL LIVING TRUST Dated March 15, 2019; KENNETH V.L. MILLER; and ANNA M. MILLER,
Third-Party Plaintiffs,
v.
SOUTH BEACH VILLAGE LAGOON VILLAS, II, and HORIZONTAL PROPERTY REGIME, LVII,
Third-Party Defendants.

C/A No. 2020-CP-07-01547

VIDEOCONFERENCE HEARING

March 4, 2022
9:30 a.m

Certified Original

VIDEOCONFERENCE HEARING

DATE: Friday, March 4, 2022

TIME: 9:30 a.m.

BEFORE: Honorable Judge Name

LOCATION: Remote Proceeding
Charleston, SC 29405

REPORTED BY: Ashley Manini, Notary Public

JOB NO.: 5097960

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF TODD E. TAYLOR:

EDWARD M. KUBEC, ESQUIRE (by videoconference)
Coffey Kubec, LLP
18 Executive Park Road, Suite 3
Hilton Head Island, SC 29928
ekubec@coffeykubec.com
(843) 422-4488

ON BEHALF OF DEFENDANTS AND THIRD-PARTY PLAINTIFFS AMAR AND KENNIE GILL LIVING TRUST, KENNIE LEE MILLER GILL, KENNETH V.L. MILLER, and ANNA M. MILLER:

MAGALIE A. CREECH, ESQUIRE (by videoconference)
Finkel Law Firm, LLC
4000 Faber Place Drive, Suite 450
Charleston, SC 29405-8556
mcreech@finkellaw.com
(843) 577-5460

A P P E A R A N C E S (Cont'd.)

ON BEHALF OF THIRD-PARTY DEFENDANTS SOUTH BEACH VILLAGE LAGOON VILLAS, II, and HORIZONTAL PROPERTY REGIME, LVII:

LACEY HOUGHTON, ESQUIRE (by videoconference)
Copeland, Stair, Valz & Lovell
40 Calhoun Street, Suite 400
Charleston, SC 29401
lhoughton@csvl.law

ALSO PRESENT:

Kennie Lee Miller Gill, Defendant and Third-Party Plaintiff (by videoconference)

I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID/EVD

(None marked.)

P R O C E E D I N G S

THE COURT: Good morning. We're in 2020-CP-07-01547. This is Taylor vs. Gill Living Trust, et al. and Gill Living Trust, et al. vs. South Beach. This is Defendants' 59(E) Motion to Reconsider and Alter or Amend.

And Ms. Creech, I'm happy to hear from you.

MS. CREECH: Good morning, Your Honor. Thank you.

We have filed this Motion to Reconsider and are respectfully requesting that the Court alter its prior ruling, such that the vote at the special meeting, which is scheduled for the 17th of this month be conducted as required by the Horizontal Property Act and the master deed. And that is requiring unanimous consent of all co-owners at Lagoon II Villas and any mortgagees who have mortgages against the property.

The basis of the Motion is that the Order has the effect of rewriting the contract to which the co-owners of Lagoon Villas are bound, mainly the master deed, which is controlled by the Horizontal Property Act. There is no authority which stands for the proposition that the South Carolina Nonprofit Act,

which was the act pursuant to which the petition was filed by the Regime, can supersede the Horizontal Property Act to which the property is subject. 33-31-160 permits an order allowing members to vote or to hold a meeting or to dispense with the articles and bylaws concerning the holding or calling of a meeting. But nothing about the statute can be objectively interpreted to permit that act to supersede the entire statutory framework of the Horizontal Property Act.

The one case, Your Honor, that I found that even touches upon 33-31-160 is a case out of the Bankruptcy Court In re, Foxwood Hills. And in that case, it was an adversary proceeding in which a counter-claim was brought by a property owner's association regarding conducting a special meeting under the Nonprofit Act. The Court in that case looked at the official comment of the Nonprofit Act, which provides that -- the Act, "Provides an escape valve allowing nonprofit," organizations -- excuse me, "allowing nonprofit corporations to conduct meetings or obtain the consent of members, delegates, or directors when it is otherwise impractical or impossible to do so." The Section allows directors, "To petition the appropriate court for an order allowing the members or directors to vote or hold a

meeting even if the order dispenses with requirements of the Model Act, the articles, or bylaws concerning voting or holding meetings."

So based on that, again, expressed language of the Nonprofit Act, it's talking about governance of the nonprofit. It doesn't deal with the actual structure of the nonprofit, itself. And so in the Foxwood Hills case, the petitioners that were asserting relief under that Nonprofit Act were not asking for anything with respect to modifying any voting requirements or any other structural requirements of the regime. But instead, were asking for a special meeting to be held for members to decide whether to dissolve the association, which sections of the community would be part of the association, to elect a new board, to determine the association does not have authority to assess certain fees, and to get -- obtain an order requiring the association to follow the governing documents declared valid by the court.

So again, that to me is a very -- a plan reading of the statute and what it allows and what it doesn't allow. And I think when we're talking about the Nonprofit Act, again, this -- as far as I'm aware, this is a question of first impression whether you have one statutory framework, which can entirely

supersede another. And I think that one of the reasons why that's problematic is because we're talking about interests in real property. Again, basic contract principles are going to apply when we're construing documents affecting interest in real property: deeds, covenants, and restrictions, et cetera. So there's nothing in the master deed that is ambiguous, which would be the only conceivable way by which the Court could modify the provisions of the master deed.

In order to effectuate the outcome that the Regime has petitioned the Court for, first, you would need all of the co-owners to unanimously vote to modify that voting requirement or to unanimously vote to remove the property from the Horizontal Property Act. If everyone on the property owners' association didn't like or want to follow the Horizontal Property Act, then conceivably, under the Nonprofit Act, any board member could simply run to the Court under the auspices of the Nonprofit Act to get an order that removes the property from the Horizontal Property Regime without a consent -- without consent of a single co-owner. And I don't think that that's what the statute was intended for, and I think that that would be an absurd result of applying the statute in

that way.

Contrary to the Regime's response to our petition, these issues with the Order Modifying the Unanimous Voting Requirement were expressly raised and ruled upon by the Court. They're perhaps posited in a different framework. Just so that the Court can, I think, view the ramifications of the decision, and understand the problematic nature of the ruling, the Court -- the Regime cited a case from the District Court, which again isn't binding, but to the extent that it is persuasive, and we submit that the Bankruptcy Court In re, Foxwood case is persuasive as well. The Dockins case cites the Fourth Circuit standard for a Rule 59(E) motion, which includes a clear violation of law or when it would be to prevent manifest injustice. So both of those grounds, Your Honor, we submit are appropriate. We're not simply restating the same issue that was raised and litigated previously but instead emphasizing the ramifications of that ruling so that the Court will hopefully modify its order in that regard.

I also did want to note that it is somewhat unclear whether the Order purports to effectuate a one time change in the unanimous voting requirement, or since it would be presumably reported

after a vote is held in the land records, whether that's going to constitute a modification of that voting requirement in perpetuity. I think that's an unclear question that we would seek some guidance on from the Court.

We also submit that a reconsideration is appropriate because this Court does not have personal jurisdiction over the owners who are not parties to this lawsuit. We are not attempting to raise those individual third-party interests but rather the -- asserting the ramification for the parties who are bound by this order. That lack of due process and the fact that those parties are not bound by this order is problematic for the plaintiff and the defendant in this case. And that is one of the reasons why the -- this legal defect in the Order should be modified.

The Regime also discusses the idea of fractional interests or voting interests when you have multiple co-owners that own a single unit. I'm not sure if perhaps we need to clarify that. I don't believe that there's anything that would require us to try to calculate how much or what percentage a specific owner has of a specific -- within a particular unit when you have multiple co-owners.

Because again, when we're talking about unanimous consent, you don't need to do any math. It's everybody. When you're talking about a majority vote, which is not what you need for an amendment of the master deed, then yes, there is a clear calculation of how that's done. And that's going to be based on the ownership interest under the master deed of that particular unit. It will be one unit -- that whole unit's interest is what's calculated for purposes of a majority. We don't even need to get into that argument because we're not talking about a majority. What we're talking about is unanimous consent that the Horizontal Property Act and the master deed require.

So in concluding, Your Honor, the Nonprofit Act cannot be used to compel a specific outcome of a vote or to rewrite the master deed or the Horizontal Property Act. If the Defendants' Motion is granted the special meeting can still proceed in the same fashion as noticed. Regardless of how the meeting is held, you need written signatures to evidence the vote. That would then be reported in land records. If the Motion is granted, we will just need to make sure we have everybody's signature as well as the signatures of any mortgagees with mortgages against the property.

It's my understanding that there's a mortgage against the Plaintiff's unit as well as Unit 1594. To the extent that I'm able to offer the assistance of my office in finding the appropriate person with those mortgage companies -- our office represents a number of servicers -- I'm happy to do that to see if we can contact the right person. I know that's not always easy to do with large servicers.

So in conclusion, Your Honor, we respectfully submit that the Nonprofit Act does not give the Court the authority to rewrite a master deed, and we would ask that the Court amend its Order in that regard.

THE COURT: All right. Thank you so much.

Who would like to be heard in opposition?

MS. HOUGHTON: Thank you, Your Honor. Lacey Houghton on before of the Regime.

We have filed a brief response in opposition to the Defendants' Motion for Reconsideration. Tried to keep it pretty brief. But it lays out the Regime's basic position and cites some case law for the Court.

But to just kind of -- just as a matter of information for the Court to let the Court know where we are. So since the Court has entered the Order granting the Regime's petition, the Order gave a certain number of days for the Regime to hold the meeting. So we have scheduled that meeting. It is scheduled for March 17th, and the required notices have all gone out to the Regime membership. The requirement was that those be sent 30 days prior to the date of the meeting. So that has all occurred, and we are looking at holding the meeting on March 17th.

The first argument that the Defendants have made and what sounds like the Defendants' primary contention is that the Court simply cannot modify the voting requirement from unanimous consent to a majority vote for an amendment to the master deed. This is squarely what the Defendants argued in opposition originally to the Regime's petition. We believe this issue has been squarely addressed and squarely ruled upon. And we do cite a case in our brief, Your Honor, for -- just for the proposition that a motion for reconsideration is really not a proper vehicle to simply ask the Court to rethink what the Court has already thought through. And it does

appear that those are the arguments that are being presented on reconsideration.

Based on the language of the nonprofit code section that we've traveled under 33-31-160 and the full text of that statute is cited in the Court's Order. It's cited in the Regime's petition. This is a broad grant of authority for the Court to fashion relief upon an appropriate petition in accordance with the terms of the statute. It's what the Court has done in this case. I mean, we believe the Court has appropriately recognized the issues that the Regime is facing. And the Court has applied the correct legal standard to attempt to afford relief to the Regime.

With regard specifically to the argument that the Court cannot over -- utilize this code section that's in the nonprofit code to override the requirements of the horizontal property regime act [sic], the Regime is a body that is organized under both the horizontal property regime act and the nonprofit code. It is governed and structured under both of those code sections. There is no reason why the provisions of the master deed would control over the authority that's granted to the Court in the code section in the nonprofit code.

The Nonprofit Act has a number of

provisions that regulate the relationships among members of a nonprofit. And a lot of those provisions specifically relate to voting. That's one of the primary functions of the Nonprofit Act. There's also a provision, I believe, in the Horizontal Property Act -- and I don't have the exact citation -- but there's a provision that expressly recognizes that bodies that are governed under the horizontal property regime act may desire to incorporate under the nonprofit code, and that that is expressly authorized. So that's a legislative recognition that a number of groups that are constituted under the horizontal property regime act are going to be also constituted under the nonprofit code.

So in sum, Your Honor, I don't believe that anything that has been presented on this front that the Court has not already addressed and ruled upon. And the Court has properly exercised its authority under 33-31-160 to fashion relief to attempt to assist the Regime in getting out of the intractable situation in which it now faces itself, and from which otherwise, there is no path forward.

The second argument that I believe the Defendants have brought to the Court is that the Court has erred in issuing the Order modifying voting rights

and derogation of the nonparty co-owners' due process rights because there are members of the Regime who are not parties to this case. Again, Your Honor, the -- under the expressed text of 33-31-160, the Court is authorized to order the relief that's been ordered upon the petition of a director, member. There's a number of parties that can file a petition. There's no contemplation within that statute that the Court has to join every single member of a nonprofit corporation in order to afford relief under the statute. It's simply not contemplated. It's not required. And in many instances, that would frustrate really the function of the statute, which is to serve as a escape valve. So we don't believe it is required to join or provide -- to join the nonparty owners as parties.

Regardless of that, Your Honor, regardless of whether it's required, so what the code section says is -- 33-31-160(b) says that if the court issues an order pursuant to 33-31-160, the court, "Shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting," if a meeting were being held pursuant to the typical procedures of the group. That's exactly what the

Court has done in the Order. I believe, it's Page 11 of the Court's Order -- well, in general -- sorry -- the Court's Order provides that all nonparty owners will be provided with notice of the meeting to be conducted pursuant to the Court's Order.

So we also included in the Court's Order a number of meeting notice documents that were approved by the Court to be sent out to the nonparty owners. So several weeks ago, when the Regime provided notice of this special meeting, each nonparty owner received notice of the meeting, received a copy of the Court's Order, and also received a specific form to check yes or no as to whether the nonparty owners consent or object to the procedures that have been ordered in the Court's Order. The Court's Order further provides that if any nonparty owner objects to the procedures in the Court's Order, then the Regime has an obligation to join that person for the purpose of being heard by the Court on their objection.

So 33-31-160 does not require the presence of all nonparty owners, all members of the corporation in the suit, in order for the Court to afford relief. It requires notice to the members of the corporation, which has been provided. And the Court has gone above and beyond that in the Order and

provided for further due process by providing an explicit opportunity to object, an opportunity to be heard, and an opportunity for judicial review. Those are the core elements of due process. So we believe that this issue has been satisfied.

And I think on the last argument, the last specific basis that is stated is that the Court has erred by modifying the right of every co-owner to vote upon a proposed amendment to the master deed and has changed that to only permitting one vote per dwelling unit regardless of the number of co-owners that a dwelling unit has.

In our responsive brief, we laid out the voting provisions in the master deed and the bylaws. Simply for the purpose of just demonstrating that when the Regime operates in its general business on a majority vote basis, each unit has only one vote, and that vote is specified at the percentage interest that's assigned to that dwelling unit in the master deed. It sounds like the Defendants agree with that premise. There's not really a dispute on that premise. So it appears that the Defendants' point on this issue is part and parcel of the primary and first argument, which was made, which is that the Court just shouldn't be modifying the voting requirement from

unanimous vote of all the co-owners to a majority vote. This is essentially the same argument that's already been made, and we've already addressed it. So I think, that's our basic response.

I would just point out that, again, with regard to 33-31-160 -- I think, we acknowledged this in our original presentation to the Court -- that there is a dearth authority, case law, fleshing out the application of this statute. There's just not a lot of cases out there. The case that was referenced by Ms. Creech is a bankruptcy case from the District of South Carolina. I think that may be the only case from a South Carolina court. So we don't have a lot of case law fleshing this out. But we do have a statute that we can interpret based on its plain language, and it is a broad grant of authority to the Court. And we believe the Court's properly exercised that authority in this case.

THE COURT: All right. Thank you so much.

Mr. Kuber, you represent a separate party, right? Did you want to be heard?

MR. KUBEC: Yes, Your Honor. I represent the Plaintiff, Todd Taylor, but I am going to adopt with Ms. Houghton, please.

THE COURT: Okay. Thank you so much.

Ms. Creech, did you want to have a brief rebuttal, and then we'll call it a day perhaps? Happy to hear from you.

MS. CREECH: Yes, Your Honor. Thank you.

I think that really when we hear these arguments, it kind of crystalizes what I think is the interplay between the Nonprofit Act and the Horizontal Property Act. And the distinction that I think we're making with respect to the Motion to Reconsider is we're not just talking about regular business of a nonprofit. We're talking about interests in real property, which is very distinct. And I think that in any real property action, if we're going to take or assert a claim or take an action that's going to extinguish or modify or alter someone's interest in real property, they need to be a party to the action.

And so if we're talking about taking action pursuant to the Nonprofit Act that's going to impact real property interests of nonparties that aren't bound by the Order, that's going to be problematic for everybody who is a party: the Regime, the Plaintiff, and the Defendants. And the fact that, I think, that the Act expressly states you don't need

to join everybody that I -- we have no dispute that that's what it says. But again, that's because it's taking about actions or calling of conducting of regular business of a nonprofit corporation. We're not talking about interests in real property. And so I think that that's really the critical distinction between the two statutory frameworks, and that you cannot disregard basic property law in attempting to enforce provisions of the Nonprofit Act in this respect.

THE COURT: All right. Thank you.

And I'm trying to remember what I was told a minute ago about how this meeting is supposed to go.

Let me answer a question. I think, Ms. Creech, you had said earlier there seemed to be some concern or -- with the Order as to whether or not these changes would be permanent. And I don't think so. I think it describes a special meeting, which would indicate that this is sort of a one-time thing. To use a South Carolina analogy, I mean, I picture this is as the truck is stuck in the ditch, and this idea is get the truck back on the road. And that's the end of it, and the truck goes back on down the road with whatever the usual rules are. But I think

when the term "special meeting" probably covers the concern about were these changes forever.

Tell me again, if you would, what was the -- I understand the notices have gone out, and the intent of the way this meeting will go is what?

MS. CREECH: If the Motion is granted, I see that the special meeting is proceeding in the same fashion as noticed. Each unit or each owner can present a proposed amendment. They have to submit it in writing, I believe, ten days in advance. You have ten minutes to explain what -- or state your position. And then, after that, you would have a vote by the Regime. We would submit that that vote should be unanimous. And since you have to evidence the vote by some written instrument that then gets recorded, the only distinction would be that we would need everybody's signature as opposed to just those constituting a majority of the interest in the Regime.

THE COURT: Now it's been a while since I heard this, and I'm trying to remember what y'all argued back in the original hearing. But I mean, looking at the statute at 160, doesn't (c) allow for the modification of quorums and percentages and numbers and that kind of thing? And I get what you're saying. You're saying maybe it doesn't matter because

maybe property rights perhaps trump that section. I mean, I guess, that's what you're saying, right? You're not saying (c) doesn't say what it says; you're saying it doesn't matter because property rights shouldn't be affected by the Nonprofit Act and the relief valve or truck struck provision. And that it doesn't matter what (c) says because it's property is essentially the argument. Is that --

MS. CREECH: That's right.

THE COURT: -- a fair assessment?

Okay. All right. Let me take a look at it, and you'll probably need some sort of decision before what date? The 17th; you said? Certainly, before that. And I'll try to get you something as quickly as possible.

MS. HOUGHTON: Yes --

THE COURT: All right. Anything else for the record?

MS. HOUGHTON: Thank you, Your Honor.

I would just extremely briefly with respect to the argument that this is different because it concerns real property. Nonprofits own property in a number of contexts. There's plenty of nonprofits out there that are not constituted under the horizontal property regime act that also owned

property, and a modification of the way that owners could vote or voting interest in that nonprofit could also impact property -- real property concerns in those contexts. So it's not wholly unique.

But I do appreciate the Court hearing us. And yes, the meeting is scheduled for March 17th currently.

THE COURT: Okay.

MR. KUBEC: And Your Honor, if I may add? Section (d) specifically says that your Order may authorize the obtaining of whatever votes and approvals are necessarily for the dissolution, merger, or sale of assets involving the company -- a nonprofit. Its assets would -- common elements.

THE COURT: Say that a little -- you're sort of echoing. Can you say that?

MR. KUBEC: Section (d) specifically says an order from the Court, "May also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets." Assets of the corporation in this instance or common elements. So an Order can affect the assets underlying property of the corporation.

MS. CREECH: But I would submit to that, that the property is not titled in the name of

the nonprofit. It is titled in the individual owner names, and each individual owner has an undivided interest in that common element. So that's, again, where we come back to the interplay between the Nonprofit Act and the Horizontal Property Act.

THE COURT: All right. And that was Section (d) of the Order? Was that part of the Motion to Reconsider? That provision?

MS. CREECH: Was it Section (d) of the Order, or is he talking about Section (d) of the --

MR. KUBEC: That's Section (d) of the statute.

MS. CREECH: Of the statute.

THE COURT: The statute. Okay. I was trying to find that in the Order. All right. Well, let me look at all of this and see what I can figure out.

All right. Thank you all very much.

Thank you, Madam Court Reporter.

If there's nothing else for the record, y'all have a great day and a great weekend.

MS. CREECH: Thank you, Judge.

MS. HOUGHTON: Thank you very much.

(Whereupon, at 9:59 a.m., the proceeding was concluded.)

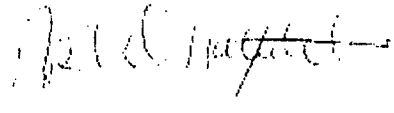
CERTIFICATE OF DEPOSITION OFFICER

I, ASHLEY MANINI, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

ASHLEY MANINI
Notary Public in and for the
State of South Carolina

CERTIFICATE OF TRANSCRIBER

I, APRIL D. HATFIELD, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



APRIL D. HATFIELD

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

1092

SEA PINES PLANTATION COMPANY)
TO) MASTER DEED
SOUTH BEACH VILLAGE LAGOON VILLAS II) HORIZONTAL PROPERTY REGIME
HORIZONTAL PROPERTY REGIME LVII)

At Hilton Head Island, County of Beaufort, and State of South Carolina, on this 14th day of October, 1973, Sea Pines Plantation Company, a South Carolina Corporation, whose principal office is situated on Hilton Head Island, State of South Carolina, (hereinafter referred to as "Grantor"), does hereby declare:

FIRST: That Grantor owns a property situated at Hilton Head Island, County of Beaufort, State of South Carolina, which is described as follows:

ALL that certian piece, parcel or lot of land, with improvements thereon, situate, lying and being in Sea Pines Plantation on Hilton Head Island, Beaufort County, South Carolina, known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII as shown on a plat thereof prepared by Calvert Surveying Company, Inc., R.L.S., which said plat is dated October 2, 1973, and recorded in the Office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 21 at Page 149 ; said herein described property commencing at a Point of Beginning which said Point of Beginning is the generally northernmost point of the above described South Beach Village Lagoon Villas II property and its intersection with a portion of lands identified as Port Villas; thence S 44° E a distance of 46 feet to a point; thence S 17° 45' W a distance of 239 feet to a point; thence S 46° W a distance of 112 feet to a point; thence N 44° W a distance of 77 feet to a point; thence N 46° E a distance of 37 feet to a point; thence N 3° 43' E a distance of 74.34 feet to a point; thence N 51° 32' W a distance of 65.58 feet to a point; thence S 63° 30' E a distance of 48.18 feet to a point; thence N 67° 30' E a distance of 30 feet to a point; thence N 33° 14' E a distance of 30 feet to a point; thence N 18° 42' E a distance of 30 feet to a point; thence N 3° 35' W a distance of 30 feet to a point; thence N 45° 51' E a distance of 57.70 feet to a point; thence S 49° 09' E a distance of 20 feet to a point; thence N 45° 51' E a distance of 62 feet to the Point of Beginning of the within described property. Said property is generally bounded on its East by a lagoon, on its West by Lagoon Villas Phase I, an access roadway, and Port Villas all being located within Sea Pines Plantation, Hilton Head Island, Beaufort County, South Carolina. For a more detailed description as to location, courses, metes, bounds and distances, reference to said plat of record is craved.

AND ALSO, a nonexclusive easement for ingress and egress on all existing roads within Sea Pines Plantation Company including, but not limited to, roads in existence running from the eastern portion of the above described property to South Sea Pines Drive said ingress and egress roads having their center lines shown and indicated on the

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above referred to plat of record which said plat was prepared by Calvert Surveying Company, Inc., R.L.S. and entitled "Lagoon Villas Phase II."

SECOND: That Grantor (intending to create a horizontal property regime that shall be known as South Beach Village Lagoon Villas II, Horizontal Property Regime LVII hereinafter called the "Regime") has construcoted on the parcel of land described above certain buildings and other improvements (which, together with the land described in Paragraph "FIRST", all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto and hereinafter usually referred to as the "Property") according to the plans attached hereto and identified as Exhibit "B", which were certified to by Richard E. Collins, Jr., A.I.A. an architectural firm duly authorized and licensed to practice in the State of South Carolina, on the 27th day of September, 1973, and which are made a part hereof.

THIRD: That the Property includes three (3) buildings, containing six (6) individual dwelling units (hereinafter referred to as "Dwelling Units") all of which are to be used for residential purposes. The Dwelling Units are all capable of individual utilization on account of having their own exits to the common elements of the Property, and they will be sold to one or more co-owners, each co-owner obtaining a particular and exclusive property right thereto, and also undivided interest in the general and limited common elements of the Property, as listed hereinafter in this Deed, necessary for their adequate use and enjoyment (hereinafter referred to as "common elements"), all of the above in accordance with the Horizontal Property Act of South Carolina.

FOURTH: That Property has a total area of 0.77 acres of which 8,071.21 square feet will constitute Dwelling Units, and 25,469.99 square feet will constitute common elements.

FIFTH:

I. DWELLING UNITS.

A. General:

1. Building #1: This building contains two (2) Dwelling Units (hereinafter referred to as "Villas") and commonly referred to as Villas 1591 and 1592.

2. Building #2: This building contains two (2) Dwelling Units commonly referred to as Villas 1593 and 1594.

3. Building #3: This building contains two (2) Dwelling Units commonly referred to as Villas 1595 and 1596.

B. The Dwelling Units include the space enclosed by the unfinished surfaces of perimeter and interior walls, ceilings and floors thereof, including vents, doors, windows and such other structural elements that ordinarily are regarded as enclosures of space; all interior dividing walls and partitions (including the space occupied by such walls or partitions); and the decorated inner surfaces of said perimeter and interior walls (including the decorated inner surfaces of all interior load-bearing walls) and floors, ceilings, consisting, as the case may be, of wallpaper, paint, plaster, carpeting, tiles and all other furnishings, materials and fixtures affixed or installed and for the sole and exclusive use of any Dwelling Unit, commencing at the point of disconnection from the structural body of the building and from utility lines, pipes or systems serving the Dwelling Unit. No pipes, wires, conduits, or other public utility lines or installations constituting a part of the overall systems designed for the service of any particular Dwelling Unit of a building, nor any property of any kind, including fixtures and appliances within any Dwelling Unit, which are not removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building, shall be deemed to be a part of any Dwelling Unit.

C. Villas: That the Villas, as shown on the plans of the Property (Exhibit "B") are composed of four (4) two-bedroom Type A Villas, and two (2) three-bedroom Type B Villas.

1. Two-bedroom Type A Villas: (Units 1591, 1592, 1595 and 1596) These Villas measure 39.83 feet wide and 36.66 feet deep in their maximum interior dimensions and contain a net interior area of 1,086 square feet.

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2. Three-bedroom Type B Villas. (Units 1593 and 1594). These Villas measure 44.83 feet wide and 44 feet deep in their maximum interior dimensions and contain a net interior area of 1,400 square feet.

II. COMMON ELEMENTS:

A. The General Common Elements are as follows:

1. The Property, excluding the limited common elements and the Dwelling Units, and including, but not limited to, the foundations, roofs, floors, ceilings, perimeter walls, load-bearing interior walls and partitions, slabs, stairways, pipes, wires, conduits, air ducts, and public utility lines, including the space actually occupied by the above.

2. Tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installation existing for common use, including a substitution of same or additional equipment which may be acquired by the Council of Co-Owners or the Regime.

3. Parking facilities located on the Property, which parking facilities consist of approximately 1,701 square feet, and are shown on the Plat of the Property (attached hereto and identified as Exhibit "A").

4. All roads, walkways, paths, trees, shrubs, yards, gardens, etc., located on the Property.

5. All other elements of the Property, constructed or to be constructed, rationally of common use or necessary or convenient to the existence, upkeep, and safety of the Property, and, in general, all other devices or installations existing for common use.

B. The Limited Common Elements are as follows:

1. The rear and front yards and service areas (shown on the plat attached hereto and identified as Exhibit "A") adjacent to each Dwelling Unit, the storage cabinets located in the service yards, and the fences screening the service areas are limited common elements and are each restricted to the use of the Dwelling Unit adjacent to such limited common elements, respectively.

SIXTH:

I. That the title and interest of each co-owner of a Dwelling Unit in the common elements listed in Sub-Paragraph II of Paragraph "FIFTH" and their proportionate share in the profits and common elements (both general and limited), as well as the proportionate representation for voting purposes in the meeting of the Council of Co-Owners (hereinafter referred to as "Council") of the Regime is based on the proportionate value of each Dwelling Unit to the total value of the Property. The total value of the Property is Four Hundred Fifty-eight Thousand Dollars ($458,000.00). The value of each Dwelling Unit and its proportionate percentage interest is set forth below. Such values shall not be deemed to limit the price for which the Property or any Dwelling Unit may be sold or exchanged are as follows:

A. Dwelling Units 1591, 1592, 1595 and 1596; 15.939 per cent each based on a value of $73,000 for each of said Dwelling Units.

B. Dwelling Units 1593 and 1594; 18.122 per cent each based on a value of $83,000 for each of said Dwelling Units.

SEVENTH: That the administration of the Regime consisting as aforesaid of the Property described in Paragraphs "FIRST" and "FIFTH" of this Deed shall be in accordance with the provisions of the By-Laws which are made a part hereof of this Deed and are attached hereto as Exhibit "C".

EIGHTH: That, as appears above, a Horizontal Property Regime is hereby constituted under and subject to the provisions of the Horizontal Property Act of the State of South Carolina, so that Dwelling Units may be conveyed and recorded as individual properties capable of independent use, and each having its own exit to the common elements of the Property, and each Dwelling Unit co-owner having an exclusive and particular right over his respective Dwelling Unit and in addition the specified undivided interest in the common elements of the Property.

NINTH: That so long as the Grantor owns one or more of the Dwelling Units, the Grantor shall be subject to the provisions of this Deed and of Exhibits "A", "B", and "C" attached hereto and the Grantor covenants to take no action which will adversely affect the rights of the Regime with respect to the assurances against latent defects in the Property or other rights assigned to the Regime by reason of the establishment of said Horizontal Property Regime.

TENTH: That the common elements shall remain undivided and no co-owner shall bring any action for partition and/or division.

ELEVENTH: That the percentage of the undivided interest in the common elements (both general and limited) established herein shall not be changed except with the unanimous consent of all of the co-owners expressed in amendment to this Deed duly recorded.

TWELFTH: That the undivided interest in the common elements (both general and limited) shall not be separated from the Dwelling Unit to which it appertains and shall be deemed conveyed or encumbered with the Dwelling Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

THIRTEENTH: That each co-owner shall comply with the provisions of this Master Deed, the Declaration of Covenants, Restrictions, and Affirmative Obligations Applicable to all Class "B" Multi-Family Residential Areas by Sea Pines Plantation Company dated July 9, 1964, and recorded in the Office of the Clerk of Court for Beaufort County at Book 124 of Deeds, Page 85, and any applicable recorded additions or amendments thereto, the Regime By-Laws, decisions resolutions of the Council of Co-Owners, Board of Administration and their representatives, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages or for injunctive relief; provided that nothing contained herein shall limit the rights of the Sea Pines Plantation Company, its successors and assigns, as set forth in Covenants, Restrictions, and Affirmative Obligations dated August 20, 1967, declared by Sea Pines Land Company, Inc., Sea Pines Plantation Company, Inc., and Lighthouse Beach Company recorded in the Office of the Clerk of Court for Beaufort County at Book 150 of Deeds, Page 41. The Dwelling Unit shall also be conveyed subject to the recorded plat and plan of the Property. In addition, the Dwelling Units shall be conveyed subject to the South Beach Owners Association Restrictive Covenants recorded in the Office of the Clerk of Court, County of Beaufort, South Carolina, in Book 176 of Deeds, at Page 203, and to the By-Laws of the South Beach Owners Association, Inc.

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FOURTEENTH: That the dedication of the Property to the Horizontal Property Regime herein shall not be revoked, or the Property removed from the Horizontal Property Regime, or any of the provisions herein amended unless all of the co-owners and the mortgagees of all the mortgages covering the Dwelling Units unanimously agree to such revocation, or amendment, or removal of the Property from the Horizontal Property Regime by duly recorded instrument.

FIFTEENTH: That no co-owner of a Dwelling Unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his Dwelling Unit.

SIXTEENTH: That all present or future co-owners, tenants, future tenants, or any other person that might use the facilities of the Property in any manner, are subject to the provisions of this Deed, and that the mere acquisition or rental of any of the Dwelling Units shall signify that the provisions of this Deed are accepted and ratified.

SEVENTEENTH: That if the Property is totally or substantially damaged or destroyed, the repair, reconstruction, or disposition of the Property shall be as provided by the above-mentioned Statute of South Carolina.

EIGHTEENTH: That, where a mortgagee or other purchaser of a Dwelling Unit obtains title by reason of foreclosure of a mortgage covering a Dwelling Unit, such acquirer of title, his successors or assigns, shall not be liable for assessments by the Regime which became due prior to the acquisition of title by such acquirer, it being understood, however, that the above shall not be construed to prevent the Regime from filing and claiming liens for such assessments and enforcing same as provided by law, and that such assessment liens shall be subordinate to such mortgage.

NINETEENTH: That in a voluntary conveyance of a Dwelling Unit, the Grantee of the unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Regime against the latter for his share of the common expenses up until the time of the grant or conveyance without prejudice to the Grantees right to recover from the Grantor the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled to a statement from the manager or Council of Co-Owners, as the case may be, setting forth the amount of the unpaid assessments against the Grantor due the Regime and such Grantees shall not be liable for, nor shall the Dwelling Unit conveyed be subject to a lien for, any unpaid assessments made by the Council of Co-Owners against the Grantor in excess of the amount therein set forth.

TWENTIETH: That the Board of Administration of the Regime or the Management Agent, or Manager, shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering Dwelling Units, but without prejudice to the right of the co-owners to obtain additional individual Dwelling Unit insurance.

TWENTY-FIRST: That insurance premiums for blanket insurance coverage of the Property shall be a common expense to be paid by periodic assessments levied by the Regime and that such payments shall be held in a separate escrow account of the Regime and used solely for the payment of the Blanket Property Insurance premiums as such premiums become due.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed by the duly authorized officers the day and year first above written.

RECORDED AUG 27 1973 AT 3:00 P.M. IN THE OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY, S. C. IN BOOK 1006 AT PAGE 469

FILED AUG 27 1973 AT 3:00 P.M. IN THE OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY, S. C. IN BOOK 1006 AT PAGE 469

Signed, sealed and delivered in the presence of:

Mary Duncan

Kristine L. McClain

SEA PINES PLANTATION COMPANY

BY: Richard S. Woods (L.S.)

ATTEST: Richard Werth (L.S.)

STATE OF SOUTH CAROLINA)
) P R O B A T E
COUNTY OF BEAUFORT)

PERSONALLY appeared before me Mary Duncan and made oath that she saw the within named Sea Pines Plantation Company by Richard S. Woods its Vice President and H. Richard Werth its Assistant Secretary sign and affix the corporate seal, and as its act and deed, deliver the within instrument dated the 12th day of October, 1973, and that she with Kristine L. McClain witnessed the execution thereof.

Mary Duncan

SWORN to before me this 12th day of October, 1973.

Kristine L. McClain
Notary Public for South Carolina
My Commission Expires: 4/1/83

BY-LAWS OF
SOUTH BEACH VILLAGE LAGOON VILLAS
HORIZONTAL PROPERTY REGIME LVII

ARTICLE I
PLAN OF APARTMENT OWNERSHIP

Section 1. Horizontal Property Regime. The Property (the term "Property" as used herein means and includes the land, the buildings, all improvements and structures thereto) located in Sea Pines Plantation, Hilton Head Island, in Beaufort County, State of South Carolina, known as South Beach Village Lagoon Villas, has been, by Master Deed, submitted to the provisions of the Horizontal Property Act of South Carolina, and is to be hereforth known as South Beach Village Lagoon Villas, Horizontal Property Regime LVII (hereinafter referred to as the "Regime").

Section 2. By-Laws Applicability. The provisions of these By-Laws are applicable to the Property and the Regime.

Section 3. Personal Application. All present or future co-owners, tenants, future Tenants, or their employees, or any other person that might use the facilities of the Property in any manner, are subject to the regulations set forth in these By-Laws and in the Master Deed establishing said Regime. The mere acquisition or rental of any of the Dwelling Units (hereinafter usually referred to as "Dwelling Unit") as defined in the Master Deed of the Property or the mere act of occupancy of any of said Dwelling Units will signify that these By-Laws and the provisions of the Master Deed are accepted and ratified, and will be complied with.

ARTICLE II
VOTING, MAJORITY OF CO-OWNERS QUORUM, PROXIES

Section 1. Voting. Voting shall be on a percentage basis and the percentage of the vote to which the co-owner is entitled is the percentage assigned to the Dwelling Unit or Dwelling Units in the Master Deed.

Section 2. Majority of Co-owners. As used in these By-Laws the term "majority of co-owners" shall mean those co-owners holding 51% or more of the total value of the Property, in accordance with the percentages assigned in the Master Deed.

Section 3. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of co-owners as defined in Section 2 of this Article shall constitute a quorum.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time of each meeting.

ARTICLE III
ADMINISTRATION

Section 1. Council Responsibilities. The co-owners of the Dwelling Units will constitute the Council of Co-Owners (hereinafter usually referred to as "Council") who will have the responsibility of administering the Property, approving the annual budget, establishing and collecting periodic assessments, and arranging for the management of the Property pursuant to an agreement, containing provisions relating to the duties, obligations, removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Council shall require approval by a majority of co-owners.

RECORDED BOOK 109 PAGE 1099 BEAUFORT COUNTY, S. C. RECORDED

Section 2. Place of Meetings. Meetings of the Council shall be held at such place convenient to the co-owners as may be designated by the Council.

Section 3. Annual Meetings. The annual meetings of the Council shall be held at the call of the Regime President once a year on the third Saturday in October. At such meetings there shall be elected by ballot of the co-owners a Board of Administration in accordance with the requirements of Section 5 of Article IV of these By-Laws. The co-owners may also transact such other business of the Council as may properly come before them.

Section 4. Special Meetings. It shall be the duty of the Secretary to call a special meeting of the co-owners as directed by resolution of the Board of Administration or upon a petition signed by a majority of co-owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the votes present, either in person or by proxy.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each co-owner or record, at least five but not more than ten days prior to such meeting. The mailing of a notice in the manner provided in this Section shall be considered notice served.

Section 6. Adjourned Meeting. If any meeting of the Council cannot be organized because a quorum has not attended, the co-owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Order of Business. The order of business at all Annual Meetings of the Council shall be as follows:

(a) Roll Call.
(b) Proof of notice of meeting or waiver of notice.
(c) Reading of minutes of preceding meetings.
(d) Reports of officers.
(e) Report of committees.
(f) Election of inspectors of election.
(g) Election of administrators.
(h) Unfinished business.
(i) New business.

The order of business at all Special Meetings of the Council shall include items (a) through (d) above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

ARTICLE IV
BOARD OF ADMINISTRATION

Section 1. Number and Qualification. The affairs of the Council shall be governed by a Board of Administration (hereinafter referred to as "Board") comprised of five persons, all of whom must be co-owners of Dwelling Units in the Property.

Section 2. General Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Council and may do all such acts and things as are not by law or by these By-Laws directed to be executed and done by the Council or individual owners.

ELECTRONICALLY RECORDED IN THE OFFICIAL PUBLIC RECORDS OF HARRIS COUNTY, TEXAS

Section 3. Other Duties. In addition to duties imposed by these By-Laws, or by resolutions of the Council, the Board shall be responsible for the following:

(a) Compliance with all of the terms and conditions of the Master Deed and enforcement of same.
(b) Care, upkeep and surveillance of the Property and the common elements.
(c) Collection of assessments from the co-owners.
(d) Employment, dismissal, and control of the personnel necessary for the maintenance and operation of the common elements.
(e) Performing repairs caused by any natural disaster or man-made damage from the escrow account and any special assessment.

Section 4. Management Agent. The Board may employ a Management Agent at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Section 3 of this Article.

Section 5. Election and Term of Office. At the first Annual Meeting of the Council, the initial term of office of two members of the Board shall be fixed at three (3) years. The term of office of two members of the Board shall be fixed at two (2) years, and the term of office of one member of the Board shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the Board, his successor shall be elected to serve a term of three (3) years. The members of the Board shall hold office until their successors have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies in the Board of Administration caused by reason other than the removal of a member of the Board by a vote of the Council shall be filled by vote of the majority of the remaining members, even though they may constitute less than a quorum, and each person so elected shall be a member of the Board until a successor is elected at the next meeting of the Council.

Section 7. Removal of Members of the Board. At any regular or special meeting of the Council duly called, any one or more of the members of the Board may be removed with or without cause by a majority of co-owners and a successor may then and there be elected to fill the vacancy thus created. Any member of the Board whose removal has been proposed to the Council shall be given an opportunity to be heard at the meeting.

Section 8. Organization Meeting. The first meeting of a newly elected Board shall be held within ten (10) days of election at such place as shall be fixed by the Board at the meeting at which such Board members were elected by the Council, and no notice shall be necessary to the newly elected Board members in order legally to constitute such meeting, providing a majority of the Board shall be present.

Section 9. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board shall be given by the Secretary-Treasurer, or other designated person, to each Board member, personally or by mail, telephone or telegraph, at least ten (10) days prior to the day named for such meeting.

Section 10. Special Meetings. Special meetings of the Board may be called by the President on three days' notice to each Board member, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least two Board members.

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Section 11. Waiver of Notice. Before or at any meeting of the Board, any Board member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Board member at any meeting of the Board shall be a waiver of notice by him of the time, place and purpose thereof. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Board Quorum. At all meetings of the Board, a majority of the Board members shall constitute a quorum for the transaction of busines, and the acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there is less than a quorum present, the majority of the Board members present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. Fidelity Bonds. The Board may require that any and all officers and employees of the Regime handling or responsible for Regime funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Regime.

ARTICLE V
OFFICERS

Section 1. Designation. The principal officers of the Regime shall be a President, a Vice President, and a Secretary-Treasurer all of whom shall be elected by and from the Board. The Board may appoint an assistant treasurer, and an assistant secretary, and such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Regime shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Regime. He shall preside at all Council meetings of the Regime and of the Board. He shall have all of the general powers and duties which are usually vested in the office of President of a Regime, including but not limited to the power to appoint committees from among the co-owners from time to time as he may in his discretion decide are appropriate to assist in the conduct of the affairs of the Regime.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Council; he shall have charge of such books and papers as the Board may direct; and he shall have responsibility for Regime funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books

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belonging to the Regime. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Regime in such depositories as may from time to time be designated by the Board. He shall, in general, perform all the duties incident to the offices of Secretary and Treasurer.

ARTICLE VI
OBLIGATIONS OF THE CO-OWNERS

Section 1. Assessments. All co-owners are obligated to pay periodic assessments imposed by the Regime to meet all Regime expenses, which shall include a liability insurance policy premium and an insurance premium for a policy to cover repair and reconstruction work in case of hurricane, fire, earthquake, and other hazards. The assessments shall be made pro rata according to the value of the Dwelling Unit owned, and as stipulated in the Master Deed.

Escrow Account. The transfer of ownership of an individual villa within the Regime carries with it the proportionate equity of that villa ownership in the Regime Escrow Account. Each villa owner will be assessed for the Regime Escrow Account in accordance with a set schedule in order to provide for a contingency fund for maintenance and repair of the Regime Property.

Section 2. Maintenance and Repair.

(a) Every co-owner must perform promptly all maintenance and repair work within his own Dwelling Unit, which if omitted would affect the Property in its entirety or in a part belonging to other co-owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

(b) All the repairs of internal installations of the Dwelling Unit such as water, light, gas, power, sewage, telephones, air conditioners, sanitary installations, doors, windows, lamps) and all other accessories belonging to the Dwelling Unit shall be at the expense of the co-owner.

(c) A co-owner shall reimburse the Regime for any expenditures incurred in repairing or replacing any common elements damaged through his fault.

Section 3. Use of Dwelling Units -- Internal Changes.

(a) All Dwelling Units shall be utilized for residential purposes only.

(b) A co-owner shall not make structural modifications or alterations in his Dwelling Unit or installations located therein without previously notifying the Regime in writing, through the management agent, if any, or through the President if no management agent is employed. The Regime shall have the obligation to answer within thirty (30) days and failure to do so within the stipulated time shall mean that there is no objection to the proposed modification or alteration.

Section 4. Use of Common Elements. A co-owner shall not place or cause to be placed in the passages or roads any furniture, packages, or obstructions of any kind. Such areas shall be used for no other purpose than for normal transit through them.

Section 5. Right of Entry.

(a) A co-owner shall grant the right of entry to the management agent or to any other person authorized by the Board in case of any emergency originating or threatening his Dwelling Unit, whether the co-owner is present at the time or not.

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(b) A co-owner shall permit other co-owners, or their representatives, when so required, to enter his Dwelling Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that such requests for entry are made in advance and that such entry is at a time convenient to the coowner. In case of an emergency, such right of entry shall be immediate.

Section 6. Rules of Conduct.

(a) Residents shall exercise extreme care to avoid unnecessary noise or the use of musical instruments, radios, television and amplifiers that may disturb other residents.

(b) No residents of the Property shall:

(1) Post any advertisements or posters of any kind in or on the Property except as authorized by the Regime;

(2) Hang garments, towels, rugs, or similar objects from the windows or from any of the facades of the Property;

(3) Dust rugs, mops or similar objects from the windows or clean rugs or similar objects by beating on the exterior part of the Property;

(4) Throw garbage or trash outside the disposal installations provided for such purposes in the service areas;

(5) Act so as to interfere unreasonably with the peace and enjoyment of the residents of the other Dwelling Units in the Property;

(6) Maintain any pets which cause distress to coowners through barking, biting, scratching or damaging of property.

(c) No co-owner, resident, or lessee shall install wiring for electrical or telephone installations, television antennae, machines or air conditioning units, or similar objects outside of his dwelling or which protrude through the walls or the roof of his dwelling unit except as authorized by the Board.

ARTICLE VII
AMENDMENTS

Section 1. By-Laws. These By-Laws may be amended by the Council in a duly constituted meeting held for such purpose, and no amendment shall take effect unless approved by co-owners representing at least two-thirds of the total value of the Property as shown in the Master Deed.

ARTICLE VIII
MORTGAGES

Section 1. Notice to Board. A co-owner who mortgages his Dwelling Unit shall notify the Board through the management agent, if any, or the President if there is no management agent of the name and address of his mortgagee; and the Regime shall maintain such information in a book entitled "Mortgages of Dwelling Units."

Section 2. Notice of Unpaid Assessments. The Board shall, at the request of a mortgagee of a Dwelling Unit report any unpaid assessments due to the Regime from the co-owner of such Dwelling Unit.

ARTICLE IX
COMPLIANCE

These By-Laws are intended to comply with the requirements of the Horizontal Property Act of South Carolina. In case any of these By-Laws conflict with the provisions of said Statute, it is hereby agreed and accepted that the provisions of the Statute will control.

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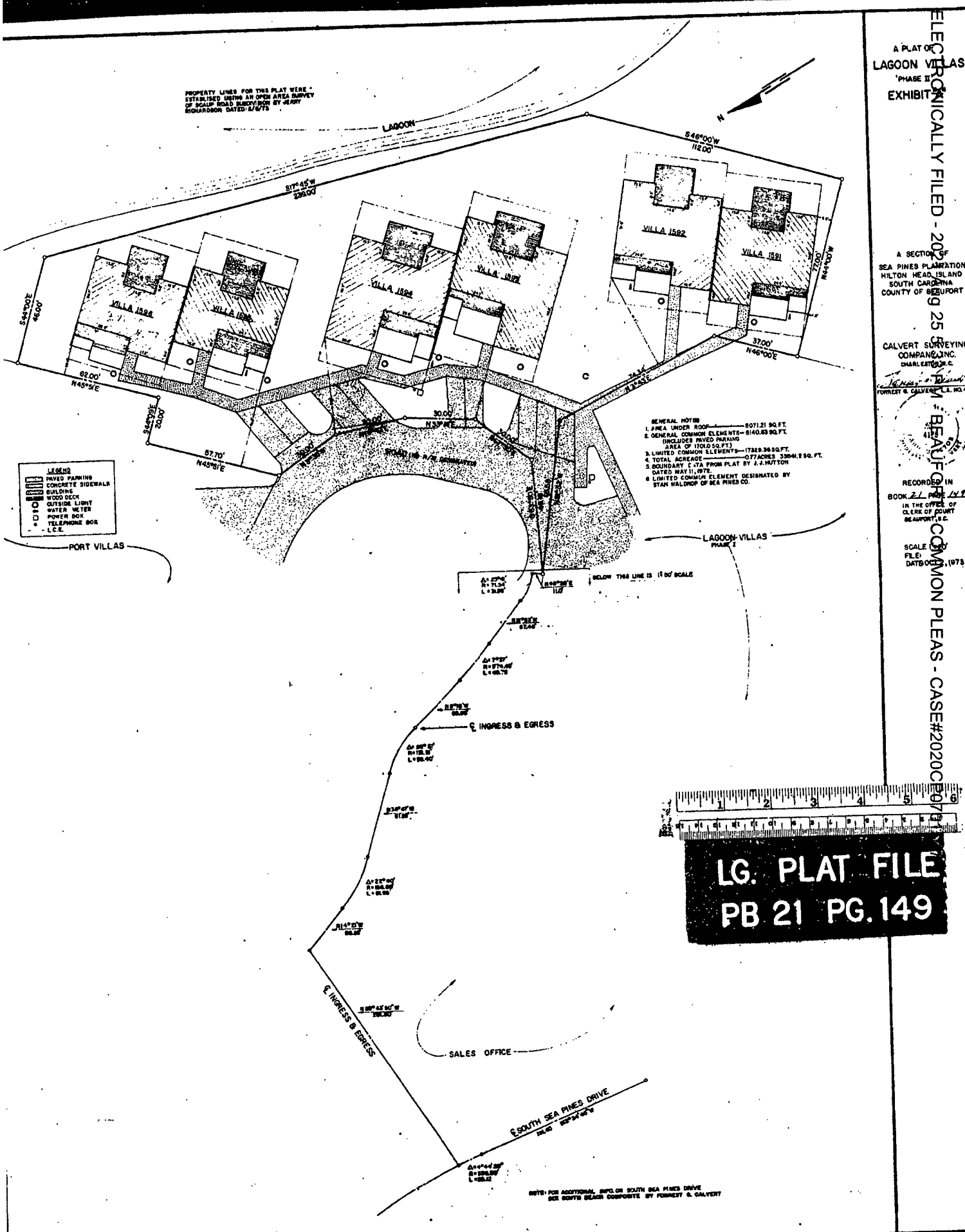

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master in Equity

Marvin H. Dukes, III, Master in Equity
Case No: 2020-CP-07-01547

Appellate Case No. 2022-000301

Todd E. Taylor .....Respondent,

vs.

Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller..... Appellants,

vs.

South Beach Village Lagoon Villas, II; Horizontal Property Regime LVII .....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

/s/ Louis H. Lang
Louis H. Lang, SC Bar 3127
Louislang@callisontighe.com
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902

Attorneys for Appellants,
Amar and Kennie Gill Living Trust Dated March 15, 2019; Kennie Lee Miller Gill, Trustee of the Amar and Kennie Gill Living Trust Dated March 15, 2019; Kenneth V.L. Miller; and Anna M. Miller

November 16, 2022
Columbia, South Carolina